

Regulatory Impact Statement

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Proposed Prostitution Control  
Regulations 2006

Closing Date for Submissions  
Friday 21 April 2006

Consumer Affairs Victoria  
Department of Justice  
452 Flinders Street  
MELBOURNE, VICTORIA 3000

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## **CONSULTATION ARRANGEMENTS**

### **How to have your say**

The Prostitution Control Regulations 1995 will sunset on 13 June 2006. Following a review process in 2005 in which stakeholders were consulted, Consumer Affairs Victoria now invites written submissions from interested persons and organisations on the appropriateness of the proposed Prostitution Control Regulations 2006.

This Regulatory Impact Statement (RIS) explains the reason for, and the objectives of, the proposed Regulations, and assesses the relative costs and benefits of the proposed Regulations and the alternatives

The content and scope of prostitution regulations in Victoria cannot go beyond the regulation making powers specified in the *Prostitution Control Act 1994*. Therefore, any changes you suggest to the proposed Regulations must be within the confines of the regulation making power.

Please indicate in what capacity you are submitting your comments. If your submission is on behalf of a representative group, please give a summary of the people and organisations that you represent.

Please send your written submissions by Friday 21 April 2006 to:

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or via email to [pcr95review@justice.vic.gov.au](mailto:pcr95review@justice.vic.gov.au)

### **Your privacy**

Your submission will be regarded as a public document and may be viewed in full by members of the public, unless you mark sections of your submission as 'private and confidential'. Notwithstanding any such marking, documents held by government may be the subject of a request for access under the *Freedom of Information Act 1982*. Documents are assessed under the Act and not all information is automatically made available.

# **PROSTITUTION CONTROL REGULATIONS 2006**

## **REGULATORY IMPACT STATEMENT**

### **EXECUTIVE SUMMARY**

The Prostitution Control Regulations 1995 will sunset on 13 June 2006. Consumer Affairs Victoria reviewed the Regulations and consulted with key stakeholders, assessed the available options and developed the attached proposed Regulations. This Regulatory Impact Statement (RIS) provides an analysis of the proposed Regulations in terms of the problems envisaged without regulations, regulatory objectives, their impact costs and benefits, and the alternative approaches to achieve the objectives considered. An assessment is also made of the implications of the proposals on competition.

#### *Problems to be addressed*

Sexually transmitted diseases (STD's) have been increasing in the UK, Europe, USA and in Australia over recent years. STD's involve considerable stress and illness, can affect reproductive ability, and can be fatal. The costs of STD's in terms of medical and non-medical treatment and care are very significant.

Sex workers are recognised as a priority population in the prevention of sexually transmitted infections; as a result, regulatory authorities in Queensland and Victoria have listed the diseases as requiring preventative testing. Research by the Melbourne Sexual Health Centre indicate there is a low prevalence of STD's among sex workers in the regulated systems compared with sex workers outside such systems and the general community.

Historically, the prostitution industry has been beset with problems associated with safety and, indeed, this is the reason for the safety objectives in the Act. This is well illustrated by the concept of the 'hidden crime' which reflects the risks inherent in the industry, the associated lack of reporting of assaults, combined with a perceived widespread negative attitude in the community towards sex workers that indicates a lack of concern with these crimes.

The most recent relevant data of the extent of risks in the sex industry is contained in reports from Queensland and there is little reason to suggest that the situation is substantially different in Victoria. The evidence from these studies shows that the industry is the subject of severe safety risks but these are significantly, but not totally, reduced in a regulated environment. The safety initiatives put in place in Queensland (eg Safety Guidelines for Brothels) testify to the extent and scope of the risks involved in the industry.

A total ban on advertising has negative effects for the prostitution service provider and clients. Professor Marcia Neave, in her 1985 report following the Inquiry into Prostitution, recognised these effects and sought a balanced approach that does not

cause public offence while allowing limited advertising. This 'balance' is informed by the fact that in the broader Australian context the community is concerned about the portrayal of sex and sexuality and nudity (by virtue of the complaints to the Advertising Standards Board. These concerns have also resulted in the recent Gender Portrayal Guidelines in Victoria.

To offer some autonomy to prostitutes who do not wish to work for another person, the *Prostitution Control Act 1994* creates a registration requirement for small owner-operators rather than requiring them to use the licensing mechanism. The licensing mechanism seeks to ensure that criminals are not involved in the prostitution industry. Criminals are less likely to be interested in these small businesses as profits are comparatively low. However, to ensure this less restrictive approach is effective and these small businesses are not operating in association with another prostitution service providing business or has an interest in more than one permit (for brothels), certain information is required for registration purposes.

### ***Regulatory objectives***

In response to these problems, the principal objective of the proposed Prostitution Control Regulations 2006 is to provide for the safety of sex workers, their clients and the general community.

### ***Benefit/costs analysis***

The RIS includes a benefit/cost analysis of the proposed Regulations against the base case. The base case represents the situation where there are no regulations in place. The analysis compared the benefits or costs of the proposed measure against the situation where there are no regulations.

As it is very difficult to assign quantitative benefits to most of the proposed Regulations, a balanced scorecard approach is used. This assigns a score depending on the assessed impact of the proposal – a negative score (-1 etc) is assigned where the impact is negative/undesirable/poor, 0 where there is no impact, and positive (+1 etc) where the impact is desirable, good. The assessment shows an overall very positive outcome (+13) for the proposed Regulations.

The analysis estimated the discounted costs of compliance for the industry over the life of the proposed Regulations (10 years) as approximately \$2.0 - \$2.4 million.

### ***Alternative methods to achieve objectives***

The RIS also includes a benefit/cost analysis of two alternatives to the proposed Regulations against the base case (no regulations). The alternatives under consideration are:

- adopting Occupational Health and Safety (OHS) Guidelines; and

- introducing a Voluntary Code (or Codes) of Practice for prostitution service providers.

The analysis of these two Options shows that they do not achieve the objectives as well as the proposed Regulations.

|                            |     |
|----------------------------|-----|
| OHS Guidelines             | +8  |
| Voluntary Code of Practice | +1  |
| Proposed Regulations       | +13 |

### ***Competition issues***

The proposed Regulations contain two elements that can be described as restricting competition, namely, the safety requirements and the regulations concerning owner-operators. As the benefit/cost analysis resulted in a very positive outcome for the safety requirements the restriction is considered justified. The benefit/cost analysis of the owner/operator requirements resulted in a balanced (0) outcome.

As brothels are, by virtue of the Act's provisions, restricted to six rooms (excluding some existing brothels) using the Australian Bureau of Statistics' definition of small business being of less than 20 employees, the proposed Regulations are assessed as not impacting differently on small or large business.

## 1. INTRODUCTION

### 1.1 Background

When the Prostitution Control Bill was introduced into Parliament in 1994, the Attorney-General stated that the then Government opposed all forms of prostitution but it acknowledged the recognition by most Victorians that prostitution will continue as long as there is a demand for commercial sexual services.

The Government therefore determined that a strict system of regulation was required that provided a barrier against organised crime and protected the community against the uncontrolled spread of brothels. Part of this regulation was to afford a level of protection for those engaged in the provision of prostitution services. Most importantly, the regulation should guard children from the effects of prostitution.

The objectives of the Act are to:

- (a) seek to protect children from sexual exploitation and coercion;
- (b) lessen the impact on the community and community amenities of the carrying on of prostitution-related activities;
- (c) seek to ensure that criminals are not involved in the prostitution industry;
- (d) seek to ensure that brothels are not located in residential areas or in areas frequented by children;
- (da) seek to ensure that no one person has at any one time an interest in more than one brothel licence or permit;
- (e) maximise the protection of prostitutes and their clients from health risks;
- (f) maximise the protection of prostitutes from violence and exploitation;
- (g) ensure that brothels are accessible to investigators, law enforcement officers, health workers and other social service providers;
- (h) promote the welfare and occupational health and safety of prostitutes.

These objectives were developed from the findings of the highly regarded 'Neave Inquiry' into prostitution in 1985<sup>1</sup>

Any person who operated a brothel prior to the introduction of the Act, and who made an application for a licence within three months, was deemed, at the commencement of the Act, to hold a licence until the actual licence could be processed. This has created a situation where a number of brothels, operating prior to the Act, have been

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<sup>1</sup> *Inquiry into Prostitution*, Professor Marcia Neave, Government of Victoria Bookshop, October 1985

allowed to continue business with more than six rooms. The largest legal brothel in Victoria has 18 rooms.

Although the Act contains provisions on street prostitution offences by both clients and sex workers, street work largely falls outside the regulatory framework.

Following introduction of the Act the Prostitution Control Regulations 1995 (the Regulations) were made to prescribe the:

- sexually transmitted diseases which prevent working in the industry (Regulation 9);
- advertising controls for prostitution service providers (Regulation 10);
- details to be given to the Business Licensing Authority by self employed, small owner-operators who wish to rely on the exemption from licensing under the Act (Regulation 11); and
- safety requirements for prostitution service providers (Regulations 14 and 19).

Extended under section 5 of the *Subordinate Legislation Act 1994*, the Prostitution Control Regulations 1995 will now sunset on 13 June 2006. Consumer Affairs Victoria reviewed the Regulations and consulted with key stakeholders, assessed the available options and developed the attached proposed Regulations. This Regulatory Impact Statement (RIS) provides an analysis of the proposed Regulations in terms of the problems that are envisaged without regulations, regulatory objectives, their impact costs and benefits and the alternative approaches to achieve the objectives that have been considered. An assessment is also undertaken of the implications of the proposals on competition.

A detailed 28-day consultation process with the release of a Discussion Paper to key stakeholders was undertaken as part of the review of the Regulations, and results are outlined in sub-section 1.3 of this RIS.

## **1.2 Brief Overview of the Industry and its Controls in Victoria and other States**

Bearing in mind the objectives of the Act, it is evident that one of the features of the prostitution industry, which sets it apart from other regulated industries, is that the areas of regulatory interest straddle the functions of a number of government agencies.

The *Prostitution Control Act 1994* is the main statute governing prostitution in Victoria. However, there are other Acts and Regulations administered by agencies other than Consumer Affairs Victoria, which contribute to the objectives of the Act; these include the *Planning and Environment Act 1987*, the *Occupational Health and Safety Act 2004*, the *Health Act 1958* and the Health (Infectious Diseases) Regulations 2001.



The Act utilises three areas of control over prostitution in Victoria, criminal controls to protect children, licensing controls to vet industry operators for criminal convictions, and planning controls to regulate the location of brothels.

Section 23 of the Act exempts a person working as a prostitute in their own business from the licensing mechanism; however, they must register with the Business Licensing Authority. The rationale for exempting small owner-operators from the licensing mechanism is twofold; it offers some autonomy to prostitutes who do not wish to work for another person, and criminals are less likely to be interested in small-scale prostitution as profits are comparatively low. The exemption does not apply if the business is associated with another prostitution service providing business.

Nominally, a six-room limit applies to brothels. While this limit applies to all new brothels, extensive grandfathering provisions mean there are brothels, which were in existence prior to the introduction of the Act, with more than six rooms, although this limit applies to all new brothels.

The Business Licensing Authority's records indicate that as at November 2005, there are 505 rooms in brothels run by licensees and four rooms in brothels run by small owner operators who are exempt from the requirement to hold a licence.

As at November 2005, there are 157 persons licensed to carry on business as a prostitution service provider, 47 of the kind being a brothel, 23 of the kind being an escort agency and 87 of the kind being a brothel and escort agency.

The Business Licensing Authority's records indicate that 95 brothels operate under licensees in Victoria. This figure takes into account the following factors:

- In some situations, more than one licensee operates a single brothel, for example some licensees are operating a business in partnership with each other at the same address;
- Some licensees are currently not trading; and
- Small owner-operators who are exempt from the licensing mechanism operate some brothels.

Small owner-operators do not require a license to operate but have to notify the Business Licensing Authority of their intention to commence business. To operate, small owner-operators register with the Business Licensing Authority and can only work with a maximum of one other person who is also a sex worker in the business.

All brothels must adhere to the planning laws and have a planning permit to operate, regardless of whether a licensed prostitution service provider or a small owner-operator runs the brothel.

There are currently 2007 persons registered with the Business Licensing Authority as small owner-operators, of these, 2003 are escort agents, two brothels, and two brothels and escort agents combined. Escort agencies can only provide a visiting

service; they cannot provide premises, regardless whether a licensee or a registered small owner-operator runs them.

When open for business, either the licensee or a person approved to be a brothel manager by the Business Licensing Authority, must supervise brothels. There are currently 743 approved brothel managers.

Persons employed to provide sexual services by a licensed prostitution service provider is not required to be approved or licensed by the Business Licensing Authority, unless they are working for themselves as a registered small owner-operator.

Street workers and prostitution businesses run by persons without a licence or an exemption from the Business Licensing Authority are operating outside this framework.

### ***1.2.1 Interstate comparisons***

There are a number of common elements in the regulatory approaches adopted by Victoria, New South Wales and Queensland. For example, recognition that prohibition is unlikely to result in the eradication of prostitution, rather, it is likely to expose vulnerable people to circumstances that are dangerous and exploitative, and that a stringent regulatory framework can improve the welfare of sex workers and minimise the impacts on the community. The following is a brief overview of prostitution controls in the other States and Territories in Australia.

#### New South Wales

The current framework commenced with the passing of the *Disorderly Houses Amendment Act 1995*. There is no licensing system to vet operators for criminal convictions. Local authorities handle the location of brothels, and many have developed policies to manage brothels in their area.

Activities that fall outside the regulatory framework are contained in the *Summary Offences Act 1988*, and include:

- living on the earnings of a prostitute, although persons who own or manage a brothel are exempt;
- causing or inducing prostitution;
- using premises, or allowing premises to be used for prostitution that are held out as being available for massage, sauna baths, steam baths, facilities for exercise or photographic studios;
- advertising that premises is used for prostitution, or advertising for prostitutes; and
- soliciting for prostitution near or within view of a dwelling, school, church or hospital.

## Queensland

Queensland has a system very similar to the controls in Victoria although more restrictive, for example, brothels cannot provide outcall services (also known as escort services) resulting in a much smaller regulated sector.

In Queensland, prostitution can be provided by sole operators or in licensed brothels. The *Prostitution Act 1999* allows a person to apply for a brothel licence, or a certificate to manage a brothel on behalf of the licensee. Those operating outside the regulatory framework include, unlicensed brothels or parlours, street workers, two sex workers sharing one premises (even if the workers both work alone in split shifts), and out-calls provided by a licensed brothel.

Sole operators or private workers can provide prostitution services at their own premises (in-call) or the client's (outcall), while a licensed brothel can only provide prostitution services on brothel premises.<sup>2</sup> Although sole operators can conduct their business under the Act, a single sex worker must not be found on the premises with any other person unless the other person has a current crowd controller's licence under the *Security Providers Act 1993* and is only participating in the provision of prostitution as a bodyguard.

In regards to advertising, the Queensland model prohibits a person from publishing an advertisement that describes the sexual services offered, might induce a person to seek employment as a sex worker, states, directly or indirectly, that the person's business provides or is connected with massage services.

Brothels in Queensland are limited to a maximum of five rooms. At any one time, the number of sex workers at the brothel must not outnumber the number of working rooms. In other words, if a person has approval to operate a 5-room brothel, the person must not have more than 5 sex workers at the brothel at the one time. The total number of all staff at a brothel, including the manager, receptionist, and all other workers, regardless of the "room rule", must not exceed 10 staff at any one time.

## South Australia

Currently there is no specific regulatory framework governing prostitution in South Australia. During 2001, the South Australian Parliament debated a Bill – the Prostitution (Regulation) Bill – that proposed a regulatory framework for prostitution using a 'negative licensing model'. The Bill was defeated, and it is unlikely that there will be further consideration of the issue under the current Government.

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<sup>2</sup> The Queensland Crime and Misconduct Commission are currently reviewing whether outcall prostitution services in Queensland should be extended to licensed brothels and / or escort agencies.

### Western Australia

Brothels operate under the informal 'sanction' of police via the 'containment policy' (not a written, approved policy as such but an informally established arrangement between police and brothel operators).

A Bill to regulate prostitution and introduce brothels was defeated in the Parliament during 2003.

### Tasmania

The offence of 'living on the earnings of prostitution' (s.8 (1) A of the *Police Offences Act 1935*) prohibits all prostitution but for sole operators. There is currently a Parliamentary Committee report before Cabinet that recommends decriminalisation under a licensing regime, with local government input into siting issues. There is no indication yet that Government will endorse the Committee's recommendations, however, recent media reports indicate that brothels may be banned.<sup>3</sup>

### Northern Territory

Prostitution in the Northern Territory is governed by the Prostitution Regulation Act, which came into force in October 2004.

Sole operators and escort agency businesses operate within the regulatory framework.

Escort businesses must apply to the Escort Agency Licensing Board for a licence to operate a business. There are no specific planning requirements attached to the establishment of an escort agency.

Brothels and street workers are not included in the regulatory framework.

### Australian Capital Territory

The *Prostitution Act 1992* requires brothels and escort agencies to register with the Registrar of Brothels and Escort Agencies. The Registrar operates from the Department of Fair Trading, and there are no inspectorial powers attached to the role. Sole operators can operate under the Prostitution Act, and register with the Department of Fair Trading in the same way as brothels and escort agencies.

There is no limit on the number of rooms for brothels, and no probity investigation conducted as part of the registration process. Street work falls outside the regulatory framework.

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<sup>3</sup> ABC Tasmania, 5 October 2005, *Government in brothel ban back flip*  
<http://www.abc.net.au/news/items/200510/1475487.htm?tasmania>

### **1.3 Consultation**

As indicated earlier as part of the review of the Regulations, between July and August 2005, Consumer Affairs Victoria undertook a pre-Regulatory Impact Statement 28-day consultation process, initiated by the release of a Discussion Paper to the key stakeholders listed below. Key stakeholders are those individuals and organisations with an interest in, or a responsibility for the health of the regulatory framework, and include government agencies, community and advocacy groups, and representatives from industry (both sex workers and business owners).

The consultation for the RIS will add to the comprehensive pre-RIS process by making the RIS and the proposed Regulations available for public comment for 28 days. Stakeholders who participated in the pre-RIS consultation process will be contacted through direct mailing. Similarly, licensees will be alerted to the commencement of the consultation period with a letter from Consumer Affairs Victoria. The public will be informed through newspaper advertisements, and the Consumer Affairs Victoria Website.

#### Stakeholders in the pre-RIS consultation process

1. Australian Adult Entertainment Industry
2. Australian Federal Police
3. Australian Federation of AIDS Organisations
4. Australian Taxation Office
5. Brotherhood of St Laurence
6. ChildWise
7. Department of Immigration and Multicultural and Indigenous Affairs
8. Federation of Community Legal Centres (Vic) Secretariat
9. Hepatitis C Council of Victoria
10. Melbourne City Mission
11. Melbourne Sexual Health Centre
12. Municipal Association of Victoria
13. National Council of Women of Victoria
14. Office of Women's Policy
15. Project Respect
16. Resourcing Health and Education in the Sex Industry
17. Sacred Heart Mission
18. Scarlet Alliance
19. St Kilda Legal Service
20. The Blood-borne & Sexually Transmissible Infections Advisory Committee
21. The Business Licensing Authority
22. The Department for Victorian Communities
23. The Department of Justice
24. The Department of Premier and Cabinet
25. The Department of Sustainability and Environment
26. The Department of Treasury
27. The Prostitution Control Act Advisory Committee
28. The Salvation Army

29. Victoria Police
30. Victorian Aboriginal Health Service
31. Victorian Centre Against Sexual Assault Forum
32. Victorian Competition and Efficiency Commission
33. Victorian Local Governance Association
34. Women's Information and Referral Exchange
35. Women's Legal Service Victoria
36. WorkSafe Victoria

Consumer Affairs Victoria received 21 responses to the Discussion Paper. In summary, the Discussion Paper asked 20 questions under the following four headings:

- Regulation 9 – Sexually Transmitted Disease;
- Regulation 10 – Advertising Controls;
- Regulation 11 – Owner Operator; and
- Regulations 14 and 19 – Safety requirements.

The responses were broadly from four categories of stakeholder groups – industry, community, community health, and Government. The industry group includes representatives of the businesses involved in brothels including the Australian Adult Entertainment Industry Inc. (AAEI), the Queensland Adult Business Association Inc. (QBA), and the Australian Sex Workers Association Inc, also known as Scarlet Alliance representing workers.

The general community is represented by Project Respect, Soroptimist International Region of Victoria, Coalition Against Trafficking in Women Australia (CATWA), and the National Council of Women of Victoria (NCWV). The community health sector is represented in the responses by the Australian Federation of AIDS Organisations Inc (AFAO), the Melbourne Sexual Health Centre, Victorian AIDS Council Inc., Gay Men's Health Centre Inc., Resourcing Health & Education in the Sex Industry (RhED).

The Government group includes responses from all three levels of government, local, State and Federal, namely the Municipal Association of Victoria (MAV), WorkSafe Victoria, Department of Sustainability and Environment (DSE), Office of Women's Policy (OWP), Business Licensing Authority, Department of Human Services (DHS), Department of Treasury and Finance (DTF) and the Australian Taxation Office (ATO).

Where relevant, reference is made to specific responses in the discussion of each proposed regulation in Section 4 of this RIS.

## 2. NATURE AND EXTENT OF THE PROBLEM

### 2.1 Introduction

The current Regulations comprise controls in four primary areas:

- Sexually transmitted diseases;
- Safety;
- Advertising; and
- Owner-operators.

This section will discuss the problems associated with the absence of regulatory controls in these areas. To put the discussion in context, each section includes at the outset a reference to the relevant provision of the Act.

### 2.2 Sexually Transmitted Diseases (STD's) <sup>4</sup>

Sexually transmitted diseases pass from one person to another by sexual contact, and sometimes from mother to child. Many, such as chlamydia, have no symptoms, but can be passed on and cause serious illness or even death.

Sections 19 and 20 of the Act provide that if a prostitution service provider allows a prostitute to work while infected with a sexually transmitted disease, or if a prostitute knowingly works while infected, they will be guilty of an offence. The Act defines a sexually transmitted disease as meaning:

- a disease or condition prescribed by the regulations to be a sexually transmitted disease; or
- HIV as defined by section 3 of the *Health Act 1958*;

It is a defence against prosecution if the worker can demonstrate that he or she has been undergoing—

- (i) regular blood tests, on at least a quarterly basis for HIV (as defined by section 3 of the *Health Act 1958*) and each other sexually transmitted disease for which blood tests are appropriate; and
- (ii) regular swab tests, on at least a monthly basis, for the purpose of determining whether he or she was infected with any other sexually transmitted disease.

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<sup>4</sup> While it is common practice for medical practitioners to refer to sexually transmitted infections, this RIS refers to sexually transmitted diseases to be consistent with the Act.

In view of these provisions many sex workers attend health centres, such as the Melbourne Sexual Health Centre, for screening and have blood samples taken.

The current Regulations prescribe the following diseases—

- Acquired immune deficiency syndrome
- Chancroid
- Donovanosis
- Genital chlamydia
- Genital herpes (when lesions are visible)
- Genital warts (when lesions are visible)
- Gonorrhoea
- Lymphogranuloma venereum
- Syphilis

This section, therefore, will examine the problems associated with not prescribing all or some of these diseases. Put another way, the discussion will focus on the need to prescribe STD's.

### ***2.2.1 The need to prescribe***

The need to prescribe STD's is consistent with the Victorian draft STI Strategy which identifies sex workers as a priority population<sup>5</sup>. The draft Strategy provides a framework for the Victorian response to STIs, particularly in relation to prevention, education, treatment, care, and support.

The Health (Infectious Diseases) Regulations 2001, administered by the Department of Human Services, list infectious and notifiable diseases. The notification of infectious diseases to health authorities is a strategy to prevent and control the spread of infections. Under the provisions of the Health (Infectious Diseases) Regulations 2001, medical practitioners must inform the Secretary of the Department of Human Services when one of their patients shows evidence of, has died with, or is a carrier of a notifiable disease.

There is evidence that rates of sexually transmitted infections around the world have been rising since the mid 1990s. For example, in the United Kingdom, rates of gonorrhoea, genital chlamydia and syphilis have risen substantially over the past 5 years. While this may be the result of sexual behaviour changes, it may also be due to increased detection techniques and deteriorating access to services. In Western

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<sup>5</sup> Draft Victorian Sexually Transmissible Infections Strategy 2006-2009, Department of Human Services, November 2005, page 3, [http://www.health.vic.gov.au/ideas/downloads/draft\\_sti\\_strategy.pdf](http://www.health.vic.gov.au/ideas/downloads/draft_sti_strategy.pdf)



Europe, rates of STD's have also been increasing rapidly owing in part to deteriorating infrastructure of health care services. The United States of America (USA) has also suffered from similar rises in STD rates for similar reasons combined with the additional burden of increasing socio-economic deprivation in many inner city areas.<sup>6</sup>

The Victorian draft STI Strategy, notes that there have been annual increases in notifiable sexually transmitted infections in Victoria since 1999. Of particular concern is the rising rate of chlamydia among young women. A rise attributed to both increased awareness and testing with improved, sensitive diagnostic tools.

The Australian Federal Government, in collaboration with the States and Territories, launched a National STI Strategy in 2005. Amongst other things, the Strategy promotes early detection and intervention as offering benefits for both the individual and the community. The objective is to initiate treatment at an early stage of the disease in order to prevent more serious or long-term consequences in the individual and to reduce the risk of transmission to sexual partners. This is particularly important for people without symptoms who can pass on the infection without knowing they have it.

Early diagnosis and treatment reduces the rate of incidence of a disease and death rate associated with these diseases. Undiagnosed or untreated STD's can lead to complications that are more serious and/or the need for more intensive treatment after diagnosis. Early detection involves testing people without symptoms who are at risk of STD's as well as encouraging those with symptoms to present early for diagnosis and treatment.

#### Impact Costs to Individual and Community

It has long been established that STD's are responsible for significant costs, both in terms of health and economics to the individual and the community. For example, chlamydia, the most common notifiable bacterial STD in Australia, is without symptoms in up to 90% of infected women, yet if untreated, can result in pelvic inflammatory disease, which affects the uterus (the womb) and fallopian tubes, decreasing fertility. In men, chlamydia affects the urinary tube inside the penis and if not adequately treated, causes pain in the testes. On rare occasions, chlamydia may trigger Reiter's Disease, causing arthritis, rashes, and eye inflammation.<sup>7</sup> There is no doubt that the consequences of STD's are very serious, sometimes fatal. In addition to these direct costs, many STD's increase the risk of HIV transmission.

The costs of STD's can be categorised as follows:

- Direct – these may be either medical or non-medical. Direct medical costs generally refer to the expenses of treating acute STD's. These include the costs

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<sup>6</sup> Review of Sexual Health Clinical Services in Victoria, A report by Family Planning Victoria, (undated), page 16, [http://www.health.vic.gov.au/ideas/downloads/sti\\_shcs.pdf](http://www.health.vic.gov.au/ideas/downloads/sti_shcs.pdf)

<sup>7</sup> Sydney Sexual Health Centre, publication number SSH-7420  
<http://www.mhcs.health.nsw.gov.au/health-public-affairs/mhcs/publications/7420.html>

of clinician visits, hospitalisation, diagnostic testing, drug treatments, and therapeutic procedures. Other expenses associated with receiving medical treatment, such as the cost of transportation to and from medical services, are classified as direct non-medical costs;

- Indirect costs - these may refer to productivity losses (lost wages) attributable to STD-related illness;
- Intangible costs – these relate to the pain and suffering associated with STD's.

A study of the direct medical cost of STD's among American youth in 2000 estimated that 9 million cases occurred among persons aged 15-24 in that year. The study estimated the economic burden or direct costs of sexually transmitted infections, including HIV among all age groups was US\$9.3 - \$15.5 billion in the mid-90s adjusted to 2000 dollars.<sup>8</sup>

This level of costs is broadly corroborated by the American Social Health Association in an article on STD's where it estimates that:

- More than half of all people will have STD at some point in their lifetime;
- More than \$8 billion is spent each year to diagnose and treat STD's and their complications. This figure does not include HIV.<sup>9</sup>

The Australian Government estimates that savings from the number of HIV and hepatitis C cases avoided at least \$2.4 billion.<sup>10</sup>

Over a decade ago, when rates were significantly lower the estimated cost of the consequence of chlamydia alone was \$90-160 million a year.<sup>11</sup>

### STD's and sex workers

The Neave Report concluded in 1985 that prostitutes are 'in the high risk category for contracting and passing on sexually transmitted diseases'.<sup>12</sup> A survey conducted for that Inquiry reported that over a four-month period at the Melbourne Communicable Diseases Clinic, 11% of 1,260 male patients nominated a local prostitute as their source of infection. Eighteen per cent of the 163 men with gonorrhoea and 10% of the 979 men with non-gonococcal urethritis said local prostitutes infected them. Only 3%

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<sup>8</sup> The Estimated Direct Medical Cost of Sexually Transmitted Diseases Among American Youth, 2000, Perspectives on Sexual and Reproductive Health, Volume 36, Number 1, January/February 2004, <http://www.guttmacher.org/pubs/journals/3601104.html>

<sup>9</sup> STD/STI Statistics, American Social Health Association, Fast Facts, [http://www.ashstd.org/learn/learn\\_statistics.cfm](http://www.ashstd.org/learn/learn_statistics.cfm)

<sup>10</sup> National Hepatitis C Strategy 2005-2008, Department of Health and Ageing, page 9; <http://www.health.gov.au/internet/wcms/publishing.nsf/Content/phd-hepc-strategy-0508-cnt.htm>.

<sup>11</sup> Review of Sexual Health Clinical Services in Victoria, A report by Family Planning Victoria, (undated), page 13 [http://www.health.vic.gov.au/ideas/downloads/sti\\_shcs.pdf](http://www.health.vic.gov.au/ideas/downloads/sti_shcs.pdf)

<sup>12</sup> Op Cit, Neave Summary of Final Report, page 4.

of men infected with herpes said they had contracted their disease from a local prostitute.<sup>13</sup>

Another survey, conducted in 2003 and in the current regulatory environment that prescribe the sexually transmitted infections to be tested, studied the epidemiological profile of clients presenting to the Melbourne Sexual Health Centre.<sup>14</sup> The survey was conducted from 1 January 2003 until 31 December 2003 and considered 749 individuals who identified as a current sex worker of whom 88% were women. The study examined the prevalence of STD's among three categories of participants: legal sex workers, illegal sex workers (including Thai international and street sex workers), and non sex workers. The term 'legal' and 'illegal' here refers to sex workers working within the current regulatory framework (legal) and those outside it (illegal).

The survey found that sex workers within the regulatory environment in Melbourne had a low incidence of any STD including chlamydia and that any STD, but not chlamydia, was significantly more common in non-sex worker women attending the clinic than legal sex workers (16% versus 7% respectively). Street sex workers had a higher prevalence of any STD including chlamydia, when compared to legal sex workers (16% versus 3% respectively).

The survey also included an audit of the medical histories of 40 sex workers within the regulatory environment and 30 Thai sex workers. This revealed that all sex workers within the regulatory environment reported 100% condom use at work and 8.3% reported condom breakage or slippage at work in the past month. In contrast, 53% of Thai sex workers reported less than 100% condom use and 10% of those who reported 100% condom use at work reported condom slippage and breakage during sex work in the past month.

The report concluded that women in sex work within the regulatory environment have a very low prevalence of infection and that most infections occur among women involved in sex work outside the regulatory environment.<sup>15</sup> While not necessarily conclusive, the environment of safety promoted by regulatory intervention appears to foster the low prevalence of STD's in sex workers within the regulatory environment.

The conclusions drawn from the studies in Melbourne are supported by a recent Queensland study, *Selling sex in Queensland 2003*, conducted by the Prostitution Licensing Authority. This wide-ranging study concluded that workers in licensed brothels report the lowest rate of chlamydia, vaginal gonorrhoea, crabs/pubic lice and hepatitis C infection, followed by private workers, then street workers.<sup>16</sup> As indicated earlier, in Queensland sex workers are required to undergo testing every six weeks to ensure against STD's in a similar way as in Victoria. When reviewing data from 1991 until 2003 the report concluded that the regulatory framework appears to offer greater

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<sup>13</sup> Op Cit, Neave Summary of Final Report, page 4.

<sup>14</sup> *Cupid's Itch*, The Public Health Control of Sexually Transmitted Infections, a thesis submitted as part of the requirements in fulfilment for the degree of doctor of public health, David Michael Lee, Faculty of Medicine, University of Melbourne, December 2004, page 41.

<sup>15</sup> Op Cit, *Cupid's Itch*, page 139.

<sup>16</sup> *Selling sex in Queensland 2003*, a study of prostitution in Queensland, Prostitution Licensing Authority, June 2004, page 38.

benefits for both sex workers and their clients “as they indicate fairly low risks for health problems and violent abuse.”<sup>17</sup>

The conclusion from these studies is that the incidence of sex workers with a sexually transmitted infection is greater in an unregulated environment than under an environment where specific STD controls exist.

Because of these concerns, diseases are prescribed or identified as being of a class defined as sexually transmittable.

### **2.3 Safety Requirements**

Promoting the safety of sex workers is a primary objective of the Act and section 4(e) and (f) state the objective is to:

- maximise the protection of prostitutes and their clients from health risks; and
- maximise the protection of prostitutes from violence and exploitation.

Section 68(d) allows Regulations to be made for or with respect to the requirements to be complied with by a prostitution service provider to ensure the safety of persons working in the business.

Two regulations are currently in place concerning safety, namely regulation 14 and 19. Regulation 14 states:

- (1) For the purposes of section 38(1)(d) of the Act<sup>18</sup>, it is a requirement that the applicant have in place arrangements to ensure—
  - (a) that all prostitutes, receptionists and managers are aware of the requirements of regulation 19; and
  - (b) that regulation 19 can and will be complied with at all times.

Regulation 19 states:

- (1) If a prostitute decides not to provide, or to stop providing, sexual services because he or she believes a situation is potentially violent or unsafe, the licensee and all approved managers must not—
  - (a) dispute the prostitute's decision; or
  - (b) initiate or allow punitive action against the prostitute; or

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<sup>17</sup> Op Cit, *Selling sex in Queensland 2003*, page 12.

<sup>18</sup> Section 38 refers to matters to be considered in determining whether an applicant for a licence is a suitable person to carry on business as a prostitution service provider. The Authority must consider— (d) whether the applicant will have in place arrangements to ensure the safety of persons working in the business that are adequate and comply with the prescribed requirements or the conditions or restrictions that might be set out in a licence;

- (c) permit another person to do anything referred to in paragraph (a) or (b).
- (2) A licensee and all approved managers must ensure that persons acting as receptionists or telephone receptionists for the licensee's business do not—
  - (a) misrepresent the qualities of any prostitute; or
  - (b) negotiate on behalf of a prostitute the sexual services to be provided by the prostitute.
- (3) If a business is, or includes, a brothel, the licensee of the business must ensure that—
  - (a) all rooms used for prostitution have a concealed alarm button, or equivalent communication device, that is in working order; and
  - (b) all rooms used for prostitution have sufficient lighting to enable prostitutes to check for readily evident signs of sexually transmitted disease; and
  - (c) a sign is prominently displayed in the reception area of the business, stating "Only safe sexual practices are engaged in on these premises" and containing an illustration of an adult male wearing a condom. The illustration may depict the entire body or a portion of it.
- (4) The licensee, and all approved managers, of a brothel must ensure that no person who works on the premises as a prostitute is required to clean or disinfect any bath or shower at the premises unless—
  - (a) those facilities have been used by a person to whom sexual services have just been provided by that prostitute; and
  - (b) adequate protective clothing is provided.
- (5) The licensee, and all approved managers, of a brothel must ensure that no person who works on the premises as a prostitute is required to clean any bath, shower, toilet or spa at the premises except as required under sub-regulation (4), unless—
  - (a) the prostitute is employed or contracted as a cleaner; and
  - (b) adequate protective clothing is provided.
- (6) If a business is, or includes, an escort agency, the licensee must ensure that communication device by which the licensee or an approved manager can be contacted at all times while the prostitute is working.
- (7) Sub-regulation (6) does not apply to a licensee who—
  - (a) satisfies the Authority that alternative arrangements in his or her business provide greater safety; and

- (b) ensures that these alternative arrangements are followed at all times in his or her business.

This section examines the problems associated with not prescribing any safety requirements. Put another way, the discussion will focus on the need to prescribe safety requirements.

### ***2.3.1 The need to prescribe safety requirements***

In addition to health issues faced by sex workers (eg STD's) there are other occupational health concerns including the risk of injury related to the work itself and violence, which may be increased due to the solitary nature of the work and associated with the fact that the work is often at night in sometimes isolated settings. It is argued there may be no other occupation, which exposes women to such high risks of violence, and yet the workers themselves often lack the basic entitlements of protection from violence, robbery and other abuse within the work context.<sup>19</sup>

Australian sex worker organisations, such as the Victorian organisation, Resourcing Health and Education in the Sex Industry (RhED), have substantial anecdotal evidence, which indicates that the level of violence perpetrated against sex workers is high. However, reliable documented evidence of the level of violence Victorian (and Australian) sex workers are subjected to is minimal.

The report *Violence in the Workplace*, by the Australian Institute of Criminology, highlighted the primary constraint to obtaining accurate statistical data for violence perpetrated against sex workers:

*“... there is inevitably a statistical “dark figure” with respect to violence perpetrated against sex workers. It is quite clear that for unregistered prostitutes, the prospect of self-incrimination acts as a disincentive to report incidents of violence to the police. Unlike the situation with regards to other forms of legitimate work, violence against prostitutes does not appear to elicit the same feelings of public compassion and outrage.”<sup>20</sup>*

In addition to the specific issue of sex worker self-incrimination, violence against women in general is under-reported. A survey conducted by the Australian Bureau of Statistics (ABS) regarding women's safety (where occupations were not specified) indicated that: only 19 per cent of the women surveyed who were physically assaulted and 15 per cent who were sexually assaulted, in the previous 12 months reported the incident to the police.<sup>21</sup>

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<sup>19</sup> *Confusion between prostitution and sex trafficking*, K. Butcher, *The Lancet*, 361:1983, 2003, see page 53 of *Selling sex in Queensland 2003, A study of prostitution in Queensland*, Prostitution Licensing Authority, 2004.

<sup>20</sup> Perrone, S. (1999), *Violence in the Workplace*, Australian Institute of Criminology Research and Public Policy Series No. 22.

<sup>21</sup> Australian Bureau of Statistics (1996), *Women's Safety*, Australian Bureau of Statistics, Cat. No. 4128.0.

The National Occupational Health and Safety Commission studied work-related homicides in Australia from 1989 to 1992 and of the 50 work-related homicides over this period six per cent were prostitutes (placing them in the top six occupations of work-related homicides).<sup>22</sup>

Further to the problem of obtaining violence statistics from regulatory bodies, academic research into the sex industry has focused primarily on the sexual health of sex workers. There is limited research into the level of violence perpetrated against sex workers and this research has generally focused on violence against street sex workers. Street sex work, however, only makes up approximately ten per cent of the population of sex workers in most major cities.<sup>23</sup> Furthermore, the limited amount of academic research into violence against sex workers has generally been small-scale qualitative research and/or research containing considerable anecdotal evidence accumulated by researchers through years of experience working with people in the sex industry.

One quantitative study, conducted by Perkins in 1986, surveyed 128 female workers across the sex industry in Sydney. Of which, 72 per cent were brothel workers, 9 per cent were escort workers, 8 per cent were bondage mistresses, 4 per cent were street workers, 3 per cent were private workers, and 4 per cent did not disclose the type of work they engaged in. The sample's past work experiences indicated a much broader range of experiences which Perkins asserted closely matched the proportions of professional prostitution in Sydney (approximately two-thirds work in brothels, one-quarter work in private prostitution and one-tenth on the street).<sup>24</sup> Table 1 reports the frequency of rape and other assaults committed against the surveyed sex workers at work.

**Table 1: Frequency of rape and other assaults committed against sex workers at work (Source: Perkins, 1991)**

|               | Rape  | Other Assaults |
|---------------|-------|----------------|
| Never         | 80.5% | 66.4%          |
| Once only     | 11.7% | 10.2%          |
| Twice         | 3.1%  | 8.6%           |
| 3-5 occasions | 0.0%  | 1.6%           |
| 6 occasions   | 0.8%  | 0.0%           |
| 7 occasions   | 0.0%  | 0.8%           |
| More often    | 0.8%  | 8.6%           |
| Not disclosed | 3.1%  | 3.9%           |

The figures in Table 1 indicate that sex workers were more susceptible to physical assaults than to rape. Perkins noted, however, "prostitutes are probably often

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<sup>22</sup> WORKSAFE News Volume 14, October 1999, National Occupational Health and Safety Commission.

<sup>23</sup> Pyett, P., B. Haste and J. Snow, (1994?) Profile of Workers in the Sex Industry, Melbourne: Report Prepared for the Prostitutes' Collective of Victoria, Centre for the Study of Sexually Transmitted Diseases.

<sup>24</sup> Perkins, R. (1991), Working girls: prostitutes, their life and social control, Australian Institute of Criminology (Australian studies in law, crime and justice series), available from <http://www.aic.gov.au/publications/lcj/working/index.html>.

technically raped without them realising it”.<sup>25</sup> Perkins also highlighted that working in a client’s car and being on premises alone were particularly dangerous for sex workers. Further to this, “escorts and servicing house calls (going to a client’s home) appeared to be even more dangerous, according to the number of complaints the author has received from women involved in various kinds of sex work.”

The level of violence sex workers are subjected to is substantially higher than the level of violence perpetrated against women in the community in general. Table 1 indicates that 16.4 per cent of the sex workers surveyed had been raped one or more times and 29.8 per cent had been subjected to other assaults one or more times. Comparatively, in the ABS’s 1996, Women’s Safety survey, only 1.5 per cent of women surveyed had been sexually assaulted in the past 12 months and only 5 per cent had been subjected to physical assault in the past 12 months.

In 1994, the Centre for the Study of Sexually Transmitted Diseases, La Trobe University, conducted a collaborative study, with the Prostitutes’ Collective of Victoria (PCV), which focused on the brothel sector of the sex industry of Victoria. 321 valid responses were obtained from female sex workers working mostly in legal brothels in Victoria. Although the focus of the study was to collect data about the sexual health of workers, two questions were asked relating to the workers feelings of safety whilst working. Table 2 reports the findings to the question ‘As a sex worker do you feel unsafe with any of the following: Taxi driver; Escort driver; Clients; Police; Partners; and Other?’ Table 3 reports the findings to the question ‘Do you feel intimidated at your place of work with any of the following: Clients; Co-workers; and Other?’

**Table 2: Sex workers’ feelings of unsafety with taxi drivers, escort drivers, clients, police, partners and others (Source: Pyett et. al, 1994?)**

|                | <b>Always</b> | <b>Usually</b> | <b>Sometimes</b> | <b>Rarely</b> | <b>Never</b>  |
|----------------|---------------|----------------|------------------|---------------|---------------|
| Taxi Drivers   | 20% (58/287)  | 9% (27/287)    | 35% (101/287)    | 15% (43/287)  | 20% (58/287)  |
| Escort Drivers | 7% (12/177)   | 6% (11/177)    | 14% (24/177)     | 15% (27/177)  | 58% (103/177) |
| Clients        | 6% (18/298)   | 6% (17/298)    | 40% (120/298)    | 29% (85/298)  | 20% (58/298)  |
| Police         | 16% (44/280)  | 9% (24/280)    | 19% (54/280)     | 16% (44/280)  | 41% (114/280) |
| Partners       | 4% (11/268)   | 2% (5/268)     | 11% (29/268)     | 14% (37/268)  | 69% (186/268) |
| Other          | 2% (1/55)     | 13% (7/55)     | 7% (4/55)        | 9% (5/55)     | 69% (38/55)   |

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<sup>25</sup> Perkins (1991) gives the example of a client going over time in spite of protests from the woman. This is technically rape; however, the prostitute probably would not perceive it as a form of rape.



**Table 3: Sex workers' feeling of intimidation at their place of work with clients, co-workers and others (Source: Pyett et. al, 1994?)**

|            | Always     | Usually    | Sometimes    | Rarely       | Never         |
|------------|------------|------------|--------------|--------------|---------------|
| Clients    | 2% (6/297) | 1% (4/297) | 27% (80/297) | 29% (87/297) | 40% (120/297) |
| Co-workers | 1% (2/286) | 2% (7/286) | 15% (43/286) | 28% (80/286) | 54% (154/286) |
| Other      | 1% (1/81)  | 4% (3/81)  | 3% (2/81)    | 6% (5/81)    | 86% (70/81)   |

Anecdotal evidence suggests that street sex workers face a much greater risk of being the victim of violence than brothel workers due to street sex workers not having an established venue of work and therefore services are generally performed at the client's choice of venue and alone. Escort workers face similar risks.

One avenue through which street sex workers can report people who commit offences against them in a non-judgemental environment is the 'Ugly Mug' Program (administered by RhED in St Kilda, Victoria). Table 4 reports the number of Ugly Mug reports made to RhED over the period 2000-2002<sup>26</sup> and the type of assault recorded. Table 5 reports the number of Ugly Mug reports where a weapon was used in the assault over the period 2000-2002 and what type of weapon was used.

**Table 4: Number of Ugly Mug reports and type of assault, 2000-2002 (Source: Claassen, 2003)**

| Year | No. of Reports | Sexual Assault | Physical Assault | Theft |
|------|----------------|----------------|------------------|-------|
| 2000 | 101            | 43%            | 44%              | 24%   |
| 2001 | 95             | 46%            | 56%              | 28%   |
| 2002 | 62             | 35%            | 53%              | 38%   |

**Table 5: Number of Ugly Mug reports where a weapon was used in the assault and type of weapon, 2000-2002 (Source: Claassen, 2003)**

| Year | No. of Reports | Sexual Assault | Physical Assault | Theft |
|------|----------------|----------------|------------------|-------|
| 2000 | 30 (30% total) | 8              | 6                | 16    |
| 2001 | 29 (31% total) | 18             | 3                | 8     |
| 2002 | 20 (32% total) | 9              | 1                | 10    |

In 1996 the Australian Research Centre in Sex, Health and Society, La Trobe University, in collaboration with the PCV conducted a study of street workers in St Kilda. An Outreach Worker from the PCV conducted forty outreach sessions over a six month period from December 1996 and made 370 contacts with sex workers (297 were women, 42 identified as transsexual and 31 were men). During the course of these outreach sessions the following reports of violence were made by sex workers:

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<sup>26</sup> Claassen, J. (2003), Review of Ugly Mug Reports 2000-2002, Resourcing Health and Education in the Sex Industry.

- two women reported being raped;
- one woman was slashed with a knife by a client;
- two women reported being robbed, with one reporting multiple robberies over the past two months;
- two incidents of assaults by other workers were reported and one incident of harassment by another worker was witnessed;
- a woman reported being threatened with a knife after agreeing to perform a service at the client's home;
- a woman reported being locked in a client's car on three separate occasions;
- a woman reported being terrorised by 'hoons' (a car-load of onlookers) who threw eggs at her; and
- one incident of a client refusing to pay for a service provided was reported.

The recent study of prostitution in Queensland referred earlier support these concerns about safety in the sex industry. The study was conducted to examine the changes in the industry since Queensland introduced its regulatory framework to govern prostitution. From a survey of sex workers, the study found that 12.5% of respondents reported forced vaginal or anal sex while at work. A further 15.3% reported attempted sex using force. This situation is worse in the un-regulated sector where street-based sex workers reported higher rates of violence. Tables 6-9 illustrate the findings of this report.

Data from the Tables shows the substantial difference in the safety environment of street workers as distinct from workers in legal brothels. For example, 49% of street workers reported they had unwanted intercourse with the use of force compared with 4% in legal brothels. In addition, 33% of street workers had been raped more than once whereas 3% of workers in brothels had reported this.

The main perceived benefit of working in brothels is related to improved safety and security.<sup>27</sup>

**Table 6: Unwanted sexual experiences during sex work by current sex industry sector**

| Unwanted sexual experience                  | Sex Industry Sector |                   |             |
|---|---------------------|-------------------|-------------|
|   | Street (%)          | Legal Brothel (%) | Private (%) |
| Attempted intercourse                       | 39                  | 11                | 11          |
| Unwanted intercourse                        | 30                  | 5                 | 5           |
| Unwanted intercourse by person in authority | 24                  | 1                 | 5           |
| Unwanted intercourse with use of force      | 49                  | 4                 | 9           |

<sup>27</sup> Op Cit, *Selling sex in Queensland*, page 53.

**Table 7: Proportion of respondents reporting ever having been raped or bashed by current type of work**

| Reported raped/bashings      | Sex Industry Sector |                   |             |
|------------------------------|---------------------|-------------------|-------------|
|                              | Street (%)          | Legal Brothel (%) | Private (%) |
| Respondents ever been raped  | 79                  | 35                | 38          |
| Respondents ever been bashed | 91                  | 50                | 51          |

**Table 8: Number of respondents reporting ever having been raped or bashed by current type of work**

| Raped or bashed by a client       | Sex Industry Sector |                   |             |
|-----------------------------------|---------------------|-------------------|-------------|
|                                   | Street (%)          | Legal Brothel (%) | Private (%) |
| Never raped by a client           | 39                  | 97                | 87          |
| Raped once by a client            | 27                  | 0                 | 7           |
| Raped more than one by a client   | 33                  | 3                 | 6           |
| Never bashed by a client          | 46                  | 98                | 88          |
| Bashed once by a client           | 21                  | 1                 | 7           |
| Bashed more than once by a client | 33                  | 1                 | 5           |

**Table 9: Respondents reporting being raped or bashed, comparison between 1991 and 2003 samples<sup>28</sup>**

|                                       | 1991 | 2003 | 2003* |
|---------------------------------------|------|------|-------|
| Respondents who have ever been raped  | 29   | 43   | 36    |
| Respondents who have ever been bashed | 31   | 57   | 50    |

\* = sample without street-based workers.

A Queensland Crime and Misconduct Commission report supports these findings, when it reported that 77% of 65 sex workers surveyed indicated that licensed brothels, which are required to prepare business and operational plans that address security and safety issues for their sex workers, are the safest work environment with none indicating that street work was safe at all.<sup>29</sup>

An examination of the 'hidden crime' of unreported sexual assault of sex workers in New South Wales argues that most women who have experienced a sexual assault are reluctant to report this crime for fear of not being believed.<sup>30</sup> The Paper contends that this is experienced to a much greater degree for sex industry workers due to the prevailing attitudes to their work. As indicated earlier, prostitution is decriminalised in NSW. The Paper argues this attitude is well expressed in a NSW Standing Committee on Social Issues report on sexual violence, which stated:

<sup>28</sup> Op Cit, *Selling sex in Queensland*, page 52.

<sup>29</sup> Op Cit, *Regulating Prostitution, An Evaluation of the Prostitution Act 1999 (Qld)*, page 71.

<sup>30</sup> Sex workers and sexual assault: The hidden crime, A paper presented by M Bridgett and J Robinson, NSW at the Restoration for Victims of Crime Conference, Melbourne, September 1999.

*“Society’s traditional contempt for the sex industry profession and its marginalisation of sex workers has meant that many men feel that they ‘may’ rape prostitutes and that these women ‘deserve’ it.”<sup>31</sup>*

Recognising the safety risks present in the sex industry, RhED in Victoria, provides an information sheet, *Safety Tips for Escort Workers*, which outlines personal safety tips for escort workers and for their drivers.

In a more comprehensive approach the Queensland Prostitution Licensing Authority published, *Health and Safety Guidelines for Brothels*, which provides brothel licensees with a set of best practice guidelines for a safe and healthy environment for sex workers in brothels.<sup>32</sup> The Guidelines cover a range of safety topics including, personal protective equipment, aggression and violence and accident and injury reporting. In June 2004, the New Zealand Occupational Safety and Health Service and the Department of Labour published a similar document called, *A Guide to Occupational Health and Safety in the New Zealand Sex Industry*. This document draws heavily on a similar publication by Scarlet Alliance.

New South Wales, Queensland, and the Australian Capital Territory have adopted a combination of approaches to address the risks in the sex industry; regulation and the introduction of Occupational Safety & Health (OH&S) guidelines. Typically, these guidelines follow a risk management model where hazards are identified, the possibility of injury or harm assessed, and measures to eliminate or reduce the risks introduced.

In Victoria prostitution service providers, must also comply with the *Occupational Health and Safety Act 2004*, which requires, as far as practicable, employers to provide a working environment that is safe, and without risk to health. Employers and self-employed persons must also ensure that persons other than their employees are not exposed to risks to their health and safety arising from the employer’s undertaking.

## **2.4 Advertising Controls**

The issue of advertising of sex services and its controls is often the subject of highly charged debate. It raises the problem of a clash between the general principle of freedom of expression and the obligation upon governments to protect people from injurious consequences of unrestricted expression of view.

The general issue therefore in relation to advertising of sex services to consumers is finding the appropriate balance between providing information and inappropriately stimulating demand. The Regulatory Impact Statement accompanying the Prostitution Control Regulations in 1995, for example, was of the view that banning explicit

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<sup>31</sup> Sexual Violence: Addressing the Crime, Legislative Council, Parliament of New South Wales Standing Committee on Social Issues (1996), Report Number 9.

<sup>32</sup> Health and Safety Guidelines for Brothels, Prostitution Licensing Authority, Queensland, October 2002.

advertisements while allowing discreet ones is the best way to limit the undesirable social effects of prostitution advertising.

Sections 17 and 18 of the Act provide for advertising controls. Section 17 states:

- (1) A person must not publish or cause to be published an advertisement for prostitution services that—
  - (a) describes the services offered; or
  - (b) contravenes the regulations.Penalty: 40 penalty units.
- (2) A person must not cause an advertisement for prostitution services to be broadcast or televised.  
40 penalty units.
- (3) A person must not publish or cause to be published a statement which is intended or likely to induce a person to seek employment—
  - (a) as a prostitute; or
  - (b) in a brothel or with an escort agency or any other business that provides prostitution services.40 penalty units.
- (4) A prostitution service provider or any other business that provides prostitution services must not publish or cause to be published an advertisement for the business that—
  - (a) uses (either alone or in combination with any other word or words or letters) the words "massage", "masseur", "remedial" or any other words that state or imply that the business provides massage services; or
  - (b) holds the business out either directly or by implication as a provider of massage services.40 penalty units.
- (5) If in a proceeding for an offence against this section it is proved to the court that—
  - (a) an advertisement has been published for or relating to a brothel, escort agency or any other business that provides prostitution services; and
  - (b) a person is the owner or occupier of the premises on which the brothel, escort agency or that other business is carried on—

that person must, in the absence of proof to the contrary, be presumed to have caused the advertisement to be published.

Section 18 states regulations may be made for or with respect to—

- (a) the size, form and content of advertisements for prostitution services or any class of prostitution services;
- (b) prohibiting the advertising—
  - (i) in a specified publication or specified class of publication; or
  - (ii) in a specified manner—of advertisements for prostitution services or any class of prostitution services;
- (c) generally prescribing any other matter or thing required or permitted by section 17 to be prescribed or necessary to be prescribed to give effect to section 17.

The current regulations (10) contain requirements relating to:

- the disclosure of PCA numbers in all advertisements. This rule was put in place to ensure that compliance can be monitored by an examination of advertisements;
- photographic and pictorial representations of a person in advertising;
- the form and size of print advertising; and
- the descriptive content of text used in advertising.

These controls exist in the context of the objectives of the Act and the results of the Inquiry into Prostitution conducted by Professor Marcia Neave, and presented in her 1985 report. The Act recognises that prostitution businesses operating inside the regulatory framework need to be profitable to survive; nonetheless, it is not an objective of the Act to encourage prostitution, rather, the Act has strong protection and harm minimisation objectives. The removal of criminal sanctions does not mean that Governments will treat prostitution in precisely the same way as other forms of business activity.

Without regulations prescribing controls over advertising, the provisions of Section 17 of the Act would prevail, that is, advertising that describes the services offered would be prohibited. This, along with the other parts of Section 17, would effectively ban any advertising of prostitution services. The current Regulations, therefore, allow certain advertising. This section therefore will examine the problems associated with a complete ban on advertising by not prescribing advertising controls or put another way, the discussion will focus on the need to prescribe controls.

### **2.4.1 The need to prescribe advertising controls**

While the Act bans advertising it does allow regulations to be made to control allowed advertising. The problems with a complete ban on prostitution service advertising are that it does not allow:

- The individual prostitution service provider to promote the services of his/her business. This is a restriction on competition; and
- Clients of prostitution services to be informed of the availability of prostitution services. This lack of public information has the potential to drive prostitution services ‘underground’ where historically this has had links with organised crime.

Neave sought to find the appropriate balance referred to earlier where it stated that:

*“Our strategy favours discreet forms of prostitution, which do not cause public offence, over more overt activities. The banning of all advertisements would not abolish prostitution and workers would still wish to attract clients. A complete ban on advertising might lead to the development of other forms of attracting clients, which could be more publicly offensive. For example, individual prostitutes and brothels might employ touts to visit hotels and other places of public entertainment and to lead clients to premises...”*<sup>33</sup>

Neave promoted the introduction of a form of control on advertising that ensures children are not exposed to glamorous advertisements depicting prostitution as a career possibility and that tourist publications do not promote prostitution along with other tourist activities.

*“Ultimately, we decided that discreet advertising should not be prohibited, but that explicit advertising of prostitution and descriptions of the types of sexual services should be banned. The restrictions which apply to prostitution advertisements should be detailed in statutory regulations, which should specify such things as the permitted size, form and content of advertisements.”*<sup>34</sup>

These general conclusions reflect recent experience, which show that the views of the broader community can influence what is considered undesirable advertising. For example, the information gathered by the Advertising Standards Board<sup>35</sup> provides a useful guide to the types of advertising that the Australian public finds undesirable or offensive and therefore needs to be controlled.

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<sup>33</sup> Op Cit, (Paragraph 8.89 Neave 1985:280)

<sup>34</sup> Op Cit, (Paragraph 8.91 Neave 1985:280)

<sup>35</sup> The Advertising Standards Board is made up of members of the public invited to reflect current community attitudes in serving as Board members. The Board considers written complaints about advertisements in the mainstream media, using the Advertiser Code of Ethics as the basis of its determinations. It considers advertisements which people find offensive the basis of: discrimination (race, nationality, sex, age, sexual preference, religion, disability, political belief), violence, language, portrayal of sex, sexuality or nudity, health and safety, alarm or distress to children.

The Board handles complaints from members of the community who find certain advertisements in the mainstream media offensive. The Board's statistics show that the portrayal of sex, sexuality, and nudity and the portrayal of people in mainstream advertising consistently attract the highest number of complaints across all Australian jurisdictions and the number of complaints is increasing as shown in Table 10:

**Table 10: Proportion of Types of Complaints Received by ASB from 2000-200336**

| <b>Issues attracting Complaint (%)</b> | <b>2003</b> | <b>2002</b> | <b>2001</b> | <b>2000</b> |
|--|-------------|-------------|-------------|-------------|
| Portrayal of sex/sexuality/nudity      | 30%         | 31%         | 28%         | 27%         |
| Portrayal of People                    | 25%         | 18%         | 22%         | 23%         |
| Other                                  | 9%          | 17%         | 11%         | 15%         |
| Health and safety                      | 11%         | 13%         | 20%         | 14%         |
| Violence                               | 8%          | 10%         | 10%         | 8%          |
| Causes alarm or distress to children   | 2%          | 6%          | 2%          | 29%         |

#### Victorian Gender Portrayal Guidelines

In response to concerns at the way advertising portrays women, especially on billboards, and following a report by the Portrayal of Women Advisory Committee in February 2002, the Victorian Government introduced Gender Portrayal Guidelines from 1 January 2004. The Guidelines aim to assist in developing communications material that contain portrayals of men and women that are positive, suitable for general viewing and seek to contribute to the elimination of systemic discrimination based on gender. A summary of the Guidelines is included in Box 1.

#### **Box 1: Summary of Gender Portrayal Guidelines**

- 1. Outdoor advertising is a public medium and advertisers should be sensitive to the location in which outdoor advertising is displayed and viewed.**  
  
Outdoor advertising is in the public domain and has a broad audience. The messages and images presented in this medium therefore need to be developed with a general audience in mind.
- 2. Advertising should avoid using inappropriate and exploitative sexual imagery of both women and men.**  
  
Sexual images that depict the gratuitous or tasteless use of nudity and that have little or no relevance to the subject of the advertising, or that objectify women's and men's bodies are inappropriate and should not be used.
- 3. Advertising should portray women and men as equally competent in a wide range of activities both inside and outside the home, including the**

<sup>36</sup> Advertising Standards Bureau website, <http://www.advertisingstandardsbureau.com.au> , the percentage figures do not total 100 due to rounding.



**workplace**

Advertising should avoid the stereotyped representation of gender roles including a narrow or unrepresentative view of women's roles, occupations, professional status, power in the community and level of intelligence.

**4. Advertising should portray both women and men in the full spectrum of diversity, including age, appearance, and background.**

Women and men in Victoria are diverse in many ways. This should be reflected in advertising by increasing, where appropriate, the diversity of the images of women and men. Care should be taken to not portray people in a way which discriminates against or vilifies a person or a section of the community.

**5. Violent images should be avoided in advertising other than as an integral part of community education campaigns designed to reduce the incidence of violent behaviour.**

Advertising must not advocate violent behaviour towards women thereby compromising women's public and private safety.

**6. Advertising should seek to use language that is non-offensive and inclusive of both women and men.**

Advertising should aim to use gender-neutral language. Language that is likely to insult or offend should be avoided, unless it is used as part of a community education campaign.

The Outdoor Media Association Incorporated (OMA), the industry body representing the majority of outdoor media contractors and production facilities in Australia, has recognised these Guidelines and included reference to them on its website, <http://www.oaaa.com.au/news.php?id=27>.

The OMA website also encourages members in the content of advertising as follows:

*The advertisement that is placed upon the plant must not contravene any criminal laws, such as indecent publications, nor infringe laws generally, such as conveying misleading information. Complex issues can arise and advice may be necessary prior to running the advertisement(s).*

*In circumstances where an advertisement complies with the law, issues of taste and decency can arise as a result of varying views and attitudes within the community.*

Queensland Advertising Studies

The Queensland Criminal Justice Commission considered the issue of advertising in 1991 and recommended that:

*Advertising should only be permitted if discreet, and should comply with guidelines set down by the Registration Board. All advertisements must display the registration number of the premises and must not seek to recruit sex workers into the industry.*<sup>37</sup>

Following this, advertising controls were included in the *Prostitution Act 1999* requiring that:

- A person must not publish an advertisement for prostitution that describes the services offered or is not in the approved form;
- A person must not publish a statement intended or likely to induce a person to seek employment as a prostitute;
- A person providing prostitution must not hold out or publish advertisements that their business is connected with massage services.

The Queensland Prostitution Licensing Authority approves all advertisements. There are stringent administrative guidelines for sole operators and brothel owners to follow when applying for such approval.

In its 2003-study referred to earlier the Queensland Prostitution Licensing Authority examined public attitudes to a variety of prostitution-related issues including concerns about the impact of prostitution on community morality, attitudes towards the regulation of sex work and the advertising and promotion of sexual services. To provide a context the study compared the attitudes of persons living in areas with licensed brothels with those of persons living in areas without licensed brothels.

The study found that the majority of the sample believes that prostitution is not like any other business and that it ought to be dealt with in a particular way. However, the report concluded that ‘the community attitude towards advertising of sex work also indicate that the community is concerned about the public visibility of any form of promotion of sexual services’. From the survey 32.5% of respondents in areas with brothels and 42.1% of respondents from areas without brothels, answered yes to the question – should it be against the law for a company to publish advertisements for prostitution?<sup>38</sup>

A recent report by the Queensland Crime and Misconduct Commission found that the number of offences against the advertising controls had ‘increased significantly’ since 1999/2000 when no offences were recorded, to 40 offences in 2002/03. The report suggests these increases reflect increased police enforcement rather than necessarily indicating an increased number of offences.<sup>39</sup> While there are no regulations concerning advertising controls, the Queensland Prostitution Licensing Authority

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<sup>37</sup> *Regulating morality? An Inquiry into prostitution in Queensland*, Criminal Justice Commission 1991, Brisbane.

<sup>38</sup> *Selling Sex in Queensland 2003*, Prostitution Licensing Authority of Queensland, 2004, pages 99 and 110. The researchers distributed 1207 questionnaires and got a return rate of 39.6%.

<sup>39</sup> *Regulating Prostitution*, An evaluation of the *Prostitution Act 1999* (QLD), Crime and Misconduct Commission, December 2004, Pages 79-80.

must approve all advertisements and has issued stringent administrative guidelines for sole operators and brothels.

## **2.5 Small Owner-Operators**

Section 23 of the Act provides an exemption from the requirement to be licensed if only that person works as a prostitute or with one other person who is also a prostitute in the business.

While not required to be licensed, section 24 of the Act requires these self employed small owner-operators to be registered with the Business Licensing Authority. Currently, regulation 11 sets out the information to be given to the Business Licensing Authority when registering as exempt. This information is as follows:

- (a) all names by which the prostitution service provider is known, his or her date of birth and residential address;
- (b) all business names under which the prostitution business is carried on;
- (c) the business address and all telephone numbers used in carrying on business;
- (d) the name and address of the owner of the premises at which the business is conducted;
- (e) the landlord's approval, if the premises are leased; and
- (f) the number of the planning permit granted by the responsible authority in respect of the business and the name of that authority.

This section of the RIS therefore will examine the problems associated with not prescribing any information to be included when a small operator registers with the Business Licensing Authority. That is, the discussion will focus on the need to prescribe information.

### ***2.5.1 The need for information to be prescribed***

Prior to the *Prostitution Control Act 1994*, the *Planning (Brothels) Act 1984* did not differentiate between large operators and self-employed small owner operators. The differentiation in the Act originated in the 1985 Neave Report, which found that there are fundamental differences between self-employed sex workers and those working for someone else. The report found that a self-employed sex worker has greater control over his or her working conditions because they are answerable only to themselves and are free to refuse clients they find physically repulsive or refuse services they do not wish to provide.

Neave concluded that an exemption from the licensing mechanism would provide some autonomy to prostitutes who do not wish to work for someone else. Furthermore, it was argued that the licensing mechanism aims to prevent criminals from being in the industry, and criminals would be less likely to be interested in

small-scale prostitution as the profits are comparatively low. However, to prevent criminals from managing a chain of small owner-operators, the exemption from the licensing mechanism does not apply if these small businesses are in any way associated with another prostitution service providing business - section 23(2) of the Act. Similarly, a copy of the planning permit is required to ensure that the small owner-operator does not have an interest in more than one brothel permit (section 75 of the Act).

Special provisions for small-owner operators are included in section 23 of the Act, which states that subject to this section, “a person carrying on the business of a prostitution service provider is exempted from the licensing mechanism if only that person works as a prostitute in that business or only that person and one other particular person so work.”

The proposed Regulations prescribe the information to be given to the Business Licensing Authority by a person who intends to rely on the exemption under section 23 of the Act. The prescribed information allows the Business Licensing Authority to properly identify these small business owners and ensure their eligibility, for example, that they are not in any way associated with another prostitution service providing business.

The introduction of a class of exempt businesses from the licensing mechanism can potentially make it difficult to identify businesses operating outside the regulatory framework. In its latest annual overview, the Business Licensing Authority provides a case study illustrating how an operator used the exemption provisions as a cover to conduct a business that would otherwise be outside the regulatory framework.

The benefit of a licensing and registration system and having that system administered through an agency such as the Business Licensing Authority is that controls can be placed on the entry (and exit) of businesses from the market. However, this is only as effective as the information contained in the licensing or registration systems itself. Without sufficient and accurate information including a copy of any lease agreement for premises, enforcement of the controls is difficult.

Giving the Business Licensing Authority powers over removing from the register, and/or greater control over entry onto the register would allow the Business Licensing Authority greater control over the person, such as those who flout the law. Nonetheless, any additional controls put in place to deal with such individuals would affect all individuals registering as small owner-operators.

The aim is to strike a balance between giving the Business Licensing Authority greater control over entry to the register so that it can determine when people are likely to flout the law, and an inclusive system that encourages people who want to work autonomously to register.

## **2.6 Summary of Problems**

In this section, it has been argued that STD's have been increasing in UK, Europe, USA and in Australia over recent years. STD's involve considerable stress and illness, can affect reproductive ability, and be fatal. The costs of STD's in terms of medical and non-medical treatment and care are very significant.

Sex workers are recognised as a priority population in the prevention of sexually transmitted infections as a result, regulatory authorities in Queensland and Victoria have listed the diseases requiring preventative testing. Research by the Melbourne Sexual Health Centre indicate there is a low prevalence of STD's among sex workers in the regulated systems compared with sex workers outside such systems and the general community.

Historically, sex work has been a dangerous profession, and the industry beset with safety problems, indeed, this is the reason for the safety objectives in the Act. This is well illustrated by the concept of the 'hidden crime' which reflects the risks inherent in the industry, the associated lack of reporting of assaults, combined with a perceived widespread negative attitude in the community towards sex workers that indicates a lack of concern with these crimes.

The most recent relevant data of the extent of risks in the sex industry is provided by reports from Queensland and there is little reason to suggest that the situation is substantially different in Victoria. The evidence from the Queensland studies shows that the industry is the subject of severe safety risks but these are significantly, but not totally, reduced in a regulated environment. The safety initiatives put in place in Queensland such as the Health and Safety Guidelines for Brothels aim to mitigate these risks.

A total ban on advertising has negative effects for the prostitution service provider and clients. Neave recognised these effects and sought a balanced approach that does not cause public offence while allowing limited advertising. This 'balance' is informed by the fact that in the broader Australian context the community is concerned about the portrayal of sex and sexuality and nudity (by virtue of the complaints to the Advertising Standards Bureau). These concerns have also resulted in the recent Gender Portrayal Guidelines in Victoria.

Recognising the community's attitude in these matters, the advertising industry association (Outdoor Media Association) encourages its members to comply with the laws and embrace the need for 'taste and decency'. The Association also promotes the Gender Portrayal Guidelines.

Recent surveys of communities in Queensland support the view that advertising of sex services should be allowed but regulated.

To offer some autonomy to prostitutes who do not wish to work for another person, the Act creates a registration requirement for small owner-operators rather than requiring them to use the licensing mechanism. The licensing mechanism aims to prevent criminal involvement in the industry. Criminals are less likely to be interested

in these small businesses as profits are comparatively low. However, to ensure this less restrictive approach is effective and these small businesses are not operating in association with another prostitution service providing business, certain information is required for registration purposes.

### **3. THE OBJECTIVES**

#### **3.1 Primary Objectives**

The principal objective of the proposed Prostitution Control Regulations 2006 is to provide for the safety of sex workers, their clients and the general community.

#### **3.2 Secondary Objectives**

A secondary objective of the Regulations is to provide an administrative framework to enable the efficient operation of the Act in so far as it applies to:

- (a) sexually transmitted diseases;
- (b) the safety of persons working in a prostitution business;
- (c) safety matters relevant to the suitability of licence applicants;
- (d) advertising by prostitution service providers;
- (e) particulars to be given to the Authority by certain small owner-operated businesses; and
- (f) the form of registrar's certificates.

## **4. THE PROPOSED REGULATIONS**

### **4.1 Legislative Power**

These Regulations are made under sections 3, 18, 68 and 90 of the *Prostitution Control Act 1994*. They revoke and replace the Prostitution Control Regulations 1995.

### **4.2 Affected Parties**

Those affected by the proposed Regulations include:

- Sex workers;
- Prostitution service providers (licensees and small owner-operators)
- Brothel managers;
- Clients of sex workers;
- General community; and
- The Business Licensing Authority and other government agencies with a role in the overall regulatory framework.

### **4.3 The Proposed Regulations**

The proposed Regulations are primarily the same as the Prostitution Control Regulations 1995. Some minor changes have been made to clarify requirements and to update them recognising current epidemiological knowledge and advances in technology. The proposed Regulations are arranged in five Parts:

Part I – Preliminary;

Part II – Health and Safety Requirements;

Part III – Advertising Controls;

Part IV – Small Owner Operators;

Part V – Other Matters.

The following is a discussion of each proposed regulation.



## ***Part I - Preliminary***

### ***4.3.1 Proposed regulations 1-5***

Include objectives, authorising provisions, commencement, revocation, and definitions. These are essentially administrative regulations that have no impact on affected parties.

## ***Part II – Health and Safety Requirements***

### ***4.3.2 Proposed 6 – Sexually transmitted diseases***

Proposed regulation 6 states that, for the purposes of the definition of "sexually transmitted diseases" in section 3 of the Act, the following diseases or conditions are prescribed -

- Chlamydia
- Chancroid
- Donovanosis
- Genital and anal herpes (when lesions are visible)
- Genital and anal warts (when lesions are visible)
- Gonorrhoea
- Infectious Syphilis

The list is essentially the same as the current list of STD's except for the following changes, resulting from the consultations in the review of the Regulations:

- Human Immuno-deficiency Virus is not included in the list because section 3 of the Act already defines it as a sexually transmitted disease. This is noted in the proposed regulations because research indicates that medical practitioners and sex workers refer to the regulations rather than the Act when testing for sexually transmitted diseases;
- Lymphogranuloma venereum, currently listed, is a form of Chlamydia infection and does not need to be listed separately;
- The current Regulations restrict wart and herpes infection to genital infections. This omits anal warts and herpes that are becoming more prevalent and therefore have been added. In the same way the words "and anal" have been added before herpes and warts; and
- The words infectious syphilis rather than syphilis are proposed as only the former can be passed on to sexual partners.

Hepatitis B is not included on the list because there is little evidence that sex workers are a major source of transmission. Furthermore, there are already effective strategies to control Hepatitis B, including a vaccine, which became part of the standard childhood immunisation program in May 2000.

In its submission to the Discussion Paper, Scarlet Alliance made the point that the presumption in the Regulations that sex workers are at increased risk of STI's or HIV and in need of monitoring is at odds with the fact that sex workers have better sexual health than the general population. It argued that this is archaic and inconsistent with 'less intrusive and self-managed approaches that are supported' elsewhere in Australia. It also considers the list of STD's is inconsistent with health measures in other occupational settings, such as hepatitis A in catering and food preparation.

While it is acknowledged that sex workers in the regulated environment may have better sexual health than the general community, this RIS has argued that this is largely due to the regulated environment, including the prescription of STD's, as evidenced by the poor safety and health of sex workers working outside the regulatory environment.

#### Penalties for Proposed Regulation 6

There are no penalties for proposed regulation 6 as the prescribing of the list relates to the implementation of a more significant policy, which is set out in section 19 and 20 of the Act, that is, to maximise the sexual health of the men and women involved in prostitution. The penalties set out in the Act are 50 penalty units for prostitution service providers and approved managers who permits a prostitute infected with a disease to work, and 20 penalty units for a prostitute who knowingly works while infected.

#### ***4.3.3 Proposed Regulations 7 and 8 – Safety requirements***

Promoting the safety of sex workers is an objective of the Act. In particular, section 4(e) and 4(f) states that its objective is to:

- (e) maximise the protection of prostitutes and their clients from health risks;
- (f) maximise the protection of prostitutes from violence and exploitation;

Section 68(d) of the Act allows the Governor in Council to make Regulations for or with respect to "the requirements to be complied with by a prostitution service provider to ensure the safety of persons working in the business."

In summary, proposed regulations 7 and 8 set out requirements:

- to promote a safe working environment free from violence and intimidation (such as supporting a prostitute who decides not to provide or stop providing sexual services because he or she feels that the situation is potentially violent or unsafe; alarms in rooms; and systems to maximise the safety of escort workers delivering services away from the business premises); and

- to promote safe sexual practices (such as the display of safe sex posters in the reception area and each room used for prostitution, and sufficient lighting in the rooms so that workers can check for visible signs of sexually transmitted diseases); and
- to ensure sex workers are not exploited (such as not requiring prostitutes to clean the facilities unless they are contracted to do so); and
- to ensure that sex workers, receptionists and managers are aware of the above requirements.

By setting out specific actions and requirements that must be complied with, the proposed regulations takes a prescriptive approach to achieving the objectives set out in section 4(e) and 4(f) in the Act.

In Victoria, prostitution service providers must also comply with the *Occupational Health and Safety Act 2004*, which requires, as far as practicable, employers to provide a working environment that is safe and without risk to health. Employers and self-employed persons must also ensure that persons other than their employees are not exposed to risks to their health and safety arising from the employer's undertaking. In view of the particular safety risks associated with the sex industry, as illustrated in Section 2 of this RIS, it is considered necessary to list in detail the safety requirements of prostitution service providers.

#### Responses to Discussion Paper

Only five responses were received from industry representative groups to the six questions, and while this provides limited scope for common threads to emerge, the idea of making more use of the OHS Act was raised. For example, one respondent considers that the sex industry should be treated the same as other industries and rely on the OHS Act for its safety requirements with WorkSafe implementing safety programs. Another suggests an industry-wide code of practice under the OHS Act would be a useful method of engaging with that legislation as well as being a reference for illegal operators. Another argues that the safety requirements should apply to the men and women who are operating illegally.

Like the responses from the industry sector, some comments from community groups suggest the sex industry should be treated the same as other industries with WorkSafe and the OHS Act as the leading authority for health and safety matters. Industry-specific OHS guidelines are seen as desirable. Other comments include the need for heavy penalties for breaches, inspections that are more regular and monitoring of brothels, mandatory use of condoms, the use of signage allowing management to refuse entry and a prohibition on licensees taking the passports of workers.

The responses from Government agencies produced no common thread. WorkSafe Victoria indicated a readiness to consider industry-specific guidelines such as apply in NSW and Queensland. One respondent suggests infringement notices are introduced for breaches of the safety requirements, and that escort agencies are covered by health standards. Other comments included the need to protect a workers' privacy in

regulation, mandating the prohibition of contractually bonding a worker, compulsory inspections, investigating a workers refusal to provide services, and the need for non-clinical and client-focussed signage.

#### Penalties for Proposed Regulation 7

Section 90(f) of the Act states that regulations made under this Act may be made so as to impose a penalty not exceeding 40 penalty units for a contravention of the regulations.

The penalty for non-compliance with proposed regulation 7(1), 7(2) and 7(3) is set at 40 penalty units. As noted above, proposed regulation 7 relates to the implementation of sections 4(e) and (f) of the Act, which is to maximise the protection of prostitutes and their clients from health risks, and to maximise the protection of prostitutes from violence and exploitation.

Setting the penalty for non-compliance at 40 penalty units is proportional to the problem that proposed regulation 7(1), 7(2) and 7(3) is trying to address and is consistent with comparable regulations. For example, proposed regulation 7(1) protects a sex worker who refuses a service because he or she believes a situation is potentially violent or unsafe. The 'refusal of service' in the proposed regulations is comparable with regulation 29 of the Health (Infectious Diseases) Regulations 2001. This regulation also protects a sex worker who refuses to provide a service, although not for reasons of personal safety, but because he or she suspects a client is infected with an infectious disease, or if a client refuses to wear a condom. Because of the obvious risk to public health, the penalty for non-compliance with regulation 29 above is 100 penalty units.

The penalty for non-compliance with regulation 7(4) and 7(5) is set at 20 penalty units. Setting the penalty for non-compliance at 20 penalty units is proportional to the problem that proposed regulation is trying to address.

Cleaning is not part of a sex worker's role unless contracted to do so. A person specifically contracted for cleaning will have appropriate protective equipment to safeguard against repeated exposure to the chemicals used. If cleaning is incidental to the duties of a sex worker, clothing used for sex work is unlikely to be suitable for cleaning, and sex workers are unlikely to possess the appropriate protective equipment.

20 penalty units is consistent with the comparable regulations, in particular, the 20 penalty units set for non-compliance with regulation 32 of the Health (Infectious Diseases) Regulations 2001, which covers the provision of clean linen and towels.

The penalty for non-compliance with regulation 7(6) is set at 40 penalty units. Proposed regulation 7(6)(a), 7(6)(b) and 7(6)(c) requires prostitution service providers to ensure that regular contact with the sex worker is maintained so that assistance can be provided if the sex worker needs it. These measures are proposed because escort workers face a set of risks that are associated with working alone, in an unfamiliar environment, where they may face unpredictable client behaviour.

Evidence from WorkSafe Victoria indicates that risks to health and safety are significantly higher when people work alone or in an unfamiliar environment.

Proposed regulation 7(6)(d) requires prostitution service providers to provide the escort worker with a free supply of condoms and water-based lubricant, this proposed regulation draws on part 6 of the Health (Infectious Diseases) Regulations 2001 relating to the supply of condoms and water-based lubricants in brothels, and makes them applicable to escort agency businesses. In the Health (Infectious Diseases) Regulations 2001, this requirement has a penalty of 50 penalty units.

#### Penalties for proposed regulation 8

There are no penalties for proposed regulation 8.

### ***Part III – Advertising Controls***

#### ***4.3.4 Proposed regulation 9 – Advertising controls***

Proposed regulation 9 contains requirements relating to:

- the disclosure of PCA numbers in all advertisements;
- photographic and pictorial representations of a person in advertising;
- the form and size of print advertising; and
- the descriptive content of text used in advertising.

These are essentially the same as existing advertising controls.

Because of the prohibition on advertising in the Act, the proposed regulations will allow prostitution service providers to advertise the services of their businesses. This has significant benefits for the industry and clients of regulated prostitution service providers. Allowing advertising may also have an impact on the public.

#### Responses to Discussion Paper

Generally, the responses from the industry sector are antagonistic to advertising controls and in particular, the advertising restriction for staff in section 17 of the Act is seen as inappropriate and inconsistent with interstate controls, although similar controls exist in Queensland, which has a comparable regulatory framework to Victoria. The requirement to include the PCA number in advertising is considered to add costs; a requirement that is in place to ensure that compliance can be monitored by an examination of advertisements. There is also a suggestion that an onus be placed on advertisers to not accept advertisements from illegal operators. However, this is already a requirement of the Act, as indicated, were it not for the proposed regulation, no advertising would be allowed.

Community responses generally recommend tighter advertising controls noting in particular the need for a prohibition on sponsorships of advertising in public events. One response draws the parallel of the harmful effects or risks associated with the sex industry with the health effects of smoking cigarettes. It suggests that similar advertising requirements apply to the sex industry. While it is difficult to compare the health impacts of tobacco and prostitution within the narrow space of sexually transmitted infections, as shown earlier, a sex worker in the regulated environment is less likely to suffer from a sexually transmitted infection compared to a worker outside the regulatory environment, and the general community.

There is generally a level of satisfaction with the existing controls from the Government responses. The concept of placing an onus on advertisers was also raised in one response. There is some suggestion of confusion with advertising controls contained in planning schemes and one response indicated sponsorship advertising should be covered by planning schemes. There is clearly some relationship with the planning scheme controls and the proposed advertising controls. The former, however, is not concerned with content whereas that is the essential substance of the prostitution controls.

Consumer Affairs Victoria monitors advertising by prostitution service providers by examining advertising in newspapers, the Internet, outdoor billboards, and by attending industry exhibitions, and assessing complaints from the public about alleged breaches. Since 2000, up to 40 allegations of advertising breaches have been investigated.

#### Penalties for Proposed Regulation 9

There are no penalties included in these regulations as penalties for breaches against the advertising controls are covered in the Act. In particular section 17(1)(b) of the Act states that: "A person must not publish or cause to be published an advertisement for prostitution services that – (b) contravenes the regulations." Penalty: 40 penalty units.

### ***Part IV – Small Owner Operators***

#### ***4.3.5 Proposed regulation 10 – Small owner-operated prostitution service providers***

Proposed regulation 10 sets out the information to be given to the Business Licensing Authority when registering. It states that:

- (1) For the purposes of section 24 of the Act, the prescribed particulars are—
  - (a) for each person working as a prostitution service provider in the business all names by which the prostitution service provider has been and is known, his or her date of birth and residential address; and

- (b) all business names under which the prostitution business will be carried on; and
  - (c) the business address and all telephone numbers, and any electronic addresses used in carrying on the prostitution business; and
  - (d) if available, an Australian Business Number issued under A New Tax System (Australian Business Number) Act 1999 of the Commonwealth.
- (2) For the purposes of section 24 of the Act, if a business is, or includes a brothel, the prescribed particulars also include—
- (a) the name and address of the owner of the premises at which the business is conducted;
  - (b) if the premises are leased, the landlord's approval and a copy of the lease; and
  - (c) a copy of the planning permit granted by the responsible authority in respect of the business.

The proposed Regulations are substantially the same as the current Regulations. The changes, including the requirement to include the ABN if available and a copy of the lease, aim to strike a balance between giving the Business Licensing Authority more control over entry to the register and an inclusive system that encourages prostitutes who are working autonomously in their own business to register.

Section 23 of the Act exempts a person working as a prostitute in their own business from the licensing scheme, and section 24 requires them to register with the Business Licensing Authority. The exemption offers some autonomy to prostitutes who do not wish to work for someone else. Furthermore, the licensing mechanism aims to keep criminals out of the industry, and criminals are less likely to be interested in small-scale prostitution because profits are comparatively low.

The exemption from the licensing mechanism does not apply if the small owner-operator is associated with another prostitution service providing business. These changes aim to enable the Business Licensing Authority determine whether the business is associated with another prostitution service providing business; an exemption does not apply if this is the case (section 23(2) of the Act). Similarly, a copy of the planning permit is required to ensure that the person does not have an interest in more than one brothel permit (section 75 of the Act).

### Responses to Discussion Paper

Questions concerning owner-operator controls attracted the least number of responses to the Discussion Paper and the eight respondents answered only half of the questions.

The primary issue raised by respondents was that the requirements to provide personal details and landlord details might provide a disincentive for autonomous workers to

register, making the option of working outside the regulatory framework more attractive.

#### Penalties for Proposed Regulation 10

There are no penalties included in these regulations, as penalties are included in the Act. In particular, section 24(1) of the Act states, “A person who intends to rely on an exemption under section 23 must... give to the Authority the prescribed particulars in relation to the business. Penalty: 30 penalty units.

### ***Part V – Other Matters***

#### ***4.3.6 Proposed regulation 11 – Certificate of Registrar***

This regulation is essentially administrative in nature and has no impact on affected parties.

### **4.4 How the Proposed Regulations Would Be Enforced**

Consumer Affairs Victoria monitors compliance to ensure prostitution service providers comply with the requirements laid out under the Act, where those functions are not allocated to other government agencies as specifically provided for in the Act. Section 26 of the Act states that the functions of the Director are:

- (a) to refer to the police force for investigation prostitution-related complaints, including complaints from prostitutes;
- (b) to liaise with the Authority and the police force so as—
  - (i) to assist the Authority in carrying out its functions under this Act; and
  - (ii) to assist the police force in carrying out its functions in relation to prostitution;
- (c) to refer relevant matters for investigation by the WorkCover Authority, the Australian Taxation Office or the Commonwealth Department of Immigration and Ethnic Affairs or any other body;
- (d) any other functions conferred on him or her by or under this Act.

In particular, the compliance monitoring arrangements for the *Prostitution Control Act 1994* and the proposed Regulations undertaken by Consumer Affairs Victoria includes:

- an annual compliance-monitoring inspection program;
- targeted inspections; and
- education and information to promote compliance.



### Annual Compliance-Monitoring Inspection Program

The annual compliance-monitoring program, involves an inspection of businesses to ensure that they are complying with the requirements of the Act and the proposed Regulations.

In regards to the safety regulations, the compliance-monitoring program provides for the physical examination of the requirements set out in the proposed Regulations, such as the existence of concealed alarms that are in working order and accessible, relevant signage and sufficient lighting in rooms used for prostitution. The program also requires enquiries made about the cleaning of premises, the safety procedures in place for escort workers, and the sex worker's right to refuse to provide sexual services.

Consumer Affairs Victoria inspectors monitors advertising by prostitution service providers by examining advertising in newspapers, the Internet, on outdoor billboards, and by attending industry related events.

### Targeted Inspections

Targeted compliance monitoring involves the investigation of complaints from the public. Inspectors will assess all complaints received from members of the public to determine whether the matter is appropriate for a targeted inspection.

### Education and Information to Promote Compliance

The Inter-Departmental Committee for Prostitution Regulation has commenced work on an education and information campaign for sex industry participants. The Committee was established as a forum for cooperation, in recognition that prostitution is a complex policy domain with issues relevant across a number of Departments. In 2005, the Committee undertook an audit of education and information resources for people involved in the sex industry. Through the audit process, it became evident that the provision of relevant information can contribute to improved levels of knowledge among sex industry participants about the regulatory framework and its protection and harm minimisation objectives

### ***Compliance and Enforcement Priorities***

Consumer Affairs Victoria's objectives in response to conduct that breaches the *Prostitution Control Act 1994* and the proposed Regulations are to:

- stop the breach;
- ensure future compliance with the law;
- raise awareness of the legislative requirements through education and information; and
- deter and punish wrong doers.

To promote compliance, Consumer Affairs Victoria uses a number of tools that are rigorous without being heavy handed. In some circumstances, the most appropriate response will be to pursue more than one enforcement option at the same time. Depending on the seriousness of the breach, the enforcement options include without prejudice discussions or a formal written warning, VCAT Disciplinary Hearings, Civil Proceedings or Prosecutions.

In determining the appropriate enforcement option, Consumer Affairs Victoria takes into account the following factors:

- the seriousness of the alleged breach;
- the detrimental impact of the conduct and the vulnerability or disadvantage of the affected party that the Act seeks to protect;
- the educative impact and deterrent effect of the action;
- the culpability of the alleged offender;
- the compliance history of the alleged offender; and
- the response of the alleged offender, including improving management practice and staff training.

### ***Other Government Agencies***

Other Government agencies with responsibilities to ensure the overall health of the regulatory framework include:

#### Business Licensing Authority

The Business Licensing Authority is an independent statutory body established under the *Business Licensing Authority Act 1998*. The Business Licensing Authority manages the licensing mechanism, grants approval to individuals wanting to become approved managers of brothels and registering small owner-operators who are exempt from the licensing mechanism.

#### Victoria Police

Victoria Police monitors compliance with the Act as it relates to issues of criminality, provides probity reports to the Business Licensing Authority on applicants for licences, and approved manager status.

Victoria Police has specific statutory powers under the Act to enter licensed and unlicensed prostitution service providing premises with and without search warrants. Victoria Police also have powers under the Act to make application to the Magistrates' Court to declare premises a proscribed brothel.

### Department of Human Services

The Department of Human Services, under the Health (Infectious Diseases) Regulations 2001, is responsible for ensuring that public health standards in brothels are upheld. This includes monitoring the free provision of condoms and water-based lubricant to sex workers and clients, and ensuring that written information about the transmission of sexually transmitted infections is provided at the brothel for both clients and sex workers. The Secretary to the Department of Human Services must ensure that an officer of the Department authorised by the Secretary inspects each brothel at least once in every 12 months.

### WorkSafe Victoria

Under the *Occupational Health and Safety Act 2004* WorkSafe Victoria has statutory responsibility for, amongst other things, safeguarding occupational health and safety in the workplace. The *Occupational Health and Safety Act 2004* applies to all workplaces, including brothels.

### Local Councils

One of the functions of local councils is to administer and enforce planning schemes that control land use and development within a municipality in accordance with the requirements stipulated under the *Planning and Environment Act 1987*.

In relation to the regulation of prostitution, councils are responsible for granting or refusing planning permits for the establishment of brothels in a particular locality within a municipality, in a way that complies with the requirements specified in the *Prostitution Control Act 1994*.

### ***Anticipated Compliance***

The expected compliance rates for the proposed regulations are high. This expectation is based on statistics compiled by Consumer Affairs Victoria since 1999 on VCAT applications, since 2000 for breaches relating to the advertising and small owner-operator regulations, and since 2004 for breaches relating to the safety regulations. The statistics show that the overall picture is one of compliance. An increase in compliance is expected as industry participants become better informed about the requirements of the law.

- Since 1999, Consumer Affairs Victoria has been involved in seven VCAT applications concerning prostitution service providers. These applications vary from taking action to suspend existing licences and taking disciplinary actions. Further, Consumer Affairs Victoria acts for the Business Licensing Authority in cases where persons take action to review the determination of the Authority.
- Since 2000, Consumer Affairs Victoria inspectors examined 40 matters relating to compliance with the advertising regulations, with the following outcomes, 24 warning letters, 1 enforceable undertaking, with five prosecution briefs raised.

Such briefs were the basis to consider various enforcement actions including taking disciplinary action in VCAT.

- Since 2000, Consumer Affairs Victoria inspectors have applied for two search warrants for small owner-operators suspected of being in breach of their exemption status. One case resulted in a successful application to the Melbourne Magistrates' Court.
- Since 2004, Consumer Affairs Victoria inspectors have examined 60 premises for compliance with the safety regulations and issued 11 warning letters.

### ***Evaluation Strategy***

The structure and form of the overall regulatory regime for the control of prostitution adopted by Government is influenced by a myriad of economic and socio-cultural factors. A further dimension of complexity is the diverse and often passionate views of the broader community. Given the well-documented challenges of this sensitive policy domain, we do not wish to pre-empt when Government will undertake an evaluation of its overall approach to regulating prostitution.

This evaluation strategy outlines the approach for evaluating the implementation of the proposed Regulations, and for the collection of information and baseline-data against which their effectiveness can be measured.

Consumer Affairs Victoria will collect data on the performance of the proposed Regulations each time an inspector completes an inspection. This information, once collated and analysed will form the baseline-data, which will be utilised to improve the effectiveness of the proposed Regulations in meeting Government policy objectives to minimise the harms caused by prostitution.

## **5. COSTS AND BENEFITS OF PROPOSED REGULATIONS**

### **5.1 Analytical Framework**

The purpose of this section is to assess the relative costs and benefits of the proposed Regulations for the Victorian community. In identifying the cost and benefits, both the proposed Regulations and the alternative measures are assessed against the base case – that is the scenario where there are no regulations.

The RIS assesses whether:

- the expected benefits of the proposed Regulations are greater than the expected costs; and
- the net benefit of the proposed Regulations exceeds the net benefits of a feasible alternative.

Proposed Regulations 1-5 are drafting matters that do not have significant impacts on affected parties. They are therefore not subject to specific assessment here.

The proposed Regulations replace sunseting Regulations. Therefore, it is necessary to assess the proposed Regulations against the base case, where the benefits and costs are compared with a notional un-regulated scenario rather than being compared with the benefits and costs attributable to the current Regulations.

A quantitative analysis has been undertaken where feasible, and a monetary value assigned. However, in instances where it is difficult to assign quantitative costs and benefits, a qualitative assessment using a balanced scorecard approach is adopted. This approach assigns a score depending on the assessed impact of the proposal, a negative score (-1 etc) is assigned where the impact is negative, undesirable or poor, “0” where there is no impact, and positive (+1 etc) where the impact is desirable or good. The base case is assumed to be “0”.

### **5.2 No Regulations – The Base Case**

#### ***5.2.1 No Prescription of STD’s***

##### (1) Health (Infectious Diseases) Regulations 2001

Section 120 of the *Health Act 1958* makes it an offence for a person to knowingly or recklessly infect another person with an infectious disease. A breach incurs a penalty of 200 penalty units or approximately \$2,000.

The Health (Infectious Diseases) Regulations 2001 has a list of infectious and notifiable diseases. The notification of infectious diseases to health authorities is a strategy to prevent and control the spread of infections. Under the provisions of these Regulations, medical practitioners must inform the Secretary of the Department of Human Services when one of their patients shows evidence of, has died with, or is a carrier of a notifiable disease.<sup>40</sup>

(2) Minimise Potential for Confusion

Section 19 of the Act makes it an offence for a person who is a prostitution service provider to permit a prostitute to work while infected with a sexually transmitted disease. Section 20 of the Act states that a person must not work as a prostitute during any period in which he or she knows that he or she is infected with a sexually transmitted disease. It is a defence against prosecution if the prostitution service provider or sex worker can demonstrate that he or she has been undergoing regular blood tests, on at least a quarterly basis for HIV (as defined by section 3 of the Act) and regular swab tests on at least a monthly basis to determine whether he or she was infected with any other sexually transmitted disease.

The sexually transmitted infections listed in the Prostitution Control Regulations are also listed in the Infectious Diseases Regulations. Therefore, not prescribing a list in the Prostitution Control Regulations may have little impact. However, medical practitioners (and sex workers through advice from medical practitioners) refer to the Prostitution Control Regulations when testing sex workers because it provides a comprehensive list that directly applies to the sex worker population.

(3) Reduces the Apparent Stigma by Leaving Controls over Infectious Diseases in One Broad Set of Regulations

The consultations and research reveal that there is a social stigma associated with sex work. There is also evidence that the sexual health of workers inside the regulatory environment is very good, resulting in a low prevalence of sexually transmitted infections. Relying on the broader health regulations recognises the health gains made by the regulated sex industry, and can contribute to a reduction in this stigma.

(4) Comprehensiveness and a Focus on Risks

The list in the proposed Regulations reflects current knowledge in epidemiology, which is the branch of medicine that deals with the study of the causes, distribution, and control of diseases in populations. By reducing the risks of infection through an informed and knowledgeable sex worker population, the list is an important complement to the safe sex strategies advocated by the Act and the draft Victorian STI strategy. Relying on the base case does not capture these benefits.

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<sup>40</sup> Source: Victorian Medical Board website: <http://medicalboardvic.org.au/content.php?sec=53>

(5) Simplicity of Identification of STD's

By listing sexually transmissible infections in the Prostitution Control Regulations, medical practitioners and sex workers are clear about what to test. Research undertaken by Consumer Affairs Victoria indicates that medical practitioners working with sex workers refer to the Prostitution Control Regulations rather than the Infectious Diseases Regulations when testing sex workers.

### **5.2.2 No Safety Requirements**

(1) Refusal of Service Due To Violence or For Safety Reasons

With respect to safety, the Health (Infectious Diseases) Regulations 2001 provide a range of requirements similar to the current Regulations. However, they only apply to brothels and not escort agencies. They require that:

A proprietor must not require a prostitute to provide a service to a client if the prostitute has refused to provide the service because –

- (a) the prostitute suspects that the client is infected with an infectious disease; or
- (b) the client has refused to use condom.

A proprietor of a brothel must take all reasonable steps to ensure that a client and a prostitute use condoms in any encounter in a brothel between a client and a prostitute, which involves vaginal, oral or anal penetration whether by means of a penis or other part of the body or by a device or object. A proprietor must not expressly or impliedly discourage the use of condoms in the brothel.

In addition, the provisions of the *Occupational Health and Safety Act 2004* requiring an employer to provide a safe work environment apply. Therefore, employers must not allow refusal on the grounds of safety.

The absence of specific regulations may not expose workers to risk. On the other hand, protecting workers from violence and exploitation is an objective of the Act, and research discussed in this RIS shows that the regulated environment, where safety controls are prescriptive, is safer for both workers and their clients.

(2) Receptionist Not To Misrepresent

The aim of the regulation is to ensure sex workers have control of the particular services they will or will not offer. A third party may describe the services in a way that heightens a client's expectation, exposing sex workers to the risk of violence from disappointed or angry clients, if they are unable or unwilling to provide those services.

(3) Concealed Alarm Buttons, Adequate Lighting in Rooms and Safe Sex Signs

The purpose of these Regulations is to maximise the protection of sex workers and their clients from health risks, and to maximise the protection of sex workers from violence and exploitation.

The requirements of the *Occupational Health and Safety Act 2004* and the Health (Infectious Diseases) Regulations 2001 cover the broad objective of these controls. Furthermore, in its submission to the Discussion Paper, WorkSafe Victoria offered to assist in the preparation of safety guidelines like the brothel's safety guidelines published by the Queensland Prostitution Licensing Authority.

The Health (Infectious Diseases) Regulations 2001 (Part 6 Brothels) require brothel proprietors to:

- Provide easily accessible written information about the transmission of sexually transmitted infections in a variety of languages at the brothel for the benefit of prostitutes and clients.
- Take reasonable steps to ensure that any information about sexually transmitted infections provided at the brothel for the benefit of prostitutes or clients is medically accurate.
- If a prostitute has difficulty in communicating in the English language, the proprietor must provide the information in a language with which the prostitute is familiar.

In view of the alternative requirements, the base case is expected to have no significant impact.

(4) Cleaning of Baths, Showers, etc

The Health (Infectious Diseases) Regulations 2001 (32 & 33) require that brothel proprietors must:

- provide clean linen and towels for the use of each client;
- provide baths or showers with a continuous and adequate supply of hot and cold water for the use of clients and prostitutes;
- ensure that the baths and showers are cleaned and disinfected after each use.

In view of the alternative requirements, the base case is expected to have no significant impact.

(5) Arrangements to Ensure Safety of Escort Workers, Provision of Mobile Telephones and Free Supply of Condoms

The provisions in the *Occupational Health and Safety Act 2004* may be enough to ensure the safety of escort workers. However, the base case ignores the unique risks



faced by escort workers by virtue of the fact that the transaction occurs at the client's venue.

The proposed Regulations make it clear that an arrangement to ensure the safety of escort workers must be in place, and that proprietors supply workers with mobile phones to enable a worker in danger to contact the prostitution service provider or approved manager for assistance.

The Health (Infectious Diseases) Regulations 2001 covers the free supply of condoms and water-based lubricants to people working in a brothel but not in an escort agency. The base case does not provide adequate protection for escort workers.

### ***5.2.3 No Prescription (Or Allowance) Of Advertising***

#### **(1) Social Benefits**

Without regulations prescribing requirements, the Act's provisions apply. Under section 17, this means that advertising would be banned. This would have the following benefits:

- It would not expose the availability of prostitution services publicly;
- It would not expose the use of prostitution services to children and young people who are more readily influenced.

#### **(2) Industry and Customer Costs**

No prescription will impose a ban on advertising. This:

- It restricts prostitution businesses from informing consumers about the services offered. This is a restraint on trade.
- It limits information to consumers and forces advertising underground. This encourages illicit information.
- Has the potential to conflict with, or cause confusion over, advertising that is controlled as part of the State Planning Policy Framework where each municipal council is responsible for advertising and advertising signs in the council area. Clauses 52.05-7 to 52.05-19 of the Framework specify categories of advertising control including decision guidelines. This includes the effect of the sign on the amenity of the area.

### ***5.2.4 No information requirements for Owner-Operators***

#### **(1) Information Required Administratively**

Planning requirements will continue to apply to owner-operated brothels and details to be supplied for registration could be 'required' administratively by the Business

Licensing Authority. Passing responsibility for specifying details to be supplied divests considerable discretion to the regulator. This has the potential for an inconsistent approach with negative impacts for the industry.

(2) Encourage More Use of Regulated System

Sex workers are concerned about the stigma they may experience if too many people in the community know about their occupation; consequently, many guard their anonymity.

Absence of the regulation therefore may encourage more use of the regulated system with associated safety and public health benefits.

### ***5.2.5 Reduced Administration and Enforcement***

No Regulations would involve reduced administrative and associated enforcement costs by virtue of there being reduced specification of regulations. The benefits of this, however, are likely to be traded off against the need for greater enforcement associated with the Act.

## **5.3 Benefit/Cost Impact Assessment of Proposed Regulations**

In identifying the costs and benefits of the proposed Regulations, they are compared with the base case, that is, the scenario where there are no regulations.

### ***5.3.1 Prescription of STD's***

(1) Comprehensiveness and a Focus on Risk Avoidance

Listing STD's in the Regulations provides a comprehensive coverage of the diseases that sex workers are exposed to and by so doing illustrates the risks associated with sex work. By listing them, sex workers are informed and better able to take preventative actions. These actions therefore provide a barrier of prevention against contagion and the transmission of these infections and by so doing avoids the significant costs associated of STD's in the community.

Benefit/cost impact rating = +5

(2) Simplicity of identification of STD's

Listing STD's is a simple way to identify those particular diseases for which testing should be undertaken. This helps sex workers and medical practitioners aware of the diseases for which sex workers are to be tested.

Benefit/cost impact rating = +1

(3) Potential for confusion

Two sets of regulations prescribe a list of sexually transmitted diseases, the Health (Infectious Diseases) Regulations 2001 and the Prostitution Control Regulations. Having two sets of regulations could cause confusion. However, when testing sex workers medical practitioners refer to the Prostitution Control Regulations.

Because testing is an outcome of the Act, the cost of testing for STD's is not a cost attributed to the proposed Regulations.

Section 19 of the Act makes it an offence for a person who is a prostitution service provider to permit a prostitute to work while infected with a sexually transmitted disease. Section 20 of the Act states that a person must not work as a prostitute during any period in which he or she knows that he or she is infected with a sexually transmitted disease. It is a defence against prosecution if the prostitution service provider or sex worker can demonstrate that he or she has been undergoing regular blood tests, on at least a quarterly basis for HIV (as defined by section 3 of the *Health Act 1958*); and regular swab tests on at least a monthly basis for determining whether he or she was infected with any other STD.

Benefit/cost impact rating = -1

**Overall Benefit/Cost Impact Rating +5**

### ***5.3.2 Safety requirements***

(1) Refusal of Service Due To Violence or For Safety Reasons

This regulation makes it clear that a sex worker has the right to refuse service because he or she believes that a situation is potentially violent or unsafe.

Benefit/cost impact rating = +1

(2) Receptionist Not To Misrepresent

The aim of the regulation is to ensure that sex workers have control over the particular services they are willing to provide.

Benefit/cost impact rating = +1

(3) Concealed Alarm Buttons, Adequate Lighting In Rooms and Safe Sex Signs

The regulation provides basic safety requirements for prostitution service providers. The specific requirements assist prostitution service providers to fulfil particular occupational health and safety obligations.

Concealed alarms range from very basic equipment including a wired button and buzzer to elaborate portable radio frequency systems with transmitter and alarm. The

cost of a basic system is approximately \$300 installed. The impact of this regulation therefore is as follows:

505 rooms @ \$300 = \$151,500

It is expected that these costs will be lower for each provider as the installation costs will be marginally lower for multiple rooms.

The estimated life of an alarm is expected to be the same as the proposed Regulations, 10 years.

The estimated cost of \$151,500 would be the cost to business if all operators installed alarms in all rooms in the first year of the Regulations. As most operators already have alarms installed the actual cost is expected to be less than this. Given the assumption that the average life of an alarm is 10 years, existing alarms will have to be replaced within the life of the Regulations. Assuming the replacement of alarms is distributed evenly over the ten year period the total discounted cost over the life of the Regulations for the industry is estimated as \$122,833 (5% discount rate). This does not take into account any increase in operators over the ten year period.

Safe sex signs in all rooms used for prostitution are a useful tool for sex workers when clients are reluctant to wear a condom, to point out that wearing a condom is the law. Prostitution service providers will be provided with safe sex signs therefore no costs of compliance will be incurred by the providers.

Benefit/cost impact rating = +1

#### (4) Cleaning of Baths, Showers, etc

Owners and operators of prostitution businesses are responsible for ensuring their premises are clean at all times. Cleaning is not part of a sex worker's role unless contracted to do so. A person specifically contracted for cleaning will have appropriate protective equipment to safeguard against repeated exposure to the chemicals used. If cleaning is incidental to the duties of a sex worker, clothing used for sex work is unlikely to be suitable for cleaning, and sex workers are unlikely to possess the appropriate protective equipment. For this reason, it is appropriate for a separate contractor to provide cleaning services.

Benefit/cost impact rating = +1

#### (5) Arrangements to Ensure Safety of Escort Workers, Provision of Mobile Telephones and Free Supply of Condoms

The proposed Regulations requiring businesses to ensure the safety of escort workers recognises that escort work presents unique safety challenges by virtue of the fact that the transaction occurs at the client's venue.

Mobile phones provide security by allowing workers to stay in contact with management in case of emergencies. The prevalence of mobile phones in the

community has significantly lowered their price, which means that this regulatory requirement will impose minimal costs to prostitution service providers.

The Health (Infectious Diseases) Regulations 2001 requires the provision of condoms and water based lubricants for brothel workers, the proposed regulation applies them to escort workers as well.

Estimating the number of men and women working as sex workers at any one time is notoriously difficult, largely because of the secrecy surrounding prostitution and the fact that some sex workers work intermittently. Estimates vary according to the methodology used and how the study defines sex work.<sup>41</sup>

Research conducted by Ansell Health Care in 2002<sup>42</sup> to estimate the number of sex workers operating in Victoria at any one-week period found that:

- there are approximately 3000 to 4000 sex workers operating in Victoria within any one week period (because the industry is transient and they may not always be the same people from week to week);
- approximately seventy-eight per cent (78%) of sex workers work for a proprietor (ie, brothel or escort business owner). Of those who work for a proprietor 75% work in a brothel and 25% work for an escort business;
- approximately twenty per cent (20%) work as small owner-operators (99% would work as escorts, and only 1% would run a brothel; and
- approximately two per cent (2%) are street workers.

On this basis, the number of sex workers providing escort services is estimated at between 585 and 780 at any one-week period.

It will be assumed that the cost of a mobile phone is \$100 and two would be provided over the life of the proposed Regulations.

The cost of condoms for the industry is approximately \$20 per pack of 144<sup>43</sup>. For estimation purposes it will be assumed that an escort would use up to one pack for each working month and work for 11 months per year (total cost is \$220 pa).

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<sup>41</sup> Estimates on the number of sex workers should always be considered with caution as different studies will yield different results, for example, Decker (1979) suggests 1.39% of the population are sex workers, while Brewer et al (2000) suggests the figure to be around 0.023%

<sup>42</sup> Advice from the Ansell Technical Services and Compliance Manager, A Arnot-Bradshaw, 9 March 2006.

<sup>43</sup> Advice from the Ansell Technical Services and Compliance Manager, A Arnot-Bradshaw, 9 March 2006.

The total estimated costs of compliance with this proposed Regulation are as follows:

| Item  | Estimated Costs over<br>life of Regulations (5%<br>discount rate used) |
|---|--|
| Mobile phone (\$100 phone, 2 per 10-year period, 585-780 escorts) | \$82,191- \$125,194  |
| Water-based lubricants (\$20 per month and 11 month working year) | \$1,032,851-\$1,377,135  |
| Total industry costs for life of Regulations                      | \$1,115,042 - \$1,502,329  |

The estimated costs of compliance are considered against the overall costs of not regulating safety as illustrated in Section 2 of this RIS and the unique risks faced by escort workers by virtue of the fact that the transaction occurs at the client's venue.

Benefit/cost impact rating = +1

**Overall Benefit /Cost Impact Rating +5**

### ***5.3.3 Advertising Controls***

#### **(1) Allowing Limited Advertising Controls**

By making sure advertising is limited in impact and visibility, the overall restrictions aim to balance the public's need for discretion and the prostitution service provider's need to inform their market.

The requirement to print the PCA number on all advertisements serves to alert purchasers of prostitution services that a business is operating inside the regulatory environment and discourages purchase of services outside the regulatory environment.

Benefit/cost impact rating = +5

#### **(2) Social Costs**

Research indicates that advertising is a driver of behaviour.<sup>44</sup> It can be expected therefore, that advertising of sex industry services will have an influence on

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<sup>44</sup> See research by:

- Grant and Won Kim (2001), reported in Mark D. Griffiths, 'Gambling advertising and problem gambling: is there a relationship?', in Youth Gambling International, Spring 2003, Volume 3, Issue 1, pp. 2-3 ([http://gaming.uleth.ca/agri\\_downloads/989/Spring2003.pdf](http://gaming.uleth.ca/agri_downloads/989/Spring2003.pdf));
- Jeffrey L. Derevensky and Rina Gupta, Lottery Ticket Purchases by adolescents: a qualitative and quantitative examination. Report to the Ministry of Health and Long-Term Care, Ontario. Quebec, Canada, August 2001, p. xvi, 66 ([http://gaming.uleth.ca/agri\\_downloads/587/lottery.pdf](http://gaming.uleth.ca/agri_downloads/587/lottery.pdf)); and
- Brown, S. and Coventry, L. (1997), Queen of Hearts: the needs of women with gambling problems, Financial and Consumer Rights Council Inc., Melbourne. (<http://home.vicnet.net.au/~fcrc/research/queen.htm>).

behaviour. Moreover, advertising has the potential to impact on children by promoting interest in the industry.

Benefit/cost impact rating = -2

(3) Industry Costs

If a prostitution service provider elects to advertise and fulfils the requirements contained in the proposed Regulations it will incur costs in complying with the dimension and size requirements of the proposed Regulations. However, these are avoidable costs because advertising is, as indicated, discretionary and would be banned were it not for the Regulations.

Put another way, the extent to which a prostitution service provider, in complying with the controlled advertising requirements incurs costs, is a choice made by the prostitution service provider based on an assessment of the anticipated benefits from advertising. Therefore, as advertising is 'discretionary' no direct industry costs apply. It can be argued that indirect costs are incurred by industry in that proprietors who wish to advertise will have to comply with the proposed Regulations.

Benefit/cost impact rating = 0

**Overall Benefit/Cost Impact Rating +3**

### ***5.3.4 Owner-Operator***

(1) Information Required Administratively

Accurate information is required to enable effective administration and enforcement of the Act. The estimated costs associated with providing the required information is outlined below.

Estimated time to provide information      0.5 hours x \$30/hr      \$15

The research conducted by Ansell in 2002 referred to earlier, estimated that 20% of the approximately 3000 to 4000 sex workers operating in Victoria work as small owner-operators. On this basis, it is estimated that there are between 600 and 800 small owner-operators working at any given time (as of November 2005, there are 2007 small owner-operators registered with the BLA).

Total costs for the escort industry over the life of the proposed Regulations is therefore \$8,550 – \$11,400 using a 5% discount rate.

Benefit/cost impact rating = +1

(2) Encourage More Use of Regulated System

The social stigma associated with prostitution may result in some small owner-operators being reluctant to register with the Business Licensing Authority and, if they plan to run a brothel, seek a planning permit from the Local Council, in the belief that not registering protects their anonymity. There is evidence to suggest greater safety risks associated with businesses operating in the un-regulated environment.

Benefit/cost impact rating = -1

**Overall Benefit/Cost Impact Rating      0**

## **5.4 Enforcement Costs**

Consumer Affairs is responsible for the administration of more than 40 Acts relating to consumer protection and business regulation. There are considerable efficiency gains in pursuing similar activities under different Acts though shared expertise. For this reason, the specific funding may vary from time to time, as compliance and enforcement expertise is shared around flexible and effective cross-functional teams that are capable of responding to a range of situations as conditions warrant. This structure requires all inspectors to be skilled in the appropriate use of enforcement powers including monitoring and prosecution to secure compliance across the Acts and regulations in the Consumer Affairs Portfolio.

The compliance monitoring and enforcement program for prostitution consists of an annual inspection program, targeted inspections to follow up on feedback from the public, information provision and education. The inspection program involves checking compliance with the statutory requirements set out in the Act and Regulations and touches on occupational health and safety, public health, financial probity and criminal conduct issues.

As part of the inspection process, inspectors work through a checklist on the physical conditions in a brothel. However, extra time and effort is deployed in eliciting and corroborating information through interviews, liaison with other enforcement agencies, preparation of reports, follow-up correspondence and visits, briefing of legal officers and, where necessary, preparation for and giving of evidence in legal proceedings.

Expenses incurred in the administration of the Act, including compliance and enforcement, are covered by the Prostitution Control Fund. Section 66(2) of the Act outlines what must be paid into the Fund, including all fees paid under the Act; all fines or penalties paid in respect of an offence against the Act; all other money received by the Business Licensing Authority; and all other money required under the Act to be paid into the Fund.

In 2004-2005, the Prostitution Control Fund allocated \$220,000 for compliance and enforcement. These costs are for the administration and enforcement of the Act as well as the Regulations. It is not possible to separate with any precision the costs



attributable to only the Regulations, it is clear however, that they are a minority (<50%).

If the annual cost is assumed to be \$110,000 (i.e. 50% of total enforcement costs) the discounted cost over the life of the Regulations is \$882,779.

In the same way, it is difficult to quantify the benefits of the administration and enforcement activities. These include addressing the problems identified in Section 2 concerning:

- STD's;
- Safety of sex workers;
- Advertising; and
- Registration requirements for small owner-operators.

The effectiveness of the broader regulatory framework for prostitution in Victoria relies on the capacity of enforcement agencies to detect, prevent and correct breaches, as well as the capacity of industry to initiate internal compliance management systems.

It is apparent from the discussion in this RIS that the approach taken in the proposed Regulations addresses the identified problems. It can therefore be assumed that in large part the administration and enforcement activities has been a crucial part of that success

**Overall Benefit/Cost Impact Rating      0**

## 5.5 Summary of Benefit/Cost Impact Assessment

Total estimated costs of the proposed Regulations are as follows:

| <b>Proposed Regulation</b>   | <b>Estimated \$</b>       |
|--|---------------------------|
| Prescription of STD's  | Not estimated             |
| Safety requirements  | \$1,115,042 - \$1,502,329 |
| Prescription (or allowance) of advertising                             | Not estimated             |
| Information requirements for Owner- Operator                           | \$8,550-\$11,400          |
| Enforcement Costs  | \$882,799                 |
| Total estimated industry costs for the 10-year life of the Regulations | \$2,006,391 - \$2,396,528 |

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The benefit/costs rating for the proposed Regulations is shown in the following Table. The weightings used for the rating are distributed equally for each regulation.

| <b>Proposed Regulation</b>                   | <b>Benefit/cost Rating</b> |
|--|----------------------------|
| Prescription of STD's                        | +5                         |
| Safety requirements                          | +5                         |
| Prescription (or allowance) of advertising   | +3                         |
| Information requirements for Owner- Operator | 0                          |
| Enforcement Costs                            | 0                          |
| <b>Total</b>                                 | <b>+13</b>                 |

## **6. OTHER MEANS OF ACHIEVING THE OBJECTIVES**

### **6.1 Introduction**

In considering the most effective means to achieve the objectives consideration has been given to two alternatives to the proposed Regulations, namely:

- adopting Occupational Health and Safety (OHS) Guidelines; and
- introduction of a voluntary Code (or Codes) of Practice for prostitution service providers.

These Options are assessed in this section of the RIS as they relate to the base case.

### **6.2 Adopt Occupational Health and Safety (OHS) Guidelines**

The *Occupational Health and Safety Act 2004* governs health and safety at work. The OHS Act covers every place of work in Victoria including premises in the sexual services industry. This Option therefore considers the use of OHS Guidelines as the means to facilitate the safety of sex workers and their clients in the same way as is undertaken in NSW and Queensland for brothel workers.

Under the OHS Act employers must ensure the health, safety and welfare at work of all employees and any other person at the workplace, including clients and visitors. To do this they must:

- Provide for workplace consultation;
- Provide or maintain equipment and systems of work that are safe and without risk to health;
- Make arrangements for the safe use, handling, storage and transportation of equipment and substances;
- Provide the information, instruction, training and supervision needed to ensure the health and safety of all employees;
- Maintain places of work under their control in a safe condition and provide and maintain safe entrances and exits to the workplace; and
- Make available adequate information on research findings and relevant test results relating to substances used at the workplace.

These requirements are directly applicable to the sex industry, in particular, the operation of brothels. The Option envisages OHS Guidelines under the OHS Act, which would have the force of law.

This Option would take the place of the proposed regulations covering listing of STD's and safety requirements and therefore the decision criteria used for assessment of those regulations is adopted here.

### **6.2.1 Prescription of STD's**

#### (1) Comprehensiveness and a Focus on Risk Avoidance

Listing STD's in OHS Guidelines that has the force of law would have similar benefits to the proposed Regulations.

Benefit/cost impact rating = +5

#### (2) Simplicity of identification of STD's

Listing STD's in OHS Guidelines that has the force of law would have similar benefits to the proposed Regulations.

Benefit/cost impact rating = +1

#### (3) Potential for confusion

Listing STD's in OHS Guidelines would result in there being three legislative/regulatory measures dealing with sexually transmitted diseases - the Health (Infectious Diseases) Regulations 2001, the *Prostitution Control Act 1994* and the Code of Practice under the OHS Act. This has the potential to cause greater confusion and inconsistency in application and compliance.

In addition, relying on broad guidelines can make it difficult to prove a breach against the *Prostitution Control Act 1994*, making law enforcement unduly complex. It can make it more difficult to address the specific occupational health and safety risks inherent in prostitution.

Benefit/cost impact rating = -3

**Overall Benefit/Cost Impact Rating +3**

### **6.2.2 Safety requirements**

It is anticipated that OHS Guidelines would be similar to the proposed Regulation.

**Overall Benefit /Cost Impact Rating +5**

**Overall Benefit/Cost Impact Rating of Option +8**

### **6.3 Voluntary Code of Practice**

This approach envisages a collaborative effort in the sex industry between sex workers, represented by Scarlet Alliance (for example), the business owners and managers, represented by the Australian Adult Entertainment Industry Inc (for example), and with the relevant health and community organisations and groups, in voluntary or self-regulation. The Option would build on the already well-developed self-regulating Guidelines produced by Scarlet Alliance and RhED.

The Option involves the collective development of a Code of Practice that sets out practical safety requirements for sex workers, methods of operation of brothels and safe escort service practices. The Code may address other issues relevant to the industry such as best practice compliance methods for relevant legislation (eg OHS, trade practices, and fair-trading).

This Option would take the place of the proposed Regulations as a whole. The decision criteria therefore relate to the Option's ability to ensure the objectives are achieved in terms of:

- Prescribing STD's;
- Safety requirements;
- Advertising controls;
- Information requirements for Owner-operators;
- Administration and enforcement of the Act.

#### ***6.3.1 Prescribing STD's***

As STD's are listed in the Infectious Diseases Regulations the impact of including them in an industry code or otherwise will be minimal.

Benefit/cost impact rating = 0

#### ***6.3.2 Safety requirements***

Failure to comply with the voluntary Code would not involve a penalty (unless the Code was adopted by the Regulations). The industry would need to develop an evaluative capacity whereby it could be held to account for its attempts at compliance management, and for any breaches of their legal responsibilities. This lack of penalty weakens incentive for compliance with the Code, exposing sex workers to risk. There is a potential that the level of additional cost impact on the industry of a Code will translate to a level of non-compliance. The associated risks to sex workers are:

- in direct health/injury exposure consequences;
- in potential exploitation; and

- further stigmatisation.

Benefit/cost impact rating = +1

### ***6.3.3 Advertising controls***

As this Option envisages no Regulations the ban on advertising in the Act would apply. This would have the following effects:

- It would restrict prostitution businesses from informing consumers about the services offered. This is a restraint on trade.
- It would limit information to consumers and force advertising underground. This encourages illicit information.
- It would have the potential to conflict with, or cause confusion over, advertising that is controlled as part of the State Planning Policy Framework where each municipal council is responsible for advertising and advertising signs in the council area. Clauses 52.05-7 to 52.05-19 of the Framework specify categories of advertising control including decision guidelines. This includes the effect of the sign on the amenity of the area.

Benefit/cost impact rating = 0

### ***6.3.4 Information requirements for Owner-operators***

As this Option envisages no Regulations, no information requirements would be prescribed. The Code could encourage the provision of this information but being self-regulatory, and as the provision of this information provides a disincentive for autonomous workers to register, it is likely that the required information would not be provided.

While planning requirements will continue to apply to owner-operated brothels and details to be supplied for registration could be 'required' administratively by the Business Licensing Authority, the lack of provision of information would impact on the effective implementation of the Act.

Benefit/cost impact rating = 0

### ***6.3.5 Reduced Administration and Enforcement***

This Option would involve reduced administrative and associated enforcement costs for Government by virtue of there being reduced specification of regulations. The benefits of this, however, are likely to be traded off against the need for greater enforcement associated with the Act.

In addition, this Option would need to be self-funding by participants with representatives able to devote sufficient effort and resources to development, monitoring, and review of the Code. Representative/s would need to be the interface

between the specific industry sector groups and Government agencies. Being self-funding this Option would impose additional costs on the industry.

As of November 2005, The Business Licensing Authority's records indicate there are 157 licensed prostitution service providers, 743 approved brothel managers, 2007 registered small owner-operators. As the current Regulations apply primarily, but not only, to this sector, this Option would, at best, have the same coverage.

A voluntary code of practice is not a feasible option for prostitution businesses because the industry is fragmented and diverse, with significant differences in views on how to stop exploitation of vulnerable parties by those with more power and control. Resulting in little consensus between workers, small owner-operators and licensees about the best direction for the industry. Furthermore, Victoria's strict regulatory system was developed for specific social policy objectives, namely to minimise harm to the community and prostitutes, and to protect children and the vulnerable.

The industry would need to see some advantages in this approach before it embraced it. An industry developed Code of Practice is more likely to focus on cost-effective outcomes.

Benefit/cost impact rating = 0

**Overall Benefit/Cost Impact Rating Of Option +1**

## **6.4 Conclusion**

The analysis of the Options to the proposed Regulations shows that each does not achieve the objectives as well as the proposed Regulations, as follows:

|                            |                      |
|----------------------------|----------------------|
| OHS Guidelines             | +8                   |
| Voluntary Code of Practice | +1                   |
| Proposed Regulations       | +13 (from Section 5) |

## **7. COMPETITION TEST**

### **7.1 Policy Background**

By endorsing the National Competition Policy (NCP) all Australian governments agreed to remove legislative impediments to competition, unless the benefits of the restriction to the community as a whole outweigh the costs, and the objectives of the legislation can only be achieved by restricting competition.

In Victoria, all proposed Regulations must be evaluated in terms of their potential to restrict competition as part of the Regulatory Impact Statement process. Assessment against the NCP involves consideration of the relevant markets and market participants and the impacts on them of the proposed Regulations.

### **7.2 Definition of Market**

The market is the sex industry that provides services in both the regulated environment and the non-regulated environment. People who can carry on business as a prostitution service provider are individuals holding a licence or individuals who are registered as small owner-operators with the Business Licensing Authority. Therefore, what is known about the market is the number of licensees operating a brothel, escort agency or both, and the number of sex workers working for themselves as small owner operators. There is no information as to the number of sex workers involved in the industry in Victoria; this is because the focus of the law is on prostitution businesses rather than individual sex workers, which is why individual sex workers are not registered if they are working for a licensee.

### **7.3 Test for Restriction on Competition**

Under the Guidelines for the application of the Competition Test to new Legislative Proposals, legislative schemes are deemed to contain restrictions on competition if they:

- Allow only one company or person to supply a good or service;
- Require producers to sell to a single company or person;
- Limit the number of industry or individual producers;
- Limit the number of persons engaged in an occupation.
- Create entry criteria that affects the ease with which new firms may enter and secure a viable market;



- Result in increased costs of production or compliance costs for those wishing to participate in the industry.

## **7.4 Assessment of Restriction**

### **7.4.1 STD's**

The proposed Regulations prescribing STD's does not restrict competition.

### **7.4.2 Safety requirements**

The proposed safety requirements impose costs of compliance and therefore restrict competition. The Benefit/Cost analysis of these requirements in section 5 of the RIS resulted in an overall positive outcome (+5) and therefore it can be concluded that the restriction on competition, by virtue of the imposition of compliance costs, is justified.

### **7.4.3 Advertising**

The proposed Regulation foster competition by allowing controlled advertising.

### **7.4.3 Small owner-operators**

The proposed requirements for small owner/operators may restrict entry because the information requirements may act to deter people from registering. The Benefit/Cost analysis of these requirements in section 5 of the RIS resulted in an overall balanced outcome (0) and therefore it can be concluded that the restriction on competition, is not un-justified.

### **7.4.4 Conclusion**

The proposed Regulations contain two elements that can be described as restricting competition, namely, the safety requirements and the regulations concerning owner-operators. The Benefit/cost analysis resulted in a very positive outcome for the safety requirements. The restriction is therefore considered justified. The Benefit/cost analysis of the owner-operator requirements resulted in a balanced (0) outcome.

## **8. IMPACT ON SMALL BUSINESS**

The Act requires that brothels have no more than six rooms to be used for prostitution (excluding some existing brothels) and persons are not allowed to have interest in more than one brothel licence. Therefore, most prostitution service businesses are necessarily 'small business' as the definition of small business by the Australian Bureau of Statistics is less than 20 employees.

Furthermore, the small owner-operator provisions in the Act takes into account very small businesses, where a sex worker can work in his or her own business autonomously, with a maximum of one other sex worker.

The proposed Regulations themselves do not impact differently upon small and large businesses.

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