



Prostitution
Licensing Authority

SUBMISSION TO THE VICTORIAN LAW REFORM COMMISSION INQUIRY INTO THE USE OF REGULATORY REGIMES TO HELP PREVENT ORGANISED CRIME AND CRIMINAL ORGANISATIONS INFILTRATING LAWFUL OCCUPATIONS AND INDUSTRIES

There has been an unfortunate history in Queensland of the involvement of organised crime and official corruption with the sex industry. The *Prostitution Act 1999*, with its establishment of the Prostitution Licensing Authority (PLA) and the legalisation of brothels via a licensing framework, was designed to break this nexus. One of the five guiding principles of the Prostitution Act is safeguarding against corruption and organised crime.

It is evident that the prospect of organised crime and official corruption gave a significant impetus to the creation of the Prostitution Act. In November 1999, during his second reading speech on the *Prostitution Bill 1999*, the Hon Tom Barton MP, Minister for Police and Corrective Services, stated that:

We cannot ever forget the part prostitution has played in corruption and organised crime in this State during some dark years in Queensland's history. We must remain ever vigilant against corruption and organised crime, and the passage of this Bill will assist us in that task.¹

The Minister was referencing the Fitzgerald Inquiry, which had revealed a direct nexus between police corruption, organised crime, and the operation of brothels (which were unlawful at that point in time). The Inquiry uncovered significant vice and apparent inaction by Queensland police in enforcing prostitution laws. Amongst other things, it was found that drug distributors were involved in the operation of Brisbane brothels, that operators had links with senior officers in Queensland police, and that the police were paid protection money by operators and accepted sexual favours. Several former Licensing Branch officers were subsequently charged and convicted of corruption. Whilst there is no suggestion that the ethically transformed modern day Queensland Police Service (QPS) would involve itself in such nefarious activities, it places the Prostitution Act in its historical context.

The Prostitution Act legalised brothels in Queensland and primarily establishes a licensing and regulatory framework for brothels. The PLA is responsible for ensuring that only suitable persons are involved in the ownership and management of brothels. The membership of the PLA includes a number of individuals with knowledge of and experience in combating organised crime. This includes the Senior Executive Officer (Crime) of the Crime and Corruption Commission and the QPS representative. The Chairperson of the Authority, Mr Marshall Irwin, has a criminal justice background and is a retired District Court judge.

¹ Hon Tom Barton MP, "Second reading speech", *Hansard*, 10 November 1999, p. 4826.

Section 101 of the Prostitution Act gives the PLA the function of deciding brothel licence applications and approved manager's certificate applications. In order to lawfully own a brothel, a person must be granted a brothel licence by the PLA. Similarly, in order to manage a brothel, a person must be granted an approved manager's certificate by the PLA. Licences and certificates are personal to the individual and may not be transferred. Under s. 81 of the Prostitution Act, a licensee must not operate a brothel in partnership with, or otherwise in association with, a person who is not also licensed to operate the brothel.

Sections 8 and 34 of the Prostitution Act deem some persons as ineligible to apply for a licence or certificate, including those convicted of a disqualifying offence. Schedule 4 (Dictionary) of the Prostitution Act defines a 'disqualifying offence' as:

- (a) an offence or an attempt to commit, or to conspire to commit or to counsel or procure a person to commit an offence, against any of the following –
 - (i) the *Criminal Proceeds Confiscation Act 2002*, section 250;
 - (ii) the *Drugs Misuse Act 1986*, section 5 or 9D;
 - (iii) a provision of the Criminal Code mentioned in schedule 1 [of the Prostitution Act];
 - (iv) a provision of the *Migration Act 1958* (Cwlth) mentioned in schedule 2 [of the Prostitution Act]; or
- (b) an offence that, if committed in Queensland, would be a disqualifying offence under paragraph (a).

Brothel licences and approved manager's certificates may only be held by natural persons. This is to ensure an appropriate degree of transparency in the ownership structure of brothels and prevent unsuitable persons from hiding behind corporate veils.

Sections 17 and 42 of the Prostitution Act establish the criteria which the PLA must consider in deciding if a person is suitable to be granted a brothel licence or an approved manager's certificate, including the applicant's reputation, having regard to character, honesty and integrity. For a brothel licence there are 12 criteria that must be considered and for a certificate there are eight. This involves one of the most comprehensive probity investigations required under Queensland law, and is not restricted to the applicant but also extends to their associates. It is an exhaustive, intensive, and personally intrusive process. In terms of information that must be provided to the PLA by brothel licence applicants that might reveal involvement in organised crime or a suspicion thereof:

- details of any criminal convictions, whether in Australia or elsewhere
- details of any criminal convictions of statutory associates
- whether they have ever been investigated, arrested, detained or charged by a law enforcement agency or cautioned by the police
- whether they have ever been summonsed on an offence
- details of any companies in which they have a controlling interest and whether these companies have been investigated by a government agency
- whether they have ever held an occupational licence that has been suspended or cancelled

- whether they have been dismissed, discharged or asked to resign from any employment
- details of all employment for the past 10 years
- the details of parents, siblings, any current or previous spouses or the like, and of any children aged at least 18 years
- financial details, a statement of net assets, and sources of funds over the past five years.

Applications for a brothel licence and for an approved manager's certificate must be referred to the Commissioner of Police under ss. 14 and 39 of the Prostitution Act, respectively. The police must make inquiries about the applicant's criminal history and any other inquiries that they consider appropriate. As part of this process, each applicant is interviewed by the police. The Commissioner of Police must provide the PLA with a report on the suitability of a person to hold a licence or certificate, which may include recommendations.

A relevant criterion in assessing suitability to be granted a brothel licence is whether the applicant has, or is or will be able to obtain, financial resources that are adequate to ensure the financial viability of the brothel. A brothel licensee who is struggling financially might be more prone to being influenced by organised crime, such as becoming involved in money laundering, drugs or the trafficking of women.

Although licences and certificates are valid for three years, unless sooner surrendered, suspended or cancelled, ss. 19 and 44 of the Prostitution Act make it a condition of licence or certificate that the holder must give the PLA an annual return, in the approved form, about the information given for the application, at the end of each of the first and second years. As part of this process, the police provide an updated probity report to the PLA. This is an opportunity for the PLA to assess whether a licensee or an approved manager continues to be suitable for involvement in the licensed sector of the sex industry.

Under s. 9 of the Prostitution Act, a person is not entitled to apply for, or eligible to be granted more than one brothel licence. Section 16 of the Prostitution Act provides that the PLA must refuse an application for a licence if it is satisfied that an applicant has an interest in another licensed brothel. Under s. 82 of the Prostitution Act, a person must not have an interest in more than one licensed brothel. "Interest in a brothel" is defined by s. 7 of the Prostitution Act. These provisions ensure that ownership of brothels is sufficiently diffuse and not concentrated, so that no single individual can exert a dominant influence over the licensed sector and effectively limits the ability of organised crime to infiltrate multiple brothels via a single licensee.

Section 101 of the Prostitution Act also gives the PLA the function of monitoring the provision of prostitution through licensed brothels. In conjunction with s. 59 of the Prostitution Act, which places limits on the power of police to enter licensed brothels, it quarantines the police from involvement in the licensed sector to an extent. The PLA has a compliance program to monitor, review and make recommendations on the operational standards of licensed brothels. Each brothel is subject to audits and unannounced inspections by PLA compliance officers throughout the year. PLA monitoring of licensed brothels is an additional barrier to the involvement of organised crime.

Should the PLA become suspicious that a brothel licensee or approved manager is involved or associated with organised crime, under the Prostitution Act it may hold a disciplinary inquiry and may take disciplinary action if it determines there are grounds. There are a range of disciplinary actions available to the PLA but they include suspension or cancellation of licences and certificates.

It is reasonably improbable that a brothel licensee would jeopardise their substantial investment in their brothel by involving themselves with organised crime. The probity and compliance functions of the PLA also mean that there is a high prospect that any such involvement would be uncovered. During the 15 year history of the licensing framework, there has been no demonstrated instance of the infiltration of organised crime at any licensed brothel. This indicates that the provisions of the Prostitution Act have been effective in providing a barrier to the involvement of organised crime in the licensed sector.

In its December 2004 report, *Regulating Prostitution: An Evaluation of the Prostitution Act*, the Crime and Misconduct Commission (CMC) found that: "The application and probity processes of the PLA and the QPS appear to have resulted in a very high standard of licensees, with no evidence of involvement in organised crime or police misconduct".² The CMC conducted a follow-up review of the Prostitution Act in 2010-11. In its June 2011 report, *Regulating Prostitution: A follow-up review of the Prostitution Act*, the CMC stated:

We have been told by most of the respondents to this review that the legal industry [this includes licensed brothels and sole operator sex workers] is free from links with organised crime other than illegal prostitution. Similarly, our Crime arm reports that in the course of its investigative and intelligence-gathering activities relating to major crime since 2004, the CMC has not become aware of any involvement of organised crime (other than illegal prostitution) in the legal prostitution sector in Queensland.

When questioned, brothel licensees and sex workers denied knowledge of any links between the legal prostitution industry and organised crime such as illicit drugs, child prostitution, sex trafficking or other criminal activities. Given the competition among participants in the legal sex industry, we would expect that any suspicious activity by others would be reported to authorities.³

The CMC went on to conclude that:

There has been one case in which a licensed brothel owner has been convicted of offences relating to the provision of illegal prostitution. However, overall, the policing efforts of the QPS, especially the PETF [Prostitution Enforcement Taskforce], combined with the stringent probity processes in place under the PLA and ongoing auditing of licensed brothels, appear to be maintaining a clean legal industry. We found no evidence of the legal industry being involved in other types of criminal activity such as child prostitution, sex trafficking, or illegal drugs.

We are satisfied that the Act continues to be effective in safeguarding against corruption and organised crime within the licensed brothel industry in Queensland.⁴

² pp. 47-48.

³ p. 20.

⁴ p. 33.