PROSTITUTION

The Goss position

Queensland's 'reforms' to prostitution laws fail to protect sex workers. MEG VANN reports.

In October 1992 the Cabinet of the Goss Labor Government approved a 'complementary legal and health initiatives' package to address the sex industry in Queensland.[1]

While the full content of the proposed reforms is not known at the time of writing, the Government is putting forward a two-pronged approach: to 'update offence provisions and increase police authorities' to effectively enforce the laws regarding prostitution, and to improve health and welfare services for workers in the sex industry.[2]

The package has been criticised by diverse community interest groups for containing inherent legal and practical contradictions which will render it unworkable and detrimental. Workers in the sex industry are disappointed at the proposed reforms, and serious objections have also been raised by community workers, civil libertarians and local authorities.

The 'reforms'

The main recommendations for legal reform are to maintain the criminalisation of almost the entire sex industry while continuing to allow single operators to work from home (private workers). This represents no change from the legal model in force in Queensland before the Inquiry into Official Corruption which produced the Fitzgerald Report.

Along with the legal 'reforms', at least $400 000 has been allocated to expand health and welfare services for sex workers and to conduct research into the sex industry. These moneys will be used to upgrade sexual health clinics, provide retraining programs for workers choosing to leave the industry, and to boost community services for sex workers.

In itself, the health package is a recognition of the real issues facing sex workers and a positive step towards adequate relevant service provision. However, health initiatives are meaningless in a legal context that perpetuates archaic and impractical attitudes to the concerns surrounding prostitution.

The law reform package ignores the findings of the Criminal Justice Commission's (CJC) lengthy Inquiry into Prostitution in Queensland and its recommendations for reform. Instead the reforms have been formulated without research and without consultation. As a result it is highly problematic for many sections of the Queensland community.

The newly appointed Queensland Police Commissioner, Jim O'Sullivan, has stated that police priorities are 'the preservation and protection of life and property'.[3] It is hypocritical then to propose increases in police powers such as the use of tracking and interception devices to crack down on the victimless crime of consenting adult prostitution. Lack of clarity of police enforcement policy regarding prostitution has created massive problems for police, sex workers and the general community in the past, and the reforms do little to provide for a coherent and uniform approach.

In a further retrograde step, the reversal of the onus of proof is proposed to enable increased prosecutions of the clients of sex workers, even though current provisions do allow for charging clients. People found on premises reasonably believed to be used for the purposes of prostitution will have to prove their presence is for a legitimate purpose — they are guilty until proven innocent. The current situation where sex workers are prosecuted while their clients go free is obviously unjust, but will two wrongs make a right?

In any case it is doubtful that these laws will lead to a substantial increase in client 'busts', since the current practice of trade-offs (where clients are not charged if they co-operate with police) will still be necessary to secure client statements to prosecute workers. It is particularly ironic that while the Committee which has been established to review the Queensland Criminal Code has recommended the removal of the reversal of the onus of proof from drug enforcement laws, the Cabinet has seen fit to introduce it in prostitution law reform.

Further complications arise from the interplay of federal policy, State laws and local council regulations. Townsville and Thuringowa city councils have 'expressed grave concerns about the issue' of allowing private workers to operate from suburban homes. While unable to refuse town planning approval for a private worker on technical grounds, councils intend to invoke moral objections to such permits being granted.[4]

It is unlikely that private workers will seek council approval. Therefore they would operate within the State criminal law but outside council regulations — and all the while be required to pay their Commonwealth taxes.

While the sex industry, like many other industries, presents certain health and safety risks to workers and the public, it is inappropriate and unrealistic to resort to moral arguments in support of proposed regulation. Queensland has a highly diverse population and moral unanimity will never be reached on the issue of prostitution.

However, of greatest and universal concern is the achievement of health and safety standards which will provide increased protection for workers and their families, clients and their families, and the wider community. This can only come about through a recognition of sex work as *work*, and aiming for a visible and regulated sex industry which encourages access to information and services and discourages unacceptable criminal behaviour such as corruption and exploitation.

Implications for sex workers

So what will be the real implications of the Goss Labor Government's attempt to target the 'criminals and parasites' of the sex industry.[5] The continued criminalisation of the industry will operate to push it further underground, and will

not achieve effective regulation, working at odds with the proposed enhanced services. A brief examination of the development of the sex industry in Queensland is proof enough of the difficulties the proposed laws will face.

In the past 20 years the links between the sex industry and organised crime have stemmed from a culture of condemnation and confusion about the regulation of prostitution, which created barriers to official accountability and criminal enforcement.[6]

This culture was perpetuated by moral arguments against prostitution, and premised on the silencing of sex workers, most of whom are women, gay men and transsexuals, many in low or unstable socio-economic conditions. The socio-economic disadvantages and structural discrimination faced by these people is one factor which makes prostitution an attractive employment option, although some choose sex work when other options are available. The disempowerment of women, gay men and people of transgender is reinforced through legal models which illegitimise prostitution as an employment option and structure sex work as deviant or inherently exploitative. This alienation of sex workers from mainstream society sets the conditions for the exploitation of individual workers and the growth of corrupt and criminal networks.[7]

In Queensland's history, the illegal status of these people as workers provided the basis for the formation of extensive criminal networks involving the corruption of officials, money laundering and drug trafficking. Lives and property were destroyed as illegal moneys changed hands behind the closed door of an invisible underground sex industry.

Sex workers themselves were subject to an extreme lack of control over their working conditions, creating serious concerns for occupational health and safety, and unacceptable practices of exploitation and discrimination in their personal and professional lives.

The political tumult of Queensland's more recent past temporarily restricted the activity of organised crime networks with the prosecution of people long rumoured to have been involved in running the industry. This breaking of the ties between the sex industry and serious harmful criminal activities meant the time was ripe for meaningful reform to address the problems of the past and to create a safe, health, regulated adult sex industry, one which was protected from vulnerability to exploitation and organised crime.

The CJC recommended a decriminalised and regulated sex industry — although criticisms have been raised that there is insufficient worker representation in its proposed structure. These findings were 'supported by an overwhelming majority of [Queenslanders] surveyed'.[8] By ignoring these recommendations, the Government has made a politically conservative decision at a time when the community and workers in the sex industry are demanding change.

It would seem the style of government in Queensland has not changed as much as we had hoped, as the proposed laws have been formulated without consultation by a closed Cabinet at the direction of the Premier. Can an independent watchdog like the Criminal Justice Commission give us any guarantee of official accountability when already its powers have been undermined by the government process of decision making? Will increased police powers overcome practical evidentiary problems to secure convictions against alleged

'crime bosses' when the sex industry will be hidden and police procedures unclear?

A particularly alarming repercussion of these laws is a potential increase in the violence suffered by sex workers. Private workers are the most vulnerable to violence, sexual violence and robbery with violence. Of the 'Ugly Mugs' incidences of violence and harassment against sex workers reported to SQWISI, 65% have been perpetrated against private workers or single outcall workers (visiting the client's hotel or home). Whatever its intention, the Government's proposals will have the effect of encouraging the operation of private workers since only then can a worker operate at least partially within the law.

Sex workers assert that small establishments and referral networks provide greater protection from violence — there is safety in numbers.[9] They also provide for improved industrial conditions, including greater access to education and resources to ensure safe sexual practices are insisted on by workers and clients. Yet these sorts of established structures will be harassed under the proposed laws and their workers prosecuted. Providing funds for a couple of counsellors is a band-aid measure to address the problem of violence against sex workers as exacerbated by their illegitimised status.

A recognition of sex work as an industry also serves to enhance the status of workers and facilitates access to information and services. Currently, sex workers are not confident of accessing their legal rights to protection from violence and harassment due to discrimination against them resulting in unfair treatment.

Despite the excellent work of the Queensland Sex Offenders Squad and various individuals in the police service who respond professionally and sensitively to the needs of sex workers who have survived rape and sexual assault, workers cannot be guaranteed a fair hearing. Currently, an alleged operator who reported a violent incident with a client to the police is facing charges of running a bawdy house — with her police report being used in evidence against her (reported to SQWISI's crisis line). This uncertainty will serve to further inhibit workers' access to their legal rights to protection from crime.

Judge Jones in the *Hakopian* case in Victoria, at first instance, gave a reduced sentence to the rapist of a sex worker based on an assumption that sex workers suffer less trauma from rape.[10] This case highlights the particular issues confronting sex workers in the courts in terms of detrimental stereotyped judgments made by an uninformed judiciary.

The increased health and welfare services proposed for sex workers will not be sufficient to reach workers in an underground, unstable industry. What use is educating general practitioners to ensure appropriate service provision if sex workers and clients choose not to disclose their occupation or sexual activity because of fear of prosecution? Government guarantees of confidentiality are not enough when that same Government has deemed one's livelihood illegal.

Measures are proposed to ensure that safe sex materials are not admissible as evidence. However, this does not address the underlying difficulty created by the illegal status of the sex industry in disseminating education and resources for safer sex, and in safeguarding against harassment and discrimination for possessing them.

What next?

The time for lobbying seems almost at an end. Opposition policy holds no strong position on prostitution law reform apart from a commitment to effective spending of public moneys on police resources. This could be utilised to generate strong criticism of the package since there are many indications that this is not going to be a cost-effective approach.

It seems the Goss Labor Government will fail to meet the challenge of an informed and sensible approach to regulation of the sex industry in Queensland. In this context of structural disadvantage and discrimination, workers in the sex industry and their support networks will continue to work to ensure that the needs of sex workers are made known and met.

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MISCARRIAGE

Compensation for wrongful imprisonment

JOHANNA SUTHERLAND discusses the Kelvin Condren case.

Whether those who have been dealt with wrongly by the criminal justice system in Queensland should be compensated by the Crown is a highly discretionary matter. There are no guidelines publicly available by which potential claimants can assess their compensation prospects.

On 2 October 1993, it will be ten years since Kelvin Condren was wrongfully charged with murder. There have since been committal proceedings, a Supreme Court trial, two hearings by the Court of Criminal Appeal, a partial hearing by the High Court, two unsuccessful petitions to the Queensland Governor for a pardon, the entry of a *nolle prosequi* by the Director of Prosecutions, and an inquiry and report by the Criminal Justice Commission (CJC). Kelvin Condren has spent nearly seven years in prison.

New evidence has rendered his 1984 conviction (*Condren* (1987) 28 A Crim R 261) a miscarriage of justice. The Queensland Court of Criminal Appeal in 1990 unanimously set aside his murder conviction, and found by majority that there had been and would be a miscarriage of justice unless the new evidence available from three new witnesses was properly considered by a jury hearing the charges (*Condren* (1990) 49 A Crim R 79). Earlier the High Court was also strongly persuaded that the new evidence would likely lead to an acquittal.[1] The fact that the Criminal Justice Commission inquiry and report[2] found that the available evidence did not support further consideration of criminal or disciplinary charges against particular police officers involved in Condren's case should not detract from Condren's claim to compensation for wrongful imprisonment.

In the United Kingdom the Government has incorporated part of its *ex gratia* scheme into law in order to comply fully with the International Covenant on Civil and Political Rights (ICCPR), Article 14(6), and the criteria for *ex gratia* payments are on the public record. Compensation applications can proceed under two schemes. Under s.133 of the *Criminal Justice Act* 1988 (UK) the Home Secretary can authorise compensation where a conviction has been quashed following an appeal made outside the normal time limit, or following his or her decision to refer a case to the Court of Appeal under s.17 of the *Criminal Appeal Act* 1968. But to qualify a decision must be based on a new or newly discovered fact which shows beyond reasonable doubt that there has been a miscarriage of justice and the non-disclosure must not be wholly or partly attributable to the convicted person. Under a non-statu-