Contemporary Comment

THE QUEENSLAND PROSTITUTION LAWS AMENDMENT ACT 1992

The Queensland Labour Government has recently extended criminal controls over prostitution through its *Prostitution Laws Amendment Act 1992*. The government's stated purpose was to reduce the influence of such criminal activities as drug-dealing, money laundering, violence and extortion. Some commentators have intimated that the government's tough stance may have had more to do with Wayne Goss's "quirky" opposition to prostitution on the grounds that it degrades women. Whether the underlying motive was to stamp out "pimps and parasites" or stop men using prostitutes, the legislation is very unlikely to succeed.

Sex workers and their organisations say the new legislation will only reopen avenues of corruption which, ironically, brought the Queensland Labor Party to power four years ago. The Opposition, the Queensland Bar Association, the Law Society, the Queensland Council for Civil Liberties, taxi drivers, and academics have all condemned the act as invasive and unworkable. Our comments come from the perspectives of civil liberties and feminism. While the views of the authors do not always coincide, we thought it useful in the interests of furthering productive debate on the prostitution question to set out both responses where they differ.

The main features of the legislation are these. The act is aimed at the criminal control of all forms of, and all participants in, organised prostitution. The new law makes it a crime for any person to be found without reasonable excuse in a place used for prostitution by two or more prostitutes; for example, in brothels, escort agencies, massage parlours or other commercial sex venues. Anyone who knowingly allows premises to be used for prostitution or knowingly participates in the provision of prostitution can be imprisoned. It is also a criminal offence for a printer, publisher or newspaper proprietor to knowingly advertise prostitution.

Under this as under previous legislation, self-employed sex workers operating on their own account from their homes do not commit an offence. However, they and their clients will be fined if they cause unreasonable annoyance or disruption to the privacy of neighbours and other residents. Street prostitution remains an offence. The male clients of any prostitutes except those working from home on their own account are now liable for prosecution if they are found in places reasonably suspected of being used for prostitution. Similarly, the meaning of "sexual act" has been expanded to apply to "2 persons of either gender participating in sexual intercourse or some other indecent act, which may or may not involve physical contact between the persons". Any person, including a client, found in a place reasonably suspected of being used for prostitution can be sentenced to a maximum penalty of seven years' imprisonment for a third offence. Procuring a sexual act by coercion is a crime with a maximum penalty of seven years, while offences involving child prostitution and the intellectually impaired attract up to 14 years.

There are incentives for clients and sex workers to engage in safe sex practices and preventive health measures. Evidence of condoms and other material associated with safe sex practices is not to be used as admissable evidence that a place is being used for prostitution, and health service providers cannot be compelled to give information about clients.

COMMENTS

The government has effectively criminalised a wide and ill-defined range of prostitution-related activities while increasing police powers of arrest and surveillance. The wide and ambiguous definition of a "sexual act" has attracted particular criticism. It may, for example, include striptease acts and 0055 telephone services. The Criminal Justice Commission conservatively estimated that each week there are 3,500 visits to sex workers throughout Queensland. With such a large potential target population, there is a real danger that scarce resources will be diverted from the policing of more serious crimes.

Penalties are relatively harsh and those applied to the client appear anomalous. The seven year prison sentence which can be given to a client found guilty on a third offence of being found in a place suspected of being used for prostitution is more than that normally received by men convicted of rape. Placing the purchase and objectification of women's bodies on a par with the perpetration of sexual violence may, in the opinion of some feminists, have the merit of making explicit the connections between prostitution, male sexuality and women's oppression. The argument in this case might be that penalties for rape need to be increased rather than those for prostitution reduced. On the other hand, others would agree with the more general objection that sex without consent must be seen to be a more serious crime against women than a sexual transaction openly negotiated between a prostitute and her client.

The provision to make the client liable for prosecution is an advance on previous legislation. By making clear the criminal responsibility of the client, the Queensland Act provides for the more equitable treatment of men and women before the law. Feminists in particular will welcome the removal of the sexual double standard. But the gender-neutralisation of prostitution laws will do little to address what feminists have identified as men's and women's asymmetrical relationship to prostitution. Both client and prostitute may be charged with an offence, but it is the prostitute whose personal and financial security is jeopardised by the transaction. The client (who is almost always male) is the purchaser of sexual services, the prostitute (in the majority of cases female) the provider; to men prostitution is a pleasurable and optional leisure activity, to prostitutes it is work and frequently an unavoidable means of making a living. So from a feminist perspective, the Queensland legislation fails to deal with the unequal nature of the sexual contract.

Criminalising "organised" prostitution will drive prostitution underground, where it will attract criminal interests and sabotage preventative public health programs, and force sex workers who want to stay legal into working on their own at home. This enforced privatisation of prostitution has disturbing implications for the privacy, security, welfare and personal safety of sex workers. (On the same day as the prostitution bill was announced, the Courier Mail reported the rapes of three Brisbane sex workers in the previous week.) Women who suffer increased sexual harassment because they happen to live near a prostitute are unlikely to prosecute offenders under the "nuisance" provision.

The legislation outlaws, not just organised prostitution, but the public, open and visible prostitution perceived to be offensive to community morals. Provided it takes place discreetly behind closed private doors, the act implicitly endorses the provision of commercial sexual services to men by what one ALP parliamentarian described as the "*genuine* individual prostitute". However good its intentions, and despite its justifiable claim that it would be impossible to eliminate single operators, feminists could argue that the Queensland Government has sanctioned the view that men have irrepressible sexual needs that must be gratified by exercising their right of access to women's bodies.

Some men, approximately ten per cent of all prostitutes, provide sexual services for other men. Because men continue to set the terms of the transaction, however, the existence of homosexual prostitution does not substantially affect the feminist argument that prostitution publicly validates a form of male sexuality centred on the purchase, use and objectification of bodies (usually but not necessarily female) for sexual gratification. The legal recognition of private forms of homosexual prostitution still reinforces the view that men's sexual needs are "by nature" unstoppable and uncontrollable.

The Criminal Justice Commission's 1991 inquiry into prostitution recommended that prostitution be decriminalised subject to local authority guidelines and the regulation of a Registration Board. We both support decriminalisation with appropriate regulation, although for different reasons. A common argument for the removal of criminal sanctions is that prostitution is present in all societies and it is better to control and regulate it than drive it underground. On the other hand, neither legislating against prostitution nor decriminalising it is likely to change what to feminists are unacceptable male practices and attitudes. Decriminalisation may simply grant tacit approval to an undesirable situation. But given the alternatives, and to the extent that decriminalising prostitution at least remedies the problem of discrimination against women, it may in the short term be a feasible interim measure.

The Queensland cabinet has not only ignored the central recommendations of the Criminal Justice Commission report, but has reversed the move in many jurisdictions (most recently in the Australian Capital Territory) towards legalising or decriminalising prostitution. Although equal liability for prosecution is undoubtedly fairer than punishing the prostitute alone, there are even more persuasive reasons for treating neither the client nor the prostitute as a criminal. The decision to pursue a more punitive agenda has disturbing implications for women, sex workers, individual liberties and the future of progressive politics in the state. Whatever its intents, the effects of the law will be to scapegoat and further stigmatise prostitutes. Paradoxically, the *Prostitution Laws Amendment Act 1992* creates the same working conditions for prostitutes that led to the massive police corruption and organised crime associated with the industry uncovered by Tony Fitzgerald.

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