

The Proposed Licensing of Brothels in New South Wales

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Abstract

The NSW Coalition government is proposing to introduce a licensing system for brothels in accordance with pre-election commitments. This paper argues that there is no evidence that brothels are criminogenic or inherently corrupting, nor any evidence that a Brothel Licensing Authority would effectively reduce and/or prevent crime and corruption. The paper considers the current NSW planning based model and compares this with the Queensland and Victorian licensing models. There are other regulatory concerns associated with the sex industry, such as amenity impacts and health and safety concerns, and the paper argues that these are regulated effectively under the current planning regime. A licensing authority is unlikely to improve the regulation of brothels in NSW in terms of illegality, amenity, and health and safety.

Introduction

The NSW Coalition government is proposing to introduce a licensing system for brothels in accordance with pre-election commitments.¹ The primary reason why the government is proposing a Brothel Licensing Authority (BLA) is to reduce and/or prevent crime and corruption. I consider whether or not a BLA would assist in achieving these goals. I examine the current NSW planning based model and compare with the Queensland and Victorian licensing models, and consider available evidence of crime and corruption. I argue that there are other regulatory concerns associated with the sex industry, such as amenity impacts and health and safety concerns, and question whether licensing would necessarily assist. There are many benefits associated with the current planning regime and I assert that a BLA is unlikely to improve the regulation of brothels in NSW in terms of illegality, amenity, and health and safety.

I consider firstly the regulatory regimes in Victoria, Queensland and NSW, and the underlying assumption that illegality begets crime and corruption. I examine existing evidence of crime and corruption and whether or not a BLA would assist in prevention. I conclude with an analysis of other regulatory concerns such as amenity, health and safety, and argue in favour of the current regulatory regime.

Regulatory regimes in NSW, Victoria and Queensland

Details of the form, powers and reach of the proposed BLA are not available. Queensland and Victoria have developed licensing models that operate in addition to a planning regime. In Queensland, as a consequence of the *Prostitution Act 1999* (Qld), sex work in brothels was legalised within a strict regulatory framework. Legal licensed brothels are regulated under the Act and the Prostitution Licensing Authority (PLA) is the primary regulatory agency. A licence cannot authorise a person to operate a brothel at more than one premise.

¹ Roth L, 'Regulation of Brothels: an update' (2011) *NSW Parliamentary Library Research Service*.

Cancellation of a licence is automatic where the licensee is convicted of certain offences. The PLA can also reprimand a licensee and compel compliance with a requirement, or suspend or cancel a licence. Sole operators or private sex workers are legal but are not subject to the regulatory or licensing role of the PLA under the Act. Escort work is illegal. Illegal sex work is subject to the *Criminal Code Act 1899* (Qld), which is policed by the Prostitution Enforcement Taskforce (PETF) within the Queensland Police service.

In Victoria, sex work services are regulated by the *Sex Work Act 1994* (Vic), *Sex Work Regulations 2006*, *Sex Work (Fees) Regulations 2004* and *Public Health and Wellbeing Act 2008* (Vic). The Business Licensing Authority (BLA) within Consumer Affairs Victoria is responsible for granting licenses and manager approvals to suitable applicants. Certain persons are not eligible to apply for or be granted a licence, such as persons who have been convicted of certain offences or if the person is not a suitable person to operate a brothel. In Victoria, the power to suspend, reprimand and/or cancel licenses is vested in the Civil and Administrative Tribunal. Licensed brothels up to 6 rooms (more if established prior to 1996) can operate subject to local planning laws. Escorts can operate from brothels and licensed escort agencies. Small owner-operated 'exempt' brothels can operate with up to two workers without a licence, but do need a permit under s23 of the *Planning and Environment Act 1987* (Vic) and must register with the BLA.

In NSW, sex services premises have been able to operate as legitimate businesses since the *Disorderly Houses Amendment Act 1995* (NSW). Currently, sex services premises are regulated by local councils using their planning powers under the *Environmental Assessment and Protection Act 1979* (NSW). The planning regime focuses upon land-use and potential amenity impacts – which can include tangible aspects such as noise, lighting, safety, and parking, and intangible issues such as 'the standard or class of the neighbourhood, and the reasonable expectations of the neighbourhood'.² Planning does not take into account the suitability of potential owners and operators when determining a development application.

The NSW Coalition government is proposing to introduce a licensing regime for brothels. Just prior to the 2011 election, the NSW Coalition government stated in a press release that it would:³

- Ensure all brothels are licensed, with stringent vetting of brothel licence applications to clamp down on the use of brothels by organised crime groups and unsuitable persons;
- Institute annual brothel license fees administered by a Brothel Licensing Authority to ensure legal brothels comply with the law and to eliminate illegal brothels;
- Improve the co-ordination of councils' compliance officers with authorities such as WorkCover NSW and NSW Health – the best weapon

² *Broad v Brisbane City Council* (1986) 59 LGRA 296 at 299 per Thomas J.

³ Hartcher C, 'NSW Libs and Nats to crack down on illegal brothels' (Press Release, 22 December 2010).

for disrupting and dismantling illegal operations and forcing compliance by licensed operators.

The primary focus of this plan is upon crime and corruption. The aim of licensing would be to stop the use of brothels 'by organised crime groups and unsuitable persons', 'eliminated illegal brothels', and disrupt and dismantle 'illegal operations' and compel compliance by operators.

Necessity and efficacy of a BLA in terms of crime and corruption?

A primary assumption underlying the original decriminalisation of the sex industry was that illegality begets crime and corruption. This was expressed in parliamentary debates about the *Disorderly Houses Amendment Act 1995*, NSW, noting that the Wood Royal Commission had identified a link between an illegal sex industry and police corruption. The threat of closure of brothels led to potential to demand and receive payment of bribes.⁴

The proposal to introduce a licensing regime rests on the assumption that this would assist in solving problems of illegality. This assumption is not supported by the experience of Queensland or Victoria. In both Queensland and Victoria there is a large unlicensed industry. For example, a recent report by the Queensland Crime and Misconduct Commission claims 'a safe and effective legal brothel industry',⁵ with 'little evidence of corruption within the legal prostitution industry within Queensland'.⁶ Currently there are 23 licensed brothels in Brisbane. On this basis licensing appears to work. However, the focus of the CMC report is on the 'legal' industry. Despite difficulties in stating with any certainty the size and nature of illegal sex-work, it is recognised that there is a 'thriving illegal prostitution sector',⁷ and it is estimated that licensed brothels make up only 10% of the state's sex-work industry.⁸ It is recognised that there is a pressing need to reduce the illegal industry in Queensland, but there is no consensus on how this should be done.⁹ Similarly, in Victoria it is estimated that there are anything from 70 to 300 unlicensed brothels.¹⁰ Moreover, it is recognised that there is a crossover between licensed and unlicensed sexual

⁴ New South Wales, Legislative Assembly, *Debates* (20 September 1995) p 1187, *Disorderly Houses Amendment Bill*, Second Reading Speech, per the Hon P Whelan, Minister for Police.

⁵ Crime and Misconduct Commission, *Regulating Prostitution: A follow-up review of the Prostitution Act 1999* (2011) xi.

⁶ *Ibid.* 19.

⁷ *Ibid.*

⁸ The University of Queensland TC Beirne School of Law Human Trafficking Working Group, *Ten Years of Prostitution Regulation in Queensland* (2009).

⁹ Crime and Misconduct Commission, *Regulating Prostitution: A follow-up review of the Prostitution Act 1999* (2011) 30.

¹⁰ Pickering S, Maher J, Gerard A, *Working in Victorian Brothels* (2009) 1.

Although see Chen M, Donovan B, Harcourt C, Morton A, Moss L, Wallis S, Cook K, Batras G, Groves J, Tabrizi S, Garland S, Fairly C, 'Estimating the Number of Unlicensed Brothels operating in Melbourne' (2010) 34(1) *Australian and New Zealand Journal of Public Health* 67-71. Chen et al argue that the number of unlicensed brothels in Melbourne is much smaller than is generally believed.

services owner-operators, revealing a system that operates partially outside the protections and scrutinies applicable to regular businesses.¹¹ If illegality is assumed to be the problem, then in both Victoria and Queensland licensing has not resolved these problems. Rather, licensing has pushed problems of illegality aside, resulting in a two tiered industry, of a heavily regulated legal industry and a thriving illegal industry.

One way of considering the efficacy and necessity of a licensing regime is to consider available evidence of crime and corruption associated with the sex services premises industry. It is frequently claimed that brothels are criminogenic, that is that they cause crime, whether as victims or perpetrators. However, despite these claims being made since the decriminalisation of the industry in 1995, there is no evidentiary support that brothels are criminogenic. Historically, when brothels were regarded as inherently disorderly and not able to operate lawfully, there was reason to associate these types of businesses with organised crime. However, with decriminalisation, these historic conditions no longer exist. I would argue that there is nothing inherently criminogenic about sex services premises. Councils and the Land and Environment Court have approached situational crime prevention in the same way as other businesses are evaluated. For example, many councils prefer to locate brothels in industrial zones which tend to be isolated at night, with poor lighting and infrastructure. The LEC has adopted pragmatic approaches to reduce the likelihood of victimisation, including security requirements such as bars on windows, CCTV and sometimes security guards. One of the concerns about crime was that clients and brothels were likely to cash rich, however increasing use of credit cards has reduced this issue. In addition, cases have demonstrated the advantages of the legalisation of the industry. The granting of legal status imports a right to governmental protection of liberty, safety and property. This means that sex services premises and their workers and clients are able to turn to the law for protection. In *Huang v Parramatta City Council* [2009] NSWLEC 1331, the Senior Constable's Statement of Evidence asserted that an existing authorised brothel near the proposed brothel had been the subject of bikie gang threats accompanied by promises of 'protection'.¹² The officer relied upon this as evidence of the inherent unlawfulness of brothels. In contrast, I regard this as demonstrating an advantage of legal status, albeit in its infant form. Rather than succumbing to bikie gang threats, the brothel owner was able to, and did, report the threats to the police and sought and received protection from existing legal institutions. Accordingly, with the decriminalisation of the sex industry in NSW the historic reasons for an association illegality no longer exist.

Another issue that the government has identified is corruption. There have been two ICAC inquiries into corruption involving the sex industry and local councils. Amongst other recommendations, the ICAC hearing of 2007 stated:

¹¹ Pickering S, Maher J & Gerard A (2009) *Working in Victorian Brothels* Melbourne Monash University.

¹² Senior Constable (2009) 'Police Statement of Evidence Brothel Development Proposal: *Huang v Parramatta City Council*', Sydney: NSW Police Force, p. 5.

It is recommended that the Minister for Planning and the Attorney General give consideration to adopting a system to prevent unsuitable persons operating brothels.¹³

I will consider each ICAC inquiry in turn to determine the efficacy and necessity of a licensing authority to prevent these specific examples of corruption.

ICAC Parramatta 2007

In 2007, ICAC investigated Wade Fryar, Team Leader of Compliance at Parramatta City Council (PCC). It was found that he had corruptly solicited and received up to \$40,000 in cash payments and sex services from brothel owners and at least 5 sex workers in return for not taking action on behalf of PCC to prevent unauthorised use of premises for prostitution. Fryar also warned sex workers and owners of impending inspections by council.¹⁴

One of the problems in evaluating the efficacy of a licensing regime in response to the issues identified in ICAC 2007 is the lack of detail. There is nothing in the report to indicate that these operators (and workers)¹⁵ would have been denied a license. That is, there was no evidence that they were 'unsuitable persons' – which may include prior criminal record, association with organised crime. Owner operators may well have passed probity checks – although information is not provided in ICAC. Presumably if they had operated in a corrupt manner then their license would have been revoked. But they would not need to have operated corruptly if they had been licensed. The same argument can be made for the current regime of council authorisation. It was the lack of authorisation and difficulties of receiving council authorisation that created the opportunity for corruption. If the businesses had been authorised by council, then there would not have been any opportunity for corruption.

In addition, the ICAC report does not provide information as to the type of sex services premises run by the operators. The report refers to 'brothels' which is consistent with a definition of sex services premises in NSW legislation and the Parramatta LEP (2011) which defines a brothel as premises from which 'one or more prostitutes work'.¹⁶ However, other definitions of sex services premises are available. The NSW Sex Services Premises Planning Advisory Panel, has recommended that rather than rely on a unitary category of 'brothel', regulations should differentiate between sex services premises types based on size, nature and potential amenity impacts.¹⁷ Specific regulations should be developed for different business types of brothels, safe house brothels,

¹³ ICAC, *Parramatta City Council Investigation into Solicitation and Bribery* (2007) 6. Recommendation 2.

¹⁴ Ibid. 5.

¹⁵ There is a lack of detail about the parameters of the proposed BLA, but from the name I would assume that it would only apply to operators of brothels, not workers. This would be in accordance with international recommendations that individual workers should not be identified.

¹⁶ *Restricted Premises Act 1943*.

¹⁷ Sex Services Premises Planning Advisory Panel, *Sex Services Premises Planning Guidelines* (2004).

sex on premises venues, swingers” clubs, bondage and discipline parlours, and sex services (home occupation) premises (HOSSP).

The type of business would make a difference in terms of the proposed reach of the BLA and its efficacy in reaching the operators in the 2007 ICAC hearing. In terms of the proposed BLA, it is unclear what subjects would be included and what excluded. What types of commercial sex services premises would be regulated under the BLA? For example, in Queensland, brothels can be licensed, but there is a prohibition on out-calls. Home occupations (sex services) are able to operate without development consent in Queensland, whilst in Victoria it is required that workers receive planning permission *and* inform the PLA.

If the businesses in the ICAC 2007 Report were home occupation (sex services) it is unclear whether they would have been covered by the BLA. In Queensland, these types of business would not have come under the purview of the Licensing Authority. In NSW home occupations occupy an ambiguous regulatory space.¹⁸ In some areas of NSW, they are regulated like other home occupations and able to operate without applying for development consent (SEPP 1), in other areas like Parramatta City Council, home occupations are regulated under the category of ‘brothel’, and thus must apply for development consent and meet council restrictions regarding location, operating hours etc. I would strongly recommend that home occupations (sex services) premises do not come within the jurisdiction of a BLA. Rather, they should be regulated like other home occupations, with a focus on amenity impacts, and deemed approval. This would have the advantage of authorising more than 40% of the sex industry,¹⁹ removing the (arguably minimal) opportunity for corruption associated with home occupations (sex services).

The 2007 ICAC Report makes it clear that erotic massage parlours were involved in council corruption. These businesses were authorised to provide massage service only, but admitted to providing sexual services to some clients.²⁰ This aspect raises again the broad definition of ‘brothel’ which would incorporate these types of businesses. Erotic massage parlours may not regard themselves as brothels and also may be a very small proportion of services. I would suggest that this is a problem of planning and issues of categories, which would not be resolved by a licensing authority. The issue of self-perception would remain whether under planning or under a licensing authority. It is unlikely that a BLA would resolve the problems of corruption identified in the ICAC 2007 report.

ICAC Willoughby 2011

In 2011, ICAC investigated Edward Karkowski, a building manager with Willoughby City Council, and found that he had corruptly exercised his official

¹⁸ Penny Crofts and Jason Prior, 'Home Occupation or Brothel? Selling sex from home in New South Wales' (Forthcoming) *Urban Policy and Research*.

¹⁹ *Report of the Brothels Taskforce*, NSW Government (2004).

²⁰ ICAC, *Parramatta City Council Investigation into Solicitation and Bribery* (2007) 12.

function to favour various business owners in return for benefits such as cash, gifts, free meals, and free massages and sex services.²¹

In terms of sex services premises, the focus was on Karkowski's dealings with Oriana Bathhouse.²² Oriana had submitted a development application for a massage parlour which Karkowski assessed and approved, failing to report that the business operated as a 'brothel'. He received sex services as often as he liked and claimed overtime while he was receiving these services.

... he acknowledged that by accepting free sexual services he put himself in a position where he could not report its illegal operation as a brothel to Council without compromising himself, and that he therefore, in effect, helped the Oriana Bath House operate illegally.

His conduct in accepting free sexual services had the effect of placing him under an obligation to help or protect the Oriana Bath House and consequently influenced him in the performance of his official functions by influencing him not to report the breach of the terms of the relevant development consent.²³

There was no evidence that this type of council corruption could have been prevented by a licensing authority, and ICAC did not recommend the adoption of a BLA in this case.

The bulk of Karkowski's corruption was associated with businesses that did not provide sex services. For example, he received gift vouchers and lunches from an office developer,²⁴ free meals and gifts from restaurants, and free hospitality from a car wash in return for assistance, or claiming that he could provide assistance. Despite this, the primary focus of the media was upon Oriana Bath House which is consistent with the historic regard and regulation of sex services premises.²⁵

Both ICAC reports indicate that the problems of corruption are not specific to, or primarily associated with, sex services premises. Rather the focus of both reports was upon council process and regulation. For example, of the thirteen recommendations of ICAC 2007 only 2 were specific to the sex industry.²⁶ In ICAC 2011 there were no recommendations that focused on the sex industry.

²¹ ICAC, *Investigation into the Corrupt Conduct of a Willoughby City Council Officer* (2011) 6.

²² Ibid. Chapter 2.

²³ Ibid. 16.

²⁴ Ibid. Chapter 3.

²⁵ Crofts P, 'Brothels and Disorderly Acts' (2007) 1 *Public Space: The Journal of Law and Social Justice* 1-39.

²⁶ Although beyond the scope of this article, the second recommendation was that legislation should be introduced to require sex industry advertisements to show the relevant development approval number. ICAC proposed that if a business did not require consent they should show an exemption number issued by the local council. This recommendation would create difficulties for home occupations (sex services) and require individual workers to identify themselves.

Rather ICAC recommended a series of reforms to council processes. This included that Willoughby Council improve the supervision and monitoring of staff with planning powers to help reduce the opportunities for corruption. This included reviewing organisational structures to ensure managers are able to effectively supervise staff reporting to them and are involved in the reviewing and auditing of work completed by staff, introducing staff rotation duties and limiting the role of specialist staff to providing advice on specialist issues, establishing periodic auditing by directors and internal auditors of determinations of development applications and construction certificates, and improving the capacity to track the out-of-office movements of staff during work hours. Another recommendation was that the NSW Department of Planning and Infrastructure and the council produces and makes publicly available a list of what activities and work associated with development are to be included in calculating the costs of works.

Accordingly, the limited evidence of corruption associated with the sex industry suggests that the issue lies not with the sex industry, but rather with procedural and substantive issues in the exercise of council planning powers. Moreover, there is no evidence that the corruption associated with sex services premises in the ICAC hearings would have been resolved by a BLA. Crofts and Summerfield have argued that the type of licensing model adopted makes a difference in terms of efficacy.²⁷ The 'pure licensing model' licenses the sex industry in a similar way to other businesses, whilst the 'social control model' is aimed at eliminating or reducing the incidence of sex work. They have argued that Victoria has adopted a pure licensing model, whilst Queensland has adopted a social control model. If the Coalition government adopted a social control licensing model, this would make it more difficult for brothels to receive authorisation, providing opportunities for corruption. However, even if a pure licensing model were adopted, I would suggest that this could exacerbate opportunities for corruption by providing another layer of administration, in the absence of any evidence that a BLA would add anything to the current planning model.

There is no evidence of widespread problems of crime and corruption associated with the sex industry. I would argue that any issues that arise are a consequence of the historic construction of sex services premises as illegal, and failures by councils to adapt to legislative reforms and regulate and authorise sex services premises in the same way that they would other businesses. My analysis of the ICAC Reports suggests that the best approach to corruption is to sort out council procedures and authorisations, and to regulate sex services premises in the same way as other businesses.

Amenity, health and safety, and the effect of the market

Licensing schemes tend to focus on issues of crime and corruption, but there are other aspects of businesses that also require attention – including amenity impacts, and occupation health and safety. I will explore these issues in turn. The

²⁷ Crofts T and Summerfield T, 'Red Light on Sex Work in Western Australia' (2008) 33(4) *Alternative Law Journal* 209.

Coalition government has asserted that a BLA would 'ensure compliance', but I argue that a licensing regime is not likely to assist in compliance, but rather that the current regulatory regime is more effective.

There is increasing evidence to suggest that sex services premises can be regulated utilising the existing planning regime to ensure minimal amenity impacts.²⁸ Prior and Crofts undertook a random fixed survey of 401 people living within a 400 metre radius of sex services premises in the City of Sydney and Parramatta local government areas. Surveyed residents were asked if they were aware of sex services premise in their area. If they answered yes, respondents were asked to rank the overall effect, using a likert scale of -3 (extremely negative) to +3 (extremely positive) of the sex services premise on their local area. In total, almost half (44%, 173 out of 401) of those surveyed were unaware that they lived nearby a sex services premise. Of the remaining survey respondents (56%, 228 out of 401) who were aware of sex service premises, just over half (49%, 122 out of 228) stated that the business had no effect (positive or negative) upon the local area. Within the remaining half nearly as many residents rated the overall impact positively (24%, 55 out of 228) as there were rating it negatively (27%, 62 out of 228). Accordingly, just under three quarters of the residents surveyed (74%, 296 out of 401) either experienced no effects as a consequence of the nearby sex services premise or did not know of its existence, suggesting that sex services premises have minimal amenity impacts. This result has also been confirmed in Queensland, 'licensed brothels have no appreciable impact on community amenity and in the decade-long history of the licensed sex industry there has not been a single complaint from any person regarding the impact on amenity of any operating brothel in the state'.²⁹

These findings suggest that in terms of planning concerns, sex services premises can be effectively regulated utilising the existing planning regime. They are not inherently disorderly businesses. Councils and the Land and Environment Court can utilise existing strategies such as locational restrictions, policies about size, operating hours, signage, structural approaches and management plans to ensure minimal amenity impacts. If a sex service premise does impact negatively on amenity impacts, then councils have general powers and powers specific to sex services premises to respond.

Health and safety was another reason provided for the decriminalisation of sex services premises in 1995.³⁰ Available research suggests that NSW is engaging in best practices in this area. NSW focuses on sex worker health, rather than whether a business is illegal or legal, although it has been recognised that a legal

²⁸ Prior J and Crofts P, 'The effects of sex premises on neighbourhoods: residents, local planning and the geographies of a controversial land use' (forthcoming) *New Zealand Geographer*.

²⁹ Crime and Misconduct Commission, *Regulating Prostitution: A follow-up review of the Prostitution Act 1999* (2011) 12.

³⁰ New South Wales, Legislative Assembly, *Debates* (18 October 1995) p 1937, Disorderly Houses Amendment Bill, Second Readings Speech, per the Hon B Gaudry.

industry eases ACON and the Health Dept access. NSW has one of the lowest rates of sexually transmitted infections in the world.³¹ NSW has been lauded for the success of targeted programs for groups with special needs, such as migrant workers. SWOP has implemented a Multicultural Health Program since the early nineteen nineties, that employs staff proficient in Chinese, Korean and Thai and developed educational resources in these languages. Condom use by women originally from one of these countries and now working in NSW is similar to Australian born sex workers and the prevalence of STIs is at an historic low.³²

The difficulty with licensing regimes is that the license or lack thereof has the potential to dominate in the regulation of sex services premises. Victoria has been criticised for being overly focused on the issue of licensing, with not enough focus on sex-worker needs.³³ By creating a special licensing authority, brothels have been shunted into a special category, and there is too much focus on licensing and the boundary between illegal and legal – and too little on other issues such as the needs of businesses, workers, clients etc.³⁴ It has been argued that as long as a licensing system persists in Victoria, the promotion of sexual health amongst women in this sector is likely to face hurdles.³⁵ For example, Workplace Victoria has failed to attend to basic workplace safety breaches that impact on workers in licensed brothels (such as inadequate bathroom facilities, and a lack of secure, safe workers' rooms).³⁶

I would strongly argue that rather than creating a special licensing authority for brothels, the government should instead focus on improving the existing system. This would involve disregarding moral arguments and adopting a pragmatic approach. There are advantages and responsibilities associated with legality.³⁷ With legalisation comes an existing framework of law and regulations for businesses applicable to sex services premises – occupational health and safety, tax, building design, workers rights etc. This systems works (on the most part) for other businesses, and there is nothing inherent in sex services premises which means that they cannot be appropriately and effectively regulated and protected under the existing legal framework.

³¹ Donovan B, Harcourt C, Egger S and Fairley C, 'Improving the health of sex workers in NSW: maintaining success' (2010) 21(3-4) *NSW Public Health Bulletin* 74-77.

³² Ibid.

³³ Edwards A, *Selling Sex: Regulating prostitution in Queensland: A report to the Prostitution Licensing Authority* (2009) 12.

³⁴ Ibid.

³⁵ Chen M, et al, 'Estimating the Number of Unlicensed Brothels operating in Melbourne' (2010) 34(1) *Australian and New Zealand Journal of Public Health* 67-71.

³⁶ Pickering S, Maher J & Gerard A (2009) *Working in Victorian Brothels* Melbourne Monash University.

³⁷ Crofts P, 'Brothels: Outlaws or Citizens?' (2010) 6(2) *International Journal of Law in Context* 151-166.

The current regime of planning can also be evaluated from an economic perspective. Regarding and regulating sex services premises as legitimate businesses imports not only planning regulations but also the force of the market. Legalisation removes the large profits associated with an illegal industry, with the result that the industry is no longer attractive to organised crime. In addition, as I noted earlier, legalisation brings with it rights, and the possibility of turning to police and legal authorities if a worker or business is under pressure from offenders. Moreover, the market imports competition, and it has been recognised that authorised sex services premises owners are likely to report suspicious activities by others to authorities.³⁸ This allows for natural surveillance, rather than the need for external policing to regulate the industry. In a legal industry the main areas for profits would be unsafe sex and sex trafficking. Both these types of illegality would be more likely to be subject to natural surveillance under the current planning regime. Sex trafficking is a difficult subject, particularly as the debate has been ‘hijacked’ by those who are pro and anti sex work.³⁹ I strongly believe that a well regulated sex industry is the most likely to deliver success in terms of reduced sex trafficking. Currently, police have sufficient existing powers to regulate this area and natural surveillance also assists in reporting of this type of crime.

Conclusion

Although the Coalition Government has promised a licensing authority for brothels in NSW, I strongly recommend that the BLA is not introduced. Upon analysis, there is no evidence that a BLA would add value to the existing planning regime. The primary focus of a BLA tends to be upon crime and corruption, but I have highlighted the lack of evidence that crime and corruption are specific to the sex industry, and suggested instead that any issues here can be handled in pragmatic planning terms and utilising existing crime prevention strategies. Moreover, the current planning regime also delivers in terms of reduced amenity impacts and improved occupational health and safety. NSW currently has one of the best regimes for regulating sex services premises. If the NSW government was serious about improving the regulation of sex services premises, I would suggest that the government provides leadership to local councils and encourage the regard of sex services premises in the same way as other businesses. I would also suggest that the government differentiate between sex services premises types based on amenity impacts, and require that home occupations sex services premises are regulated in the same way as other home occupations. The current regulatory regime for businesses works. There is nothing inherently criminal or disorderly about the sex industry.

³⁸ Crime and Misconduct Commission, *Regulating Prostitution: A follow-up review of the Prostitution Act 1999* (2011) 20.

³⁹ Ibid. 21.