PROSTITUTION LAW REFORM FOR WESTERN AUSTRALIA

Report of the Prostitution Law Reform Working Group

January 2007

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Statement of the Chair

The Prostitution Law Reform Working Group comprised six members –

- Sue Ellery MLC
- John Hyde MLA
- Giz Watson MLC
- Lisa Bastian (Manager, Sexual Health & Blood-borne Virus Program, Department of Health)
- Kim Porter (Detective Superintendent, Organised Crime Division, Western Australia Police)
- Caroline Wright (Principal Policy Officer, Office of the Attorney General)

together with Legal Advisor, Alan Sefton (Senior Assistant State Counsel, State Solicitor's Office) and Executive Officer, Kylie Dixon (Project Officer, Department of the Attorney General).

I would like to thank the Working Group and contributors including those who took the time to make submissions to the Group.

Sue Ellery MLC
Chair

Terms of Reference

The terms of reference for the Working Group were to:

1. Draw up the broad principles upon which prostitution reform should be based.

2. Consider laws in other jurisdictions including New Zealand.

3. Address the practical issues for Western Australia.

The Working Group was asked to consider a model based on minimalist decriminalisation with the view to creating a framework that:

- is conducive to public health by regulating and controlling people involved in the provision of prostitution and the location of operators of businesses of prostitution;
- protects sex workers from exploitation; and
- protects children from being involved in prostitution.

The laws pertaining to street-based sex work were not considered by the Working Group as the Government is currently not considering any changes to the existing provisions. The *Prostitution Act 2000* (WA) criminalises many aspects of prostitution including street soliciting.

Executive Summary

On 12 September 2006, the Attorney General, the Hon Jim McGinty MLA announced his intention to establish a Working Group to investigate reforms to Western Australia's prostitution laws.

A Working Group was established to identify and report in relation to the broad principles upon which prostitution reform should be based. It was asked to consider a model based on minimalist decriminalisation with the view to creating a framework that:

- is conducive to public health by regulating and controlling people involved in the provision of prostitution and the location of operators of businesses of prostitution;
- protects sex workers from exploitation; and
- protects children from being involved in prostitution.

While the Working Group focused largely on a minimalist decriminalised model, it gave consideration to a range of models including legalised, criminalised and decriminalised models.

The Working Group consulted widely, met key stakeholders and received and considered a range of public submissions.

The challenges to the reform of the law in this area are evident from the diversity of views expressed in submissions to the Working Group and divergence of approaches in other jurisdictions. The key issues that arise are health and safety protections, licensing, planning and local government matters, and police powers.

After careful review of the different models and rationales advanced in support or against those models, the Working Group is satisfied that a minimalist decriminalised model will provide a sound foundation for reform of the law of prostitution in Western Australia. The Working Group makes detailed recommendations regarding the elements which should form part of that model. By way of summary, the key recommendations of the Working Group are as follows:

Certification

- A minimalist model, based on the New Zealand model be adopted, whereby operators and managers of sexual services businesses (ie. a brothel operator or an escort service operator) be required to be certificated, rather than particular premises licensed.

- At all times that a business is operating from any particular premises the operator or an approved manager must be present and a copy of the certificates

issued to the operator and approved manager must be displayed in a place visible to a person on entering the premises.

- Individual sex workers not be required to be registered or to hold a certificate.

- Persons who work at small owner-operated premises be excluded from the certification requirement. In order to fall within this exception not more than 2 workers may work at the premises and each worker must retain control over his or her individual earnings from commercial sexual services carried out at the premises. Such premises would still be subject to local government controls, such as requirements for approval to operate a business from home.

- Applicants must establish they are of good character and fit and proper persons to hold a certificate and not have charges pending or convictions of certain serious offences, such as those relating to sexual crimes, organised crime, drugs and violence. Applicants must satisfy a residency requirement.

- While certificates will not be restricted to individuals and may include partnerships and private companies, additional requirements be imposed to ensure that persons in a position of control or management of such entities are themselves suitable persons to be involved in the sex industry.

- The Department of Racing, Gaming & Liquor, utilising its existing infrastructure, exercise the function of certificating operators and approved managers in the industry. It be empowered to receive, assess and determine applications for certificates and their renewal and to suspend or cancel certificates. The Department have powers to require the provision of information and documentation by persons for the purposes of determining their suitability to hold a certificate and that the person operating a sexual services business is licensed.

- The Department be required to forward any applications to the WA Police to conduct inquiries in relation to the applicant and their eligibility to obtain a certificate, including criminal history searches and examination of intelligence holdings in relation to the applicant and any criminal associations. The WA Police be entitled to comment on and forward relevant information to the Department to assist its decision-making process. It also be given access to the register of certified brothel operators and approved managers.

- An applicant who is aggrieved by a decision to refuse, suspend or cancel a licence may apply to the State Administrative Tribunal for the decision to be reviewed. The Commissioner of Police has a right to be a party to the review.

- Police officers be empowered to enter sexual services premises to monitor that the premises are being operated and managed by certificated persons.

Planning

- The approval of the use of premises for sexual services businesses be subject to ordinary planning processes. Planning approvals by local government be guided by and subject to Western Australian Planning Commission (WAPC) policy guidelines/model provisions on sexual services businesses. Local government be entitled to regulate but not prohibit such businesses.

- The location of such premises be addressed by the WAPC through the issue of policies and model provisions setting out its view as to an appropriate approach to the issue of planning approvals for this type of land use.

- The WAPC develop a policy position in advance of relevant provisions of the new legislation commencing so as to ensure that there is a smooth transition to the new decriminalised model.

- Transitional arrangements be made for well-managed sexual services businesses, which were existing when this review was announced on 12 September 2006, to obtain planning approval. Operators be entitled to apply to the Department of Racing, Gaming & Liquor which must grant an approval unless it considers that the premises are not being managed appropriately. The Department liaise with the relevant local government and police when making the decision and be entitled to take into consideration:

    a) whether the premises has been the subject of formal complaints from residents or occupiers in the area prior to the Report being made public;
    b) whether the operation of the premises causes a disturbance in the neighbourhood because of factors such as its size, the number of people working in it, the hours of operation, the noise and vehicular and pedestrian traffic; and
    c) whether the operation of the premises interferes with the amenity of the neighbourhood.

- There be no right of appeal from a decision under the above transitional approval system. If an application is refused an applicant may apply under ordinary processes for planning approval.

- In respect of ordinary applications for planning approval, there be a transitional arrangement such as s.15(1) of the *Prostitution Reform Act 2003* (New Zealand). Under that arrangement, where a local government is considering an application for a development approval for a land use relating to sexual services businesses, the local government be required to have regard to whether the business is likely to cause a nuisance or is incompatible with the existing character of the locality. The interim or transitional provision be superseded by an amendment to a local planning scheme. When the WAPC and in turn the Minister for Planning is satisfied that a local planning scheme or amendment

satisfactorily addresses the spatial regulation of sex-industry uses, the scheme or amendment should include a provision providing that the interim or transitional provision is superseded.

Health, Safety and Working Conditions

- A minimalist decriminalised model be adopted focussing on the provision of information and education to increase awareness of health and safety issues within the industry, provision of support to sex workers, reducing stigmatisation of sex workers, recognising the right of sex workers to work in a safe environment and empowering them to assert their rights.

- Measures be included in the proposed legislation to promote positive health practices and require that certain minimum health and safety requirements be maintained by operators of sexual services businesses, sex workers and clients.

- Occupational safety and health requirements under the occupational health and safety legislation continue to apply. Worksafe perform educative and enforcement functions in relation to occupational health and safety issues within the industry.

- The Department of Health work in partnership with Worksafe and non-government outreach organizations to disseminate information and education to persons involved in the sex industry. The Department of Health, Worksafe and the organizations, in consultation with relevant stakeholders in the industry, develop a code of practice to be followed in the industry.

- The level of funding of non-government outreach organizations be reviewed in light of the expected increased demand on their resources in a decriminalised model.

- To ensure the rights of sex workers are safeguarded, the operator of a sexual services business be required to directly employ sex workers who provide such services at the premises or through the business ie. under a contract of service.

- The offence under s.7 of the *Prostitution Act 2000* (WA) to engage in certain acts, such as assaulting or intimidating a person, to induce the person to act, or continue to act, as a prostitute, be extended to include circumstances covered by s.16 of the *Prostitution Reform Act 2003* (New Zealand) including seeking to induce or compel any person into surrendering the proceeds of any commercial sexual services.

- Sex workers be afforded a statutory right to refuse to provide, or to continue to provide, a commercial sexual service to any other person despite anything in a contract for the provision of commercial sexual services.

- A person's entitlements under the *Workers' Compensation and Injury Management Act 1981* not be lost or affected in any other way by his or her being capable of working as a sex worker if he or she refuses to do, or to continue to do, that kind of work.

- Persons under the age of 18 years be safeguarded from involvement in and exposure to commercial sex work. Existing offences relating to the involvement or exposure of persons under the age of 18 years to commercial sex work be retained. Obligations and offences in relation to underage persons being on premises used for the purposes of commercial sexual services be extended to impose strict liability on the operator and approved manager for ensuring that all sex workers are over the age of 18 years and that no persons under that age are present on the premises. The operator also be required to ensure that a sex worker produce photographic evidence of the person's age in an approved form and maintain relevant records.

Police Powers

- WA Police be consulted and provide input in relation to decisions whether to issue certificates to applicants and be provided with access to the register of certificate holders.

- Police officers be conferred with limited powers to enter sexual services premises to verify that they are being operated and managed by certificated persons.

- Existing police powers be retained, including those under Part 4 of the *Prostitution Act 2000* which empower police:
  - to require a person to produce documents or things, provide information to police and answer questions for the purpose of performing any function in respect of an offence under s.7 (inducement/coercion of a person to become a prostitute) or any offence under that Act involving a child (s.23).
  - if a police officer has reason to believe that such an offence is being or may be committed, to enter a place from which a business involving the provision of prostitution is being or is suspected of being carried on and inspect any articles and records kept there search, detain persons and seize items suspected on reasonable grounds to afford evidence as to the commission of an offence against that Act (s.26).
  - to obtain a warrant of search and seizure in relation to evidence as to the commission of an offence against that Act (s.27).
  - to act as undercover officers in certain circumstances (s.35).

Proposed Legislation

- Except to the extent of any inconsistency with the proposed decriminalised model, existing provisions in the *Prostitution Act 2000* be incorporated in the new proposed Act and the *Prostitution Act 2000* be repealed.

- Sections 190 and 191 of the Criminal Code, which impose restrictions on persons' involvement in prostitution and procuring persons to be prostitutes, be repealed. The provisions will either be unnecessary in light of the adoption of a decriminalised model or adequately reflected in offence provisions in the new legislation.

- The Minister for Health be required to carry out a review of the operation and effectiveness of the Act as soon as practicable after 2 years and report to Parliament.

Consultation

The Working Group was established to consult widely on the issue of prostitution law reform. The Working Group held meetings with representatives from the sex industry, the Western Australian Local Government Association, the Department for Planning and Infrastructure, the Department of Racing, Gaming & Liquor, the Western Australia Police and Worksafe.

Three members of the Working Group travelled to New Zealand to gain an understanding of the New Zealand model. Meeting were held with representatives from the Ministry of Justice, the New Zealand Police, the New Zealand Prostitutes Collective and the Minister for Police.

Key stakeholders were asked to make submissions to the Working Group (listed in **Appendix One**). Public submissions were also sought through an advertisement in the *West Australian* newspaper on 18 October 2006.

In total, 44 written submissions were received (listed in **Appendix One**). In summary, 26 of those submissions supported a decriminalised model and 17 did not support decriminalising prostitution. One submission was neutral.

Submissions supporting decriminalisation were received from a range of stakeholders including public health bodies, government agencies, local government, sex worker support services, members of the general public and one church group. Many of the submissions did not condone prostitution yet recognised that prostitution has and will continue to remain a part of society. Considerable support was expressed for the view that issues such as health, welfare, workers' rights and protections and community concerns arising from the operation of the industry would more appropriately and effectively be addressed in a decriminalised or legalised model. While it was generally recognised in the submissions that a degree of regulation of the industry is desirable, an onerous licensing model was not generally supported.

Opposition to decriminalisation was reflected in submissions from a number of religious groups and members of the general public. Reasons advanced in opposition to a decriminalised model included concerns that this may be seen to condone prostitution, normalise it as a career and increase prostitution generally. Concerns were also expressed that decriminalisation would result in increased exploitation of women, child prostitution, violence, involvement of organised crime, sex crimes and risk to the public health.

Proposed Models of Reform

There are three main models that are generally referred to in discussions on prostitution law reform, as outlined by the New Zealand Justice and Electoral Committee in their Commentary on the Prostitution Reform Bill.

Legalised Model

Legalisation makes prostitution legal under a statutory regime. Victoria has been referred to as a classic example of a legalised model. The *Prostitution Control Act 1994* (Vic) actively involves the police in the regulation of the brothel industry. A regulatory framework is established in the legislation requiring all 'prostitution service providers' to be licensed, with applicants having to pay high licence fees and undergo rigorous police scrutiny in addition to holding a valid council planning permit for their establishment. The New Zealand Justice and Electoral Committee pointed to the high compliance costs associated with the Victorian model that seemingly have resulted in many illegal prostitution businesses. The onerous licensing provisions contributed to workers choosing to operate outside the system or turn to illegal street prostitution.

Criminalised Model

Criminalisation makes prostitution an offence. The criminalisation of individual sex workers is not a model that is adopted in other jurisdictions. In South Australia, Tasmania and the Northern Territory, it is an offence to operate a brothel, however self-employed sex workers can operate lawfully.

Some submissions received by the Working Group referred to the 'Swedish' model which has criminalised prostitution with respect to clients. The Swedish Government, in an effort to remove women from the sex industry, has targeted clients rather than sex workers. As the New Zealand Committee observed, although the effect of the law introduced in 1999 was a decrease in the number of women working visibly as sex workers, Swedish researchers point out that clients and workers have found less visible ways of making contact.

Decriminalised Model

Decriminalisation removes all laws that criminalise prostitution. However, it does not involve the State condoning or profiting from prostitution. It removes the criminal penalties and criminal stigma from prostitution. A decriminalised sex industry need not, however, be an unregulated industry, as prostitution becomes subject to the same kinds of controls and regulations which govern the operation of other businesses. This enables sex workers to have and access the same protections afforded to other workers. The Working Group was satisfied that the adoption of such a model is likely to increase the willingness of sex workers to identify themselves as part of the industry. The Working Group was also satisfied that such changes are unlikely to result in a significant growth in the sex industry.

Approach of the Working Group

The Working Group focused largely on a minimalist decriminalised model. This was in line with the terms of reference but also a position that acknowledges the problems and contradictions with previous policy and legislation in Western Australia. It is widely accepted that commercial sexual services exist and therefore must be adequately addressed in policy and legislation. The current system is complex and ambiguous and therefore inadequate to properly deal with this issue.

A pragmatic approach was adopted by the Working Group in looking at a decriminalised model. While recognising the complex social, political, moral and public health implications of commercial sex work, the Working Group makes no value judgment about the sex industry. The Working Group acknowledges the negative aspects of the industry including the potential for drug use and the involvement of organised crime. The Working Group also recognises the vulnerability of sex workers and the potential harm to persons in the industry and supports protections, in legislation, regulations and codes to address these concerns.

Any reform in this area is challenging and will promote arguments from all sides. The key issues that arise are licensing, health and safety protections, police powers and planning and local government matters. The Working Group addressed these issues based on the premise that a minimalist decriminalised model would be the best model for Western Australia to adopt. The best features of the New Zealand model as well as other jurisdictions provided a solid basis for the Working Group to consider the issues.

As outlined in the Report, the Working Group supports the use of neutral terminology. Accordingly, where appropriate in the Report, the terms ‘sex worker’, ‘provision of commercial sexual services’, ‘premises’, ‘sexual services businesses’ and ‘operators’ have been used rather than terms such as ‘prostitute’, ‘prostitution’, ‘brothels’ and ‘madams’.

Prostitution Laws in Australia

Western Australia

Commercial sex work has existed in Western Australia since the early days of European settlement.

For many years police sought to control commercial sexual services through the application of a policy known as the police containment policy. This unwritten policy operated formally from 1975, although it had operated informally for over 100 years. The policy allowed certain metropolitan and Kalgoorlie sexual services businesses to operate with police approval and subject to police-imposed conditions. Enforcement of the conditions was conducted by the police vice squad and required that the premises be drug and alcohol free, a female-only operation and have no juvenile involvement. Further, sex workers had to be registered with police and were subject to enforced regular health checks.

The containment policy has been reviewed many times and has been the subject of adverse comment and criticism due to its lack of clarity, the absence of legislative foundation and potential to afford opportunities for corruption. The *Royal Commission Into Whether There Has Been Corrupt Or Criminal Conduct By Any Western Australian Police Officer* (Geoffrey A Kennedy AO QC, released 3 March 2004) noted that inadequate legislative support diminishes the ability of the Western Australia Police (WA Police) to effectively plan and implement corruption prevention strategies. Further, from a corruption perspective, the lack of precise legislation creates a situation of high risk (Volume 2, Final Report, Part 2, page 318).

In 2000, the Commissioner of Police rescinded the containment policy, leaving the sex industry largely unregulated. The WA Police have retained a unit within the Organised Crime Division that is responsible for liaising with operators and workers at sexual services premises. Under the containment policy, a database of sex workers was maintained and is presently maintained by the police unit, with restricted access.

In 1997 a ministerial working group comprising the then Attorney General and the then Ministers for Police, Local Government, Health and Family and Children's Services had been established. The working group made recommendations from which a Bill entitled the Prostitution Control Bill 1999 progressed to draft eight, but was not introduced into Parliament.

Activities such as soliciting, living off the earnings of prostitution and keeping a brothel were offences under various provisions of the *Police Act 1892* (WA) (ss59, 65(8), 76G, 76F) and the *Criminal Code* (WA) (s.209) until they were repealed by the *Criminal Law Amendment (Simple Offences) Act 2004* (WA).

Although commercial sex work itself is not illegal, currently under the *Criminal Code* (s.190, s.191), a person who manages premises for the purpose of prostitution, lives (wholly or partly) off the earnings of prostitution, or procures a person for prostitution is guilty of an offence.

In 2000, the *Prostitution Act 2000* commenced operation in WA. This Act principally deals with street soliciting, offences involving children in relation to prostitution, advertising and sponsorship. It also provides police with various investigative and enforcement powers including powers to require that information and documentation be produced for the purpose of investigating a prostitution offence involving children or offence relating to inducing or coercing a person to be a prostitute. Where the police have reasonable grounds to believe that such an offence has been, is being or may be committed, the police are also conferred with powers to enter, without warrant, premises from which a prostitution business is, or is reasonably suspected of being carried on and inspect any articles and records kept there. Other police powers include powers, in certain circumstances, to obtain a search warrant and act as undercover officers.

In 2003, the Gallop Government introduced into Parliament the Prostitution Control Bill 2003 (the 2003 Bill), which sought to establish a Prostitution Control Board, introduce a licensing system and decriminalise prostitution. The 2003 Bill proposed to provide the Board and Police with powers to prevent and deter the involvement of organised crime in prostitution. It also sought to ban brothels in residential areas and permit them in industrial areas only if they were not within 300 metres of a school, church, child-care premises, or residential land. The 2003 Bill provided for increased penalties to protect children and incapable persons from being induced into prostitution. This Bill lapsed on 23 January 2005 when Parliament was prorogued due to the State election. Public comments by various parties in the Legislative Council indicated it would not have received majority support.

It is difficult to estimate the number of individual sex workers in Western Australia. Many sex workers work on a part time basis and others move in and out of the industry depending on their circumstances. WA sex worker outreach services estimate that there are about 1200 to 1700 sex workers currently operating in WA, the majority being within the metropolitan area. Of these figures, in 2006, 1280 are unique phone numbers in the Personal Column of the *West Australian* newspaper. They also estimate that of these approximately 380 work in sex work establishments. Both the sex worker outreach services and the WA Police have indicated to the Group that there are approximately 30 commercial sexual services premises operating in the Perth metropolitan area. WA Police indicate that there are approximately 8 commercial sexual services premises in regional WA.

Regarding the number of 'illegal' immigrant sex workers, in 2004-2005 the Department of Immigration and Multicultural Affairs reported that 290 'unlawful non-citizen sex workers' were located in Australia with 5% (15) being in Western Australia.

Other Jurisdictions

In Victoria, the *Prostitution Control Act 1994* uses three main areas of control over prostitution – criminal controls to protect children, licensing controls to vet industry operators for criminal convictions and planning controls to regulate the location of brothels.

The Queensland *Prostitution Act 1999* regulates prostitution by a brothel licensing system and town planning controls.

New South Wales has essentially decriminalised the provision of commercial sexual services through changing the laws regarding both street prostitution and brothel-keeping. However, various offences are still contained within the *Summary Offences Act 1988*. These include inducing another to commit an act of prostitution, advertising prostitution services, and restrictions on soliciting in public places.

The Australian Capital Territory regulates brothels and escort agencies in accordance with the *Prostitution Act 1992*.

Under the *Summary Offences Act 1953*, it is an offence in South Australia to operate a brothel, knowingly live on the proceeds of another person's prostitution, solicit in a public place or procure another person to become a prostitute. Self-employed sex workers can operate lawfully.

In Tasmania, it is illegal to operate or be in control of a sexual services business under the *Sex Industry Offences Act 2005*. However, it is not an offence for a self-employed sex worker.

In the Northern Territory, under the *Prostitution Regulation Act*, in operation since 2004, it is an offence to operate a brothel, however sole operators and escort agency businesses are legal.

In New Zealand, extensive research and consultation was carried out prior to and following the introduction of prostitution law reform. The *Prostitution Reform Act 2003* (NZ Act) repealed prostitution-related legislation and created a new legal environment for the sex industry based on a decriminalised model.

See **Appendix Two** for a summary of prostitutions laws in other jurisdictions.

Definitions/Terminology

The Working Group recommends that more contemporary terms such as 'sex workers' and 'provision of commercial sexual services' rather than 'prostitutes' or 'prostitution' be adopted in the proposed legislation as they simply and accurately reflect the activity and reduce the negative connotations associated with the latter terms. Such an approach was adopted in the NZ Act. Furthermore, rather than using terms such as 'brothels', 'escort agencies' and 'madams', it is recommended that more neutral terms be adopted such as 'premises', 'sexual services businesses', 'operators' and 'approved managers'.

Certification

The Working Group has examined various models of regulation, from the full licensing system adopted in jurisdictions such as Victoria, through to the minimalist certification approach adopted in New Zealand.

Under a full licensing system considerable control is exercised over the operation of the sex industry and participants in it. One of the main objectives of such a system is to ensure unsuitable people are not involved in the industry, particularly in positions of control, that premises are available for inspection and enforcement of controls is made easier. In Victoria, where a full legislative and licensing model has been adopted, there has been criticism of the costs of the regime to government and the sex industry, of the onerous requirements imposed on the sex industry and of the resulting inclination of many persons to operate outside the legalised framework.

In contrast, the approach of New Zealand is to adopt a minimalist certification regime. In the NZ Act, the term 'certification' was preferred rather than 'licensing' to reflect the minimalist approach being taken to regulation, in contrast to full licensing models, and to reduce negative connotations that may be associated with the licensing of prostitution.

Under the New Zealand model, all operators of businesses of prostitution must hold a certificate. The certificate:

- is issued by the Registrar of the District Court (as per the regulations);
- is for a period of 12 months and may be renewed or cancelled; and
- must be produced on the request of a member of police (properly identified) by a person reasonably believed to be the operator of a business of prostitution.

An operator who does not hold the requisite certificate commits an offence. A person is disqualified from holding a certificate if he or she has been convicted of an offence, including criminal and drug related offences. The court maintains a record of applicants for certificates and certificate holders.

Such a regime has the benefits of being simple and straightforward and neither onerous nor expensive. A criticism of the model is however the reduced capacity for monitoring and controlling participants in the industry when compared to a full licensing model.

The Working Group has formed the view that a minimalist model based on the New Zealand model should be adopted, whereby operators and managers of sexual services businesses are required to be certificated. It is however recommended that additional safeguards be included in the WA legislation to provide greater scrutiny of the suitability of such persons before they are issued certificates and to ensure that only certificated persons are operating and managing such businesses. Given, in particular, the potential for organised crime elements to participate in the industry and to ensure the safety and welfare of workers it was considered appropriate that greater safeguards be adopted in the Western Australian model.

The proposed model adopts a more minimalist, less costly and less interventionist approach than the model proposed in WA in the Prostitution Control Bill 2003. Under the 2003 Bill it was proposed that a Prostitution Control Board be created and perform extensive licensing and supervisory functions. In contrast, under the model recommended by the Working Group, the Department of Racing, Gaming & Liquor utilising its existing infrastructure, will exercise a more limited function of certificating operators and approved managers in the industry. It will be empowered to scrutinise, with input from the WA Police, the suitability of applicants for certificates. The recommended level of scrutiny is greater than that in New Zealand. It is considered that a more rigorous process should be followed to ensure that certificates are only issued to suitable persons and that it is appropriate the WA Police should have an explicit role in that process. Such a vetting system exists in other industries, including the liquor, racing, gaming, security and crowd control industries where it is considered important that persons involved in the industry are of suitable character.

Key features of the recommended certification model are as follows:

Operator and approved manager must be certified

- Every operator or approved manager of a business of providing, or arranging the provision of, commercial sexual services (ie. a brothel operator or an escort service operator) must hold a certificate issued under the Act.

- Certificates will be valid for 12 months and application must be made to renew them.

- At all times that a business is operating from any particular premises the operator or an approved manager must be present and a copy of the certificates issued to the operator and approved manager must be displayed in a place visible to a person on entering the premises.

- Commercial sexual services will be defined to include sexual services that involve physical participation by a person in sexual acts with, and for the gratification of, another person; and that are provided for payment or other reward (irrespective of whether the reward is given to the person providing the services or another person). Activities which will be excluded from the definition include striptease, lap dancing, pole dancing, peep shows and phone sex as it is not proposed that these aspects of the wider sex industry be covered by the proposed legislation.

Individual workers excluded

- Individual sex workers will not be required to be registered or to hold a certificate.

- Persons who work at small owner-operated premises will be excluded from the certification requirement. In order to fall within this exception not more than 2 workers may work at the premises and each worker must retain control over his or her individual earnings from commercial sexual services carried out at the premises.

The focus of the certification scheme is on the persons who control sexual services businesses rather than the individual workers. The Working Group is satisfied that an approach of registration/certification or licensing of individual sex workers is inconsistent with a philosophy of minimalist decriminalisation. The above exclusions recognise that it will always be difficult to regulate individual sex workers, particularly those operating from private residences and not working with others as part of an established business. Further, given the stigmatisation of sex work and corresponding strong opposition of many workers to any system requiring individual workers to be registered it is considered that a requirement for individual certification would encourage many workers to work outside the requirements and safeguards of the established system.

The Working Group recognises that, for safety reasons, it is reasonable to extend the exception to small owner-operated premises of up to 2 workers. While the NZ Act has an exception for such premises having up to 4 persons (s.4), the Working Group considers that a limit of 2 workers is more appropriate. This is considered to better balance the competing policy consideration of potential nuisance to members of the community, particularly where such premises are located in residential areas. The Working Group notes that such premises would still be subject to council controls, such as requirements for approval to operate a business from home.

Eligibility to obtain certificate

- In order to obtain a certificate an application must be made containing prescribed details of the applicant.

- Applicants will be required to meet certain criteria relating to suitability. The requirements include that the applicant be of good character and a fit and proper person to hold a certificate, not have charges pending or convictions of certain serious offences, such as those relating to sexual crimes, organised crime, drugs and violence. Certificate applications will be required to include personal details, as with the current liquor licensing system, which will be provided to the WA Police for review and comment.

- While certificates will not be restricted to individuals and may include partnerships and private companies, additional requirements will be imposed to ensure that persons in a position of control or management of such entities are themselves suitable persons to be involved in the sex industry.

- Applicants will also be required to satisfy a residency requirement. The purpose of this requirement is to avoid any issues of enforcement that may arise where a person is not ordinarily resident within the State.

Assessment and determination of applications

- The Department of Racing, Gaming & Liquor (the Department) will manage the certification process. It will receive, assess and determine applications for certificates and their renewal and will have powers to suspend or cancel certificates.

  The Department will be required to forward any applications to the WA Police. The police will conduct inquiries in relation to the applicant and their eligibility to obtain a certificate, including criminal history searches and examination of intelligence holdings in relation to the applicant and any criminal associations. The WA Police will be entitled to comment on and forward relevant information to the Department to assist its decision-making process. It will also have access to the register of certified operators and approved managers.

- Police officers will be empowered, without warrant, to enter a commercial sexual services premises or a place reasonably suspected of being a sexual services premises (unless, it is private residential premises) for the purpose of satisfying themselves:
  - that the operator and approved manager/s of the premises are certified;
  - that at all times when the business is operating the operator or approved manager is present at the premises; and

- that a certificate specifying the name of the operator and the approved manager on duty is visible on entering the premises.

The police officer will also be entitled to require that the person apparently managing the premises and/or operator identify themselves and provide proof of their identity if required for the above purposes.

These powers will enable police to enter sexual services premises to monitor that the premises are being operated and managed by certificated persons but will not confer on them a general right of inspection or search of the premises.

- The Department will have powers to require the provision of information and documentation by persons for the purposes of determining their suitability to hold a certificate and that the person operating a prostitution business is licensed.

The Department is considered the appropriate body to manage this process given, in particular, its existing infrastructure (hence the minimisation of costs associated with the establishment of a separate organization such as a Prostitution Control Board), the expressed willingness of the Department to assume responsibility for this function, the appropriateness of co-locating this responsibility with a Department already involved in regulating other industries such as liquor, racing and gaming which have the potential for the involvement of organised crime and the Department's experience in, and established procedures for, vetting applications for licences in those industries.

Public interest protected information

- The Commissioner of Police will have the power to direct the Department not to disclose the source and content of certain information provided to the Department by the WA Police where the Commissioner is satisfied its release might be contrary to the public interest. Examples of this include where such a disclosure might prejudice: a person's safety; the effectiveness of an investigation or prosecution of a person for an offence; reveal the identity of an informant; or confidential police practices or methodology. The importance of protecting confidential police intelligence information has been recognised in various other statutes, including in recent amendments to the *Liquor Licensing Act 1988* and *Gaming and Wagering Commission Act 1987*.

Right of review

- An applicant who is aggrieved by a decision to refuse, suspend or cancel a licence may apply to the State Administrative Tribunal (SAT) for the decision to be reviewed.

- In the event of an application being made to SAT to review a decision to refuse, suspend or cancel a certificate the Commissioner of Police will have a right to be a party to the review.

- Special provision will be included so that public interest protected information that was before the Department or sought to be relied on before SAT can be reviewed by SAT in private on the application of the Department of Racing, Gaming & Liquor or Commissioner of Police in the absence of the applicant's representative or any other person. SAT can direct that the information not be disclosed to the applicant if satisfied that it would be contrary to the public interest.

While in New Zealand certificates are issued by the District Court Registrar and appeals against his or her decisions are heard by a judge of the District Court, in WA the above model is considered more appropriate. Given the deliberate establishment by the Government of the Tribunal to review administrative actions of governmental bodies and agencies, it is considered to be the appropriate body to determine applications to review decisions made by the Department to refuse, cancel or suspend a licence.

Planning Requirements

The Working Group notes that a significant potential impediment to the effective implementation of the proposed model is that of sexual services businesses obtaining local government planning approval to conduct their businesses. In New Zealand, the approach adopted included enabling, but not requiring, territorial authorities (local government) to put in place by-laws regulating where commercial sexual services could operate. While several territorial authorities exercised these powers, it is evident that a number of operators experienced considerable difficulty in obtaining necessary approvals to establish sexual services businesses. This resulted in several successful appeals against the decisions of the territorial authorities.

The New Zealand experience is indicative of why the Working Group is concerned to ensure that planning decisions in relation to sexual services businesses are dictated by proper planning considerations rather than moral considerations and that local governments seek only to reasonably regulate rather than prohibit such businesses from operating. While it is recognised that local government is the appropriate body for determining these issues, it is also recognised that it is desirable that there be clear direction given to such authorities to ensure a reasonable and consistent approach is taken to such planning decisions.

The approach proposed in the 2003 Bill was to amend all planning schemes so as to require local governments to adopt a set of uniform planning principles regarding prostitution.

Representatives from the Western Australian Local Government Association (WALGA) and some local councils made submissions and had discussions with the Working Group. WALGA maintained its position with respect to the 2003 Bill that it is the appropriate body to deal with ongoing planning issues and should not be restricted. The Working Group acknowledges the important role of local government and appreciates that many local governments, like the police, have had policy, expenditure and governance burdens by trying to administer sexual services businesses in the absence of workable State legislation. The Working Group welcomes the views of WALGA and these councils that they will be able to regulate sexual services businesses fairly, equally and efficiently in a decriminalised model.

The Working Group proposes to utilise existing statutory powers and processes to address the planning issue. This approach is seen as being more consistent with a minimalist model of decriminalisation and is expected to achieve a similar outcome. Rather than seeking to set out in the proposed legislation specific factors dictating where such premises may be located, this will be addressed by the Western Australian Planning Commission (WAPC) through the issue of policies and model provisions setting out its view as to an appropriate approach to the issue of planning approvals for this type of land use.

The WAPC's powers include a power, under s.26(1) of the *Planning and Development Act 2005*, with the approval or on the direction of the Minister, to prepare State planning policies directed primarily towards broad planning and facilitating the coordination of planning throughout the State by local governments. It is required to consult relevant local governments, public authorities and other persons potentially affected, publicly release a proposed policy and consider any submissions made (s.27). Under s.77 of the Act local governments are required to have regard to such policies when preparing or amending local schemes and can incorporate provisions of such policies within their schemes.

Should Parliament decriminalise commercial sexual services the WAPC has advised that it will:

- ensure that the planning policy framework complements and supports any reform agenda embodied in a reform Act; and
- provide guidance to local government to ensure an appropriate level of uniformity in how the planning system responds to spatially regulate sex-industry uses.

To achieve those objectives the WAPC has indicated that it will:

- assess sexual services businesses as it would assess any other business based on proper planning principles;
- include standard provisions in the model scheme text - it is anticipated that consideration will be given to the types of zones where it is appropriate for sexual services businesses to be located as of right or as a discretionary use; and

- provide guidance to local government, for instance, in the form of a Planning Bulletin or a State Planning Policy.

The WAPC has also indicated to the Working Group that it would be desirable for such a policy bulletin to be developed in advance of relevant provisions of the new legislation commencing so as to ensure that there is a smooth transition to the new decriminalised model. It is essential that this work be done before the legislation is operational.

Transitional Measures

As sexual services businesses are not presently recognised as permitted uses for premises under planning schemes, it is important that transitional arrangements be made for existing sexual services businesses and for other premises pending adoption by local governments of appropriate provisions in their planning schemes.

a) Existing well managed premises

The Working Group has received information from a number of sources, including representatives of several local governments, which suggests that many established premises are well managed and have limited impact on the neighbouring community. In order for the proposed minimalist decriminalised model to succeed, it is considered important that such businesses be permitted to continue to operate. Undue delay or restriction on the status of such businesses may lead to a proliferation of such businesses continuing to operate outside the requirements of the law. Apparently such problems arose in Queensland.

The approach adopted in the 2003 Bill in Western Australia was to deem the use of certain pre-existing premises to be a permitted use under relevant planning schemes, subject to the approval of the then proposed Prostitution Control Board. The Board was required to liaise with the relevant local government in which the land was located and consider various matters.

The approach recommended by the Working Group is that operators of sexual services businesses apply to the Department of Racing, Gaming & Liquor for the premises from which they operate to be approved. The Department will be required to grant such approvals unless it considers that the premises are not being managed appropriately. It is recommended that in making a decision the Department be required to liaise with the relevant local government and police and that it be entitled to take into consideration:

a) whether the premises has been the subject of formal complaints from residents or occupiers in the area prior to the Report being made public;
b) whether the operation of the premises causes a disturbance in the neighbourhood because of factors such as its size, the number of people

working in it, the hours of operation, the noise and vehicular and pedestrian traffic;

c) whether the premises interferes with the amenity of the neighbourhood.

It is considered that this avenue of fast-tracking approvals should apply to premises that were operational on 12 September 2006 (the date the Attorney General publicly announced Government's intention to reform prostitution laws) and still operating at the day of the commencement of legislation. Such a date is required to be defined so as to ensure planning concessions are limited to premises genuinely established prior to the proposal for concessions being made public. It is important to avoid conferring such benefits on opportunistic operators who may seek to establish such premises prior to the legislation commencing, with a view to taking advantage of the concessional treatment.

The Working Group recommends that there be no right of appeal to SAT or any other body in respect of any decision made regarding this process. If an applicant is refused a fast-track approval, the applicant may apply for planning approval under ordinary processes otherwise applicable.

b) Other premises

For other applications for planning approval, it is recommended that there should be a transitional provision such as s.15(1) of the NZ Act. The effect of the arrangement would be that where a local government was considering an application for a development approval for a land use relating to the sexual services businesses, the local government would be required to have regard to whether the business was likely to cause a nuisance or was incompatible with the existing character of the locality. As with s.15(3) of the NZ Act, the interim or transitional provision would be superseded by an amendment to a local planning scheme. When the WAPC and in turn the Minister for Planning was satisfied that a local planning scheme or amendment satisfactorily addressed the spatial regulation of sex-industry uses, the scheme or amendment would include a provision providing that the interim or transitional provision was superseded.

Health, Safety and Working Conditions

Workers in the sex industry are potentially exposed to a variety of health risks, from sexually communicable diseases through to stress, alcohol and drug dependence and violence. While acknowledging the low rate of sexually transmissible infections (STIs) in the WA sex industry, a key objective of the Working Group has been to identify a model which will be conducive to positive public health outcomes and afford similar protections to sex workers as are available to workers in the wider community. The Working Group concluded that in order to foster a positive environment for the health and safety of sex workers and their customers it is preferable to adopt a minimalist

decriminalised model. As part of that model there should be a focus on the provision of information and education to increase awareness of health and safety issues within the industry, provision of support to sex workers, reducing stigmatisation of sex workers, recognising the right of sex workers to work in a safe environment and empowering them to assert their rights.

Consistently with the New Zealand model it is therefore proposed that measures be included in the proposed legislation to promote positive health practices and require that certain minimum health and safety requirements be maintained by operators of sexual services businesses, sex workers and clients. While certain health and safety requirements should be mandated in the legislation, it is also considered important that ordinary occupational safety and health requirements under the *Occupational Safety and Health Act 1984* and associated legislation continue to apply.

Discussions with Worksafe indicate that it currently performs a role in addressing occupational health and safety issues within the sex industry, principally when complaints are brought to its attention. Worksafe also recognises that it would be appropriate for it to perform educative and enforcement functions in relation to occupational health and safety issues within the industry under the proposed decriminalised model. Its representative has advised the Working Group that it is expected that any additional demands on Worksafe that may arise following adoption of a new legislative model can be absorbed within its existing resources and financial capacity.

Under the New Zealand model, district medical officers are empowered to inspect prostitution premises and enforce health requirements under that legislation. The Working Group has formed the view that such a model would however be impracticable in this State. Under the proposed model it is instead recommended that the Department of Health work in partnership with Worksafe and non-government outreach organizations to disseminate information and education to persons involved in the sex industry. Worksafe has educative and enforcement functions and can avail itself of the obvious knowledge and expertise of the Department of Health to promote and enforce safe and healthy work practices. It is envisaged that the two organizations will work in partnership with a view to developing a code of practice to be followed in the industry. It is considered that the detail of any such code is appropriately to be determined in due course by those organizations in consultation with relevant stakeholders in the industry.

Given the important role performed by non-government outreach organizations in the provision of information, education and support to sex workers, it is also recommended that the level of funding of such organizations be reviewed in light of the expected increased demand on their resources in a decriminalised model.

It is accordingly recommended that:

Sex workers must be employees

i) Operators of sexual services businesses must employ sex workers under contracts of service.

It is apparent that the legal relationship between commercial operators and sex workers varies considerably. It can vary from a direct employment relationship, to engagement under a contract for the provision of services, through to an arrangement whereby the worker purportedly has no recognised legal relationship with the operator except to pay to hire a room from the operator while performing sexual services. While many such workers may be covered by certain protections afforded under industrial, workplace safety and workers' compensation legislation, this is not necessarily the case for all. Even those who are protected are not necessarily aware of and able to access their basic entitlements such as sick leave, holiday pay and superannuation. To ensure their rights are safeguarded, it is recommended that the operator of a sexual services business must directly employ sex workers who provide such services at the premises or through the business ie. under a contract of service.

Sex workers and clients must adopt safe sex practices

ii) All sex workers and their clients:

- must take reasonable steps to ensure a prophylactic sheath or other appropriate barrier is used if those services involve vaginal, anal, or oral penetration or another activity with a similar or greater risk of acquiring or transmitting sexually transmissible infections (STIs) or blood-borne viruses (BBV).
- must not, for the purpose of providing or receiving commercial sexual services, state or imply that a medical examination of that person means that he or she is not infected, or likely to be infected, with an STI or BBV.
- take all other reasonable steps to minimise the risk of acquiring or transmitting STIs or BBVs.

It is presently a requirement of s.8 of the *Prostitution Act 2000* that persons engaged in acts of prostitution use a prophylactic appropriate for preventing the transmission of bodily fluid from one person to another. The above provisions, based on the NZ Act, are considered by the Working Group to more comprehensively address risks to public health from the transmission of STIs or BBVs.

Operators must adopt and promote safe sex practices

iii) Obligations be imposed on operators and managers of sexual services businesses to:

- take reasonable steps to ensure that no commercial sexual services are provided by a sex worker unless a prophylactic sheath or other appropriate barrier is used if those services involve vaginal, anal, or oral penetration or another activity with a similar or greater risk of acquiring or transmitting STIs or BBVs.
- take all reasonable steps to give health information to sex workers and clients.
- display health information prominently in the premises.
- not state or imply that a medical examination of a sex worker means the sex worker is not infected, or likely to be infected, with an STI or BBV.
- take all other reasonable steps to minimise the risk of sex workers or clients acquiring or transmitting STIs or BBVs.
- display information prominently in the premises regarding the right of a sex worker to, at any time, refuse to provide, or continue to provide, a commercial sexual service.

Operators supply free prophylactics

iv) Operators should be required to supply prophylactics free of charge to any person who requires them for use when participating in commercial sexual services in the course of that business.

Offences and Penalties

v) Failures to comply with the above duties be offences and penalties applicable to the above offences reflect parity with similar types of offences under the *Occupational Safety and Health Act 1984* and the *Health Act 1911*.

Prohibition on penetrative sex if infected

vi) An offence be created for:

(I) a sex worker or client, if they have a notifiable STI or BBV, to engage in acts involving vaginal, anal, or oral penetration including cunnilingus.

(II) an operator or manager to permit or encourage a person to act as a sex worker and engage in such acts if they know or could reasonably be expected to know they have a notifiable STI or BBV.

Under the *Health Act 1911* certain health professionals are required to notify the Executive Director, Public Health of persons who have notifiable infectious diseases. Having regard to the expert advice from the Department of Health, it is considered that sex workers or clients with a notifiable STI or BBV should be prohibited from engaging in penetrative sex or all forms of oral sex as part of a commercial sexual service. These activities have been identified as the principal activities where persons have a higher risk of transmitting a notifiable STI or BBV. The Working Group is satisfied that the risk of exposure arising from other forms of sexual activities is sufficiently low that the above prohibition should not extend to such activities. It is also considered that operators and managers should be vigilant and not permit prohibited activities to occur.

Currently, there is a legal framework in WA relevant to the management of a person with a dangerous infectious disease such as HIV. Sections 251, 252 and 276 of the *Health* Act *1911* set out provisions for the notification of the infection and powers delegated to the Executive Director, Public Health by the Minister for the purposes of checking or preventing the spread of any dangerous infectious diseases, including HIV, which could be exercised in circumstances where a person may be placing others at risk of transmission of these diseases. In addition, a warrant can be issued that gives WA Police the necessary authority to apprehend and take the individual to a place of isolation or quarantine. Under s.294(8) of the *Criminal Code* in certain circumstances a person who does an act that is likely to result in a person having a serious disease is guilty of a crime and liable for 20 years imprisonment.

It must be noted that there have been no reported cases of HIV transmission by a sex worker within Australia to date.

Mandatory Health Checks

vii) Regular health checks for workers be encouraged but not mandated under the proposed legislation.

In respect of the question of mandatory testing, there are a number of competing practical and policy considerations. The Department of Health encourages all sex workers to undergo regular testing for STIs or BBVs, monthly for bacterial infections and 3 monthly for blood-borne viruses. There is however room for debate as to the frequency at which such testing should occur and whether there are any advantages in mandating such testing rather than encouraging it as part of a an overall educative process. Further, a risk of mandating such testing may be the fostering of the incorrect perception, which is sought to be

dispelled in the preceding proposed provisions, that a person who has been tested for various STIs or BBVs is not infected with an STI or BBV. There is a recognised window period for a number of STIs and BBVs within which a person may have contracted the STI or BBV but not test positive for its presence.

Ultimately, the Working Group was not persuaded that it was appropriate to mandate such testing in the proposed legislation. In forming that view the Group considered that in due course further consideration should be given to the issue by Worksafe and the Department of Health and, if appropriate, should be the subject of guidelines or a code of practice.

Additional Protection of Sex Workers

The vulnerability of some sectors of the industry to violence and exploitation is a serious problem. Street and escort workers often operate in essentially unprotected environments, encountering clientele who may be drunk, drugged and/ or disturbed. Overseas workers who enter Australia are also a particularly vulnerable group, some of whom may be dependent on unscrupulous operators for their safety and livelihood. High levels of fear and isolation and language barriers can also exacerbate their situation.

It is also recognised that persons should not be pressured or coerced into working as sex workers or providing particular sexual services.

It is accordingly recommended that the model have the following features:

No coercion or inducement

In recognition of the importance of persons not being coerced or induced to be a sex worker it is currently a serious crime under s.7 of the *Prostitution Act 2000* to engage in certain acts, such as assaulting or intimidating a person, to induce the person to act, or continue to act, as a prostitute. A similar but slightly broader approach is adopted under s.16 of the NZ Act which makes it an offence to seek to induce or compel any person into providing commercial sexual services or surrendering the proceeds of any commercial sexual services.

The Working Group recommends that the proposed legislation extend the existing prohibition in s.7 of the *Prostitution Act 2000* to include the circumstances covered by s.16 of the NZ Act, particularly seeking to induce or compel a person into surrendering the proceeds of any commercial sexual services.

Sex workers may refuse to provide commercial sexual services

Under s.17 of the NZ Act sex workers have a right of refusal to provide, or to continue to provide, a commercial sexual service to any other person despite anything in a contract for the provision of commercial sexual services. The Working Group recommends that an equivalent provision be adopted in Western Australia. It is considered an important protection of the rights of workers. The right to refuse sex work is important given the power imbalance between sex workers and their clients and management. It gives the sex workers the power and ability to make choices about bodily integrity without fear of reprisal. No worker should be forced to provide or continue to provide a sexual service to any client.

Refusal to work as sex worker does not affect entitlements

It is recommended that a person's entitlements under the *Workers' Compensation and Injury Management Act 1981* may not be lost or affected by his or her being capable of working as a sex worker if he or she refuses to do, or to continue to do, that kind of work.

The purpose of such a provision is to recognise that persons should not be required to engage in work as a sex worker and that any entitlements which an injured worker may have under that Act are not to be affected if the person refuses to do, or to continue to do, that kind of work. By ensuring that entitlements are not affected, it assists those sex workers who have a genuine desire to leave the industry. The provision is modelled on the approach adopted under s.18 of the NZ Act.

Restrictions on advertising commercial sexual services

While recognising the benefits of the decriminalisation of commercial sexual services, the Working Group also recognises the importance of not promoting commercial sex work and of reasonable limits being placed on the advertising of these services. Reasonable limits on advertising are imposed in New Zealand (s.11 NZ Act) and in various other jurisdictions.

It is not considered that advertising should be prohibited absolutely, particularly given that advertisements provide an important means for support agencies to contact and provide support and information to sex workers.

Given the largely self-regulating nature of advertising at present, it is not proposed to impose any restrictions on the content of any advertisements but recommended that a regulation making power be included under which such matters can be prescribed if it is considered necessary at some time in the future.

It is accordingly recommended that a person be prohibited from broadcasting or causing to be broadcast an advertisement for commercial sexual services except through a

newspaper or periodical, in its classified advertisements section or the internet in such manner as may be prescribed. Given the proposed definition of commercial sexual services outlined earlier, the advertising restrictions would not apply to other services such as phone sex and dating services.

It is proposed that the current provisions in the *Prostitution Act 2000* (ss9, 10) be retained.

Offences relating to children

The Working Group recognises that there is a paramount need to protect persons under the age of 18 years from involvement in and exposure to commercial sex work. The Working Group received no evidence to suggest that this is a significant problem within sexual services businesses, nevertheless it is important that adequate safeguards be maintained.

In Western Australia extensive offences relating to the involvement or exposure of persons under the age of 18 years to commercial sex work are already contained in the *Prostitution Act 2000*. These include prohibitions on acting as a prostitute for a client who is under the age of 18 years, causing, permitting or inducing a child to act as a prostitute, receiving payment derived from a child acting as a prostitute, engaging in an act of prostitution at a place where a person under the age of 18 is present or allowing a person to enter or remain at a place at which a prostitution business is being carried on.

In New Zealand, a number of similar offences in relation to child prostitution are created (ss20-23 NZ Act). It is however expressly provided that a child may not be charged as a party to such offences committed on or with that person (s.23(3) NZ Act). This protects the child from prosecution. The Working Group considers that the onus should be on operators and clients to ensure that sex workers are over 18 years of age and that it is more appropriate that child sex workers (ie. persons under the age of 18 years) receive intervention and assistance from appropriate agencies rather than prosecution.

While the Working Group considers that child sex workers receive intervention and assistance rather than be subject to prosecution, it is recognised that there may be unusual circumstances where prosecution might be considered, subject to prosecutorial discretion, as a final resort. For example, a person who is just under 18 years old who deliberately and repeatedly continues to act as a sex worker despite efforts of intervention and assistance. The New Zealand Justice and Electoral Committee noted the difficulty police have with persons between 16-18 years old.

At present, it is an offence for a child to act as a prostitute and the penalty is 2 years imprisonment (s.14(a) *Prostitution Act 2000*). The Working Group considered this to be a significant penalty and, although it is not expected that such a penalty would be applied, recommends that the penalty be reduced to a fine.

While it is intended that the existing offences in relation to the involvement or exposure of persons under the age of 18 years to prostitution be retained in substance, it is also intended that more specific obligations and corresponding offences be introduced in relation to underage persons being on premises used for the purposes of commercial sexual services.

In particular, it is considered that the operator and manager of sexual services businesses should be strictly liable for ensuring that all sex workers are over the age of 18 years and that no persons under that age are present on the premises.

It is also recommended that the operator must ensure that a sex worker produce evidence of the person's age in one of the following forms: a current passport, a current Australian driver's licence, a prescribed document that bears a photograph of the person and indicates by reference to the person's date of birth or otherwise that the person has reached 18 years of age. A similar requirement is imposed under the *Tobacco Control Products Act 2006* in respect of sales of tobacco products to juveniles.

It is further recommended that the operator/manager be required to take and retain a copy of that evidence and make a record of when and by whom it was taken.

While recognising workers may be reluctant to provide identifying information to the operator, given the philosophy of treating the operation of the business in a similar manner to other businesses, which necessarily maintain records for employment and other purposes, this requirement is considered to represent a reasonable balance between worker's rights and safeguarding the interests of juveniles.

Police Powers

There is a wide variation between jurisdictions in relation to the nature and extent of police powers conferred in relation to the sex industry. Certain of those differences are apparently explicable by the different approaches taken in those jurisdictions to the legalisation or prohibition of the industry.

A minimalist approach is taken in New Zealand and New South Wales. Police require a search warrant to enter and search premises without consent. Other jurisdictions such as Victoria have broader coercive powers in relation to sexual services businesses.

Justifications advanced for very broad police powers include the nature of the potential adverse influences on the sex industry and sex workers and concern to address issues including drug use and distribution, sexual servitude/slavery, people trafficking, debt bondage, juveniles within the sex industry, organised crime, persons living off the earnings of prostitution and the safety of sex workers.

While the Working Group recognises those concerns it considers that there is a need to balance a range of competing policy considerations including protection of civil liberties,

privacy and confidentiality, the personal nature of the services being provided in the sex industry and proposed decriminalised status of the industry.

In those jurisdictions where powers are conferred on police to enter sexual services premises without a warrant and exercise powers such as inspection, search and seizure, a number of restrictions and safeguards are generally associated with any such powers.

The safeguards include:

- limiting the persons who can enter by reference to their seniority or written authority from an appropriate senior officer within their respective Police Service (SA, Tasmania, Qld, Vic, NT);
- recording details of the circumstances of the entry and exercise of any powers and forwarding them to an independent licensing body (Qld, Vic, NT);
- requiring that a certain state of mind exist before entry occurs, such as reasonable suspicion or belief that an offence of a specified type (such as prostitution offences involving children or inducement or compulsion of persons to act as prostitute) has been or is about to be committed (Tas, ACT, current WA position).

The WA Police currently have a range of powers which can be utilised in relation to the investigation and enforcement of offences relating to the provision of commercial sexual services.

Under the *Criminal Investigation Act 2006*, which is to substantively commence in mid-2007, various police powers are collected together including powers to obtain search warrants, and enter premises to ensure peace and good order at a public place or where the officer has reasonable suspicion of acts of violence/breaches of the peace occurring.

In the area of organised crime, police may apply to the Corruption and Crime Commission (CCC) under Part 4 of the *Corruption and Crime Commission Act 2003* (CCC Act) for the grant of extraordinary powers, including enhanced powers of search, seizure, examination of persons and conduct of controlled operations, in respect of certain serious offences listed in Schedule 1 to the Act. The offences include money or property laundering (s.563A *Criminal Code*). Therefore, if the WA Police has a concern that sexual services premises are being used by organised crime for money laundering, police can potentially access extraordinary powers under the CCC Act.

The *Criminal Property Confiscation Act 2000* also provides for extensive powers to investigate and confiscate certain property such as unexplained wealth or the benefits from crime.

Members of the WA Police are also afforded a number of specific powers under the *Prostitution Act 2000*. Those powers are set out in Part 4 of the Act and include powers:

- to require a person to produce documents or things, provide information to police and answer questions for the purpose of performing any function in respect of an offence under s.7 (inducement/coercion of a person to become a prostitute) or any offence under that Act involving a child (s.23);

- if a police officer has reason to believe that such an offence is being or may be committed, to enter a place from which a business involving the provision of prostitution is being or is suspected of being carried on and inspect any articles and records kept there search, detain persons and seize items suspected on reasonable grounds to afford evidence as to the commission of an offence against that Act (s.26);
- to obtain a warrant of search and seizure in relation to evidence as to the commission of an offence against that Act (s.27);
- to act as undercover officers in certain circumstances (s.35).

As noted earlier in the report, it is proposed that the WA Police provide input in relation to the process of issuing certificates to applicants. It is also recommended that police officers be conferred with limited powers to enter sexual services premises to verify that they are being operated and managed by certificated persons. While these controls are more extensive than under the NZ Act it is considered that they achieve a better balance between minimising the regulation of the decriminalised industry and reducing the involvement of inappropriate participants such as organised crime.

Otherwise, the Working Group considers that existing police powers, particularly under the *Prostitution Act 2000,* are sufficiently broad that no further police powers are warranted.

The Working Group has also received evidence from the WA Police about the existence within the Organised Crime Division of the WA Police of a unit responsible for liaising with operators and workers at sexual services premises. The evidence presented by WA Police was of the positive effect of this interaction. The Working Group recommends that such a liaison function be maintained to provide specific contact for participants in the industry. The Working Group understands that information has been, and is collected by members of the liaison unit and is retained in a separate computer system to general police databases and that it is not generally accessible to other members of the WA Police. The Working Party recommends that such a practice continue (noting comments below). It also notes that confidentiality obligations are imposed on police under s.58 the *Prostitution Act 2000* in respect of information obtained in the course of their duty. It is also an offence under the *Criminal Code* for a public officer to make an unauthorised disclosure of information that the officer is under a duty not to disclose (s.81) or to unlawfully access a restricted-access computer system (s.440A).

This Report notes the views expressed by Giz Watson MLC:
The WA Police already have extensive powers to investigate criminal matters under the *Criminal Investigation Act 2006*, the *Corruption and Crime Commission Act 2003*, the *Criminal Property Confiscation* Act *2000* and the *Prostitution Act 2000*. Despite the official ending of the police containment policy in 2000, the police have retained a unit within the Organised Crime Division of the WA Police that is responsible for liaising with operators and workers at sexual services premises. This unit maintains a database of sex workers. The Working Group is proposing a minimalist decriminalisation model in which individual sex workers will not be required to be certified. It is therefore

inappropriate for the WA Police to retain their existing database and to continue the unit's practise of contacting and obtaining the identity of sex workers and other information. The existing database should be destroyed. The Working Group is recommending that such a liaison function be maintained to provide a specific contact for participants in the industry. However, it is essential that any contact be at the initiation of the sex worker unless of course there is a specific investigation being carried out. Sex workers should have the same right to privacy as any other citizen. Under the new model the police will continue to have access to information regarding certified operators and managers.

Role of Agencies

Under the model recommended by the Working Group, it is proposed that the following bodies would have the following roles:

Local Government

- Role relating to premises not people.
- Exercise existing responsibilities as for any other commercial enterprises.
- Planning approvals by local government would be guided by and subject to WAPC policy guidelines/model provisions on sexual services businesses. There would be an ability to regulate but not prohibit such businesses.
- In transitional arrangements, ability to have input into whether planning approval be granted for existing premises but ultimate decision would be the responsibility of the Department of Racing, Gaming & Liquor.
- Environmental Health Officer role would continue to exercise responsibilities under existing legislation.

WAPC / Department for Planning and Infrastructure

- Responsibility for determining and issuing appropriate policies and model provisions to ensure a consistent and appropriate approach is adopted by local government to the granting of planning approvals for commercial sex operations.

Worksafe

- Responsibility under existing legislation for ensuring occupational safety and health issues are addressed in the workplace.
- Sex workers will be required to be employed under contracts of service ie. be employees and hence will be protected by this legislation.
- Exercise educative and enforcement functions. Existing powers include powers to inspect workplaces.
- Work in partnership with the Department of Health to:

a) disseminate information and education to persons involved in the sex industry to promote and enforce safe and healthy work practices; and
b) develop guidance notes / codes of practice / regulations to be followed in the industry, in consultation with relevant stakeholders in the industry.

- Any additional costs will be absorbed by the agency; they do not foresee another inspector would be required in the event of decriminalisation.

Department of Health

- Exercise existing public health responsibilities including disease control.
- Assess the additional demands on, and increase funding to, relevant non-government organizations such as Magenta/FPWA.
- Work in partnership with Worksafe and industry stakeholders to:
    a) disseminate information and education to persons involved in the sex industry to promote and enforce safe and healthy work practices; and
    b) develop guidance notes / codes of practice / regulations to be followed in the industry, in consultation with relevant stakeholders in the industry.
- Provide other advisory assistance to Worksafe to assist it discharge its functions.
- Exercise a re-education role for participants in the sex industry engaging in unsafe practices, through the use of public health nurses.

Department of Racing, Gaming & Liquor

- Responsibility for certification process for commercial sexual service operators and managers including powers to issue, renew, suspend or cancel certificates.
- As part of certification process required to check that applicants meet certain eligibility criteria, including that they be of good character and fit and proper persons.
- Required to liaise with WA Police during certification process.
- Responsibility under transitional arrangements for assessing and determining applications for planning approval by existing commercial sex operations, in consultation with local government.

WA Police

- Active participation in certification with right to be consulted and provide information relevant to applicants for certificates.
- Right to access register of certificated operators and approved managers.
- Power to enter premises to verify that certificates on display and being conducted by certificated operator and approved manager.
- Investigation and enforcement of breaches of the criminal law.

Under the proposed decriminalised model, the above agencies are expected to have interactions with participants in the sexual services industry. It is recommended that such agencies cooperate with each other and develop protocols with a view to assisting each other perform their respective functions.

Proposed Legislation

Changes to existing Acts

In the event that the above recommended model is adopted, a number of consequential changes to other legislation will be required. The exact nature of these changes will be determined in consultation with Parliamentary Counsel at the drafting stage of the legislation.

Prostitution Act 2000

It is proposed that, except to the extent of any inconsistency with the proposed decriminalised model, existing provisions in the *Prostitution Act 2000* be incorporated in the new proposed Act and the *Prostitution Act 2000* be repealed.

This approach has the advantage of reflecting all relevant legislative provisions relating to the provision of commercial sexual services in one Act and ensuring consistency of terminology. It is also appropriate given that certain existing provisions in the *Prostitution Act 2000* have application to the provision of commercial sexual services generally.

Criminal Code

Sections 190 and 191 of the *Criminal Code* impose restrictions on persons' involvement in prostitution and procuring persons to be prostitutes. The provisions will either be unnecessary in light of the adoption of a decriminalised model or adequately reflected in offence provisions in the new legislation. It is therefore recommended that sections 190 and 191 of the *Criminal Code* be repealed.

Review

It is recommended that the Minister for Health carry out a review of the operation and effectiveness of the Act as soon as practicable after 2 years and report to Parliament. Such a review clause is a common legislative requirement. The New Zealand legislation established the Prostitution Law Review Committee to carry out an assessment and review of the operation of the Act and report to the Minister of Justice. While the Working Group recommends that the review be conducted by a committee with representatives of key stakeholders it considers that the Minister should have discretion as to how and with whose assistance the review is conducted.

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Legislation

Prostitution Control Bill 2003 (WA)

Amendment (Simple Offences) Act 2004 (WA)

Corruption & Crime Commission Act 2003 (WA)

Criminal Code (WA)

Criminal Investigation Act 2006 (WA)

Criminal Property Confiscation Act 2000 (WA)

Gaming and Wagering Act 1987 (WA)

Health Act 1911 (WA)

Liquor Licensing Act 1988 (WA)

Occupational Safety & Health Act 1984 (WA)

Planning & Development Act 2005 (WA)

Police Act 1892 (WA)

Prostitution Act 1992 (ACT)

Prostitution Act 1999 (Queensland)

Prostitution Act 2000 (WA)

Prostitution Control Act 1994 (Victoria)

Prostitution Reform Act 2003 (New Zealand)

Prostitution Regulation Act (Northern Territory*)*

Restricted Premises Act 1943 (NSW)

Sex Industry Offences Act 2005 (Tasmania)

Summary Offences Act 1953 (South Australia)

Summary Offences Act 1988 (NSW)

Tobacco Control Products Act 2006 (WA)

Workers' Compensation & Injury Management Act 1981 (WA)

Appendix One: Submissions

Submissions were sought from the following stakeholders:

- Department of Health
- Worksafe
- Department for Planning and Infrastructure
- Department of Local Government and Regional Development
- Unions WA
- WA Council of Social Service Inc
- Chamber of Commerce and Industry WA
- Real Estate Institute of Western Australia
- WEL WA
- Law Society of WA
- Criminal Lawyers Association
- The Human Rights Committee of the United Nations Association – WA Division
- Western Australian Local Government Association
- Shire of Broome
- City of Bunbury
- City of Geraldton
- City of Kalgoorlie/ Boulder
- City of Perth
- Town of Port Hedland
- Town of Victoria Park
- Town of Vincent
- City of Stirling
- Anglican Social Responsibility Commission
- Uniting Church
- Human Rights WA
- WA Aids Council
- Public Health Association
- WA Committee for HIV/AIDS and STIs
- Sex Worker Outreach Program
- Scarlet Alliance
- 30 sexual services businesses throughout Western Australia

Submissions were received from the following invited stakeholders:

- City of Kalgoorlie/Boulder
- Town of Vincent
- Anglican Social Responsibility Commission
- Uniting Church
- WA Aids Council
- WEL WA
- Law Society of WA
- Public Health Association
- WA Committee for HIV/AIDS and STIs
- Sex Worker Outreach Program (including feedback from individual sex workers)
- Scarlet Alliance
- Worksafe
- Department of Planning and Infrastructure
- Real Estate Institute of Western Australia
- Department of Local Government and Regional Development
- Western Australia Local Government Association
- Department of Health
- 9 sexual services operators

Submissions were also received from:

- 7 individual members of the public
- The Australian Family Association
- The National Civic Council
- Catholic Women's League WA
- National Council of Women
- Linda's House of Hope
- Festival of Light Australia
- Life Ministries
- Christian Democratic Party
- WA Association of Heads of Churches
- CATWA (Coalition Against Trafficking In Women – Australia)
- Salvation Army

Appendix Two: Summary of Other Jurisdictions

There is a patchwork of different prostitution laws applying throughout Australia and New Zealand. There is no single, consistent model. The following tables provide a useful comparison of the key issues –

- Licensing / certification requirements;
- Planning requirements;
- Health requirements; and
- Police powers.

Licensing/ Certification Requirements

State/ Territory	Act	Licensing Regime
Victoria	*Prostitution Control Act 1994* Part 3	Prostitution service providers must be licensed. A person working as a prostitute in their own business is exempt from the licensing regime, however, they must register with the Business Licensing Authority. The exemption does not apply if the business is associated with another prostitution service providing business. The Business Licensing Authority determines licence applications. The Act sets out factors the Authority must consider and the circumstances in which the Authority must refuse a licence application. A licence may be granted subject to conditions and remains in force until it is surrendered, suspended or cancelled. A licensed business must at all times be personally supervised by the licensee or an approved manager.
Queensland	*Prostitution Act 1999* Part 3	Prostitution can be provided by sole operators or in licensed brothels. An eligible person may 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 escort services provided by a licensed brothel. The Prostitution Licensing Authority, established under the Act, determines the suitability of the applicant and the granting or refusal of an application for a licence. A person may only hold one brothel licence for a term of one year.
New South Wales	*Summary Offences Act 1988*	There is no licensing system under the Act. Living on the earnings of a prostitute is prohibited, however persons who own or manage a brothel are exempt.
South Australia	*Summary Offences Act 1953*	It is an offence to operate a brothel, knowingly live on the proceeds of another person's prostitution, solicit in a public place or procure another person to become a prostitute. As a result, self-employed sex workers can operate lawfully but are not licensed.
Tasmania	*Sex Industry Offences Act 2005*	It is an offence for a person other than a self-employed sex worker to own, operate or be in day-to-day control of a sexual services business. There are no licensing or registration requirements for self-employed sex workers.
Northern Territory	*Prostitution Regulation Act* [2004] Part 2 Div 2	It is an offence to operate a brothel. Sole operators can operate legally but are unregulated. Escort agency businesses must make an application to the Escort Agency Licensing Board for a licence to operate the business. Assessment of applications for licences requires the Board to appraise the eligibility and suitability of the applicant. In assessing the suitability of an applicant, the Board may consider their criminal history.
Australian Capital Territory	*Prostitution Act 1992* Part 2	Brothels and escort agencies are required to register with the Registrar of Brothels and Escort Agencies. The Registrar operates from the Department of Fair Trading. There is no probity investigation conducted as part of the registration process. Sole operators can operate legally and register with the Department of Fair Trading in the same way as brothels and escort agencies.
New Zealand	*Prostitution Reform Act 2003* Part 3	Every operator of a business of prostitution must hold a certificate, which can be obtained on application to the Registrar of the District Court. Escort agencies come under this regime. Small owner-operator businesses are not required to obtain a certificate. A person is disqualified from holding a certificate if he or she has been convicted at any time of any disqualifying offences set out in the Act. The certificate expires after one year but may be renewed.

Planning Requirements

State/ Territory	Act	Requirements
Victoria	*Prostitution Control Act 1994* Part 4 *Planning and Environment Act 1987*	The Act sets out the planning controls for brothels. An application must be made for a permit. The responsible authority must consider a list of factors in determining the application, including the location of the brothel to places of worship, schools, hospitals, adequate parking and access, the amenity of the neighbourhood, proposed size of the brothel and proposed method and hours of operation and guidelines about the size or location of brothels issued by the Minister administering the *Planning and Environment Act 1987* (s.73). The responsible authority must refuse to grant a permit in certain circumstances, including if the brothel is on land that is within an area zoned for residential use, (generally) the land is within 100 metres of a dwelling, (generally) the land is within 200 metres of a place of worship, hospital, school, kindergarten, children's services centre or any facility or place regularly frequented by children for recreational or cultural activities, or special circumstances set out in guidelines issued by the Minister. (The responsible authority is the relevant municipal council or Minister – s.13 *Planning and Environment Act 1987*).
Queensland	*Prostitution Act 1999* Part 4 *Integrated Planning Act 1997* 3.1.7; Sch 8A	A development application is required. The assessment manager (local government) must refuse a development application if the application land is within 200m of a primarily residential area, or is within 200m of a residential building, place of worship, hospital, school, kindergarten, or any other facility or place regularly frequented by children for recreational or cultural activities - measured according to the shortest route a person may reasonably and lawfully take, by vehicle or on foot, between the application land and the other land; or within 100m of a residential building, place of worship, hospital, school, kindergarten, or any other facility or place regularly frequented by children for recreational or cultural activities - measured in a straight line; or, for land in a town with a population of less than 25000, the local government for the local government area has required that all applications within the area be refused and the Minister has agreed that the applications should be refused. Brothels are limited to a maximum of 5 rooms. An appeal may be made to an independent assessor.
New South Wales	*Restricted Premises Act 1943* Part 3	Local authorities handle the location of brothels and have developed policies for the management of brothels in their area. Under the *Restricted Premises Act 1943* a local government can apply to the Land and Environment Court for an order than an owner or occupier of a brothel is not to use or allow the use of the premises for the purposes of a brothel. A local government can only make such an application when it is satisfied that it has received sufficient complaints about the brothel to justify making the application. The Court may consider a range of factors in making the application, including whether the brothel is operating near a church, hospital, school or place frequented by children, whether the brothel causes a disturbance in the neighbourhood, sufficient off-street parking, suitable access, the size of the brothel, the amenity of the neighbourhood.
Tasmania	*Sex Industry Offences Act 2005*	It is an offence to be a commercial operator of a sexual services business. There are therefore no planning requirements under the Act.
Northern Territory	*Prostitution Regulation Act* [2004]	It is an offence to operate a brothel but sole operators and escort agencies are legal. There are no specific planning requirements under the Act.
New Zealand	*Prostitution Reform Act 2003* ss 13-15	The Act allows territorial authorities (local councils) to create bylaws to influence where brothels can operate.

Health Requirements

State/ Territory	Act/Guidelines	Health Checks
Victoria	*Prostitution Control Act 1994* ss 19, 20 Prostitution Control Regulations 2006	It is an offence to allow a prostitute infected with a sexually transmitted disease (STD) to work in a brothel. It is a defence if the person reasonably believed that the prostitute was undergoing regular health checks (blood tests, swab tests) and reasonably believed the person was not infected with an STD. Similarly, a prostitute must not work if infected (same defence applies).
Queensland	*Prostitution Act 1999* ss 89,90 Prostitution Regulations 2000	A licensee or approved manager of a licensed brothel must not permit a person to work as a prostitute if he or she is infective with a STD. It is a defence if the licensee/ approved manager believed on reasonable grounds that the person had regular medical examinations (six weekly checks) and was not infective with a STD. Medical examinations cannot be used to induce a client to believe a prostitute is not infected with a STD.
New South Wales	*Public Health Act* 1991 s.13; WorkCover NSW Health and Safety Guidelines for Brothels	Under general public health legislation, a person (not only a sex worker) must disclose prior to intercourse if he or she has an STI and the risk of transmission. Sexual intercourse is defined as vaginal, anal or oral insertion of a penis or cunnilingus. Regular health checks are recommended under OHS. The employer should pay for the medical check and for the employee's time while undergoing medical examination. Sex workers should attend a sexual health centre or private doctor for sexual health assessment, counselling and education appropriate to individual needs. Frequency of assessment is a matter for determination by the individual sex worker in consultation with his/her clinician.
South Australia	*Summary Offences Act 1953*	The legislation is silent on this issue.
Tasmania	*Sex Industry Offences Act 2005* s.12	Sex workers and clients must adopt safe sex practices including taking all reasonable steps to minimise the risk of acquiring or transmitting a sexually transmissible infection.
Northern Territory	*Prostitution Regulation Act* [2004] s.20	Medical examinations cannot be used to induce a client to believe a prostitute is not infected with a STD (and a licensee must take all reasonable steps to ensure such an inducement does not occur).
Australian Capital Territory	*Prostitution Act 1992* ss 24, 25, 26	Each operator and owner of a brothel/ escort agency must take reasonable steps to ensure that a prostitute does not provide commercial sexual services if he or she is infected with a STD. It is an offence for a person to provide commercial sexual services if he or she knows, or could reasonably be expected to know, that he or she is infected with a STD. Medical examinations cannot be used to induce a client to believe a prostitute is not infected with a STD.
New Zealand	*Prostitution Reform Act 2003* ss 8, 9, 10	The Act sets out health and safety requirements. An operator of a business of prostitution must take all reasonable steps to minimise the risk of sex workers or clients acquiring or transmitting sexually transmissible infections. An operator must not state or imply that a medical examination of a sex worker means the sex worker is not infected or likely to be infected with a sexually transmissible infection. The same obligations apply to sex workers and clients.

Police Powers

State/Territory	Act	Police Powers
Victoria	*Prostitution Control Act 1994* Part 3, Div 8A, 9; ss61K, 62, 64 *Fair Trading Act 1999*	A distinction is drawn between powers of inspectors (who are appointed under the *Fair Trading Act 1999*) and police officers. Inspectors are conferred with extensive powers to investigate compliance with the Act. Members of the Police Service above the rank of inspector can at any time enter and inspect premises. Power is granted in certain circumstances to enter unlicensed premises without a search warrant. Police can also require a licensee or approved manager to provide their names or address and require persons to state their age if there is reason to believe that there may be a child engaged in prostitution. The powers of entry to do not extend to entering private individual residential premises.
Queensland	*Prostitution Act 1999* Part 3 Div 3 ss 59-61	Police of at least the rank of inspector or specifically authorised in writing by such a senior officer to enter a licensed brothel on the particular occasion do not require a warrant to enter a brothel. The officer may also perform certain other actions with the written authorisation of the licensing authority, such as inspecting and seizing items and requiring certain documentation to be produced. Police also have the power to require a licensee and approved manager to provide their name and address and, if they reasonably believe a person in a licensed brothel may be a minor, to demand particulars of their age and require relevant proof in appropriate circumstances.
New South Wales	*Summary Offences Act 1988* s.21	Police require a search warrant to enter and search a brothel without consent. A member of the Police Force may apply to an authorised officer for the issue of a search warrant if the member of the Police Force has reasonable grounds for believing that section 16 or 17 [prostitution or soliciting in massage parlours; allowing premises to be used for prostitution] is being / will be contravened. An authorised officer is a Magistrate, Registrar of Local Court or authorised employee of Attorney General's Department (s.3 *Law Enforcement (Powers and Responsibilities) Act 2002*).
South Australia	*Summary Offences Act 1953* s.32	It is illegal to operate a brothel in South Australia. The Commissioner or a senior police officer, or any other police officer authorised in writing by the Commissioner or a senior police officer, may at any time enter and search premises which he or she suspects on reasonable grounds to be a brothel.
Tasmania	*Sex Industry Offences Act 2005* s.15	It is illegal to operate a brothel in Tasmania. A police officer of the rank of sergeant or above may enter premises without warrant if he or she has reasonable grounds to suspect an offence of operating a brothel, offence against a sex worker or a prostitution offence involving a child is being or is likely to be committed before entering the premises (ss. 4, 7, 8(2), 9).
Northern Territory	*Prostitution Regulation Act* [2004] s.52	It is illegal to operate a brothel in the Northern Territory. An authorised member may, at any time, enter premises which are or are reported to be, or which are reasonably believed to be, a brothel. An authorised member is a member of the Police Force authorised in writing by the Commissioner of Police or a member of the Police Force of or above the rank of Sergeant. Also right to enter escort agency business.
Australian Capital Territory	*Prostitution Act 1992* s.28	The power of entry of a police officer is restricted to circumstances where the officer believes on reasonable grounds that certain offences [ss 20, 21, 23] relating to child prostitution are being or are likely to be committed on the premises and it is necessary to enter the premises to prevent the commission or repetition of the offence, investigate the offence or apprehend an offender.
New Zealand	*Prostitution Reform Act 2003* Part 2 ss 30-33	A minimalist approach is taken in New Zealand. Police require a search warrant to enter and search a brothel without consent. An application must be made to a District Court Judge, Justice, Community Magistrate or Registrar of a District Court. The form and content of the warrant and the powers conferred are prescribed under the Act.