

Regulating prostitution – the pitfalls of perception

They say that prostitution is one of the oldest professions. If so, then how to manage prostitution – how to balance the needs of clients, sex workers and the wider community – must be one of the oldest problems, and therefore, one of the oldest public policy dilemmas faced by any organised society.

The history of prostitution control in Queensland is an interesting one, but for brevity's sake I will skip to more recent history. I will cover the story from the mid-1980s.

The unhealthy relationship between police and the sex industry in Queensland is well documented, and has been a long-term corruption risk for the Queensland Police Service. Public concern about this relationship led to the establishment of the Fitzgerald Inquiry in 1987 and the subsequent prosecution and imprisonment of the Police Commissioner. One of the first jobs for the newly created Criminal Justice Commission (CJC), established in 1989 on recommendation of The Fitzgerald Report, was to review the management of prostitution in Queensland and to recommend how best to regulate the prostitution industry.

The Goss Government responded to the CJC's 1991 report by introducing the *Prostitution Laws Amendment Act 1992*, essentially the first attempt in Queensland to control prostitution via statute.

The 1992 legislation was a fairly hardline law enforcement approach which only allowed for the operation of prostitution by sole operators, and had the effect of disrupting much of the existing brothel-like organisation. Ultimately though, this tough stance resulted in much of the illegal industry moving

underground. The unintended consequence of this approach meant that the public health imperative – ensuring the sexual health of the industry – was seriously compromised.

The *Prostitution Act 1999* (the Act), which came into effect on 1 July 2000, was introduced in the hope of addressing the consequential short-comings of the Prostitution Laws Amendment Act. The Act appears to be loosely modelled on the Victorian approach to regulating prostitution with several notable differences (the Victorian legislation allows for six rooms in a brothel rather than five, outcalls from brothels are permitted and there is no restriction on the number of sex workers allowed on premises).

Queensland's regulatory regime was intended to achieve four main objectives:

1. to ensure the sexual health of the community through mandating safe sex practices within licensed brothels and requiring sexual health checks of sex workers operating legally in Queensland;
2. to ensure the safety of sex workers within licensed brothels;
3. to protect sex workers from exploitation by requiring licensed brothels to establish acceptable workplaces for their workers; and
4. to prevent official corruption.

This new legislation has established that, along with sole operators, small licensed brothels can operate within designated areas throughout Queensland. The Act also established the Prostitution Licensing Authority (PLA), an eight member

Government-appointed board, supported by the Office of the PLA. The Government was keen to ensure that the constitution of the Authority appropriately represented not only the community but those key government agencies whose responsibilities included a sex industry dimension.

Corporate governance frameworks are, amongst other things, developed to reflect the legislative framework within which an agency operates. The PLA understood its significant role in administering the Act and the powers given to it and as a consequence the PLA's corporate governance framework is robust, specific to our unique environment and ensures the power of the Authority is harnessed to achieve its purposes.

The statutory functions of the PLA are:

- To decide brothel licence and brothel manager applications;
- To monitor the provision of prostitution through licensed brothels;
- To discipline, if necessary, brothel licensees and managers;
- To receive complaints about prostitution;
- To liaise with police and other government departments and agencies in carrying out their functions with regard to prostitution and;
- To advise the Minister for Police about relevant programs relating to prostitution and about the development of codes of practice for licensed brothels.

Supporting the PLA is a small staff of nine, which includes

officers to carry out the compliance, probity, media surveillance, finance, research and policy functions.

In 2000, I was appointed as the inaugural Registrar of the PLA, providing me with a unique perspective on regulating the ‘un-regulatable’ – a hitherto illegal and anonymous industry that is repudiated by the majority of the wider community.

The PLA has always been conscious of both the implicit and explicit risks facing its work.

In 2001 the PLA approached the Crime and Misconduct Commission (CMC) to undertake a risk review of security, fraud and corruption detection and prevention following the identification of potential risks to the PLA. The list of potential risks, which I will quickly run through here, shows that the PLA faces many of the ordinary risks that any public sector agency must address.

- Physical security of the PLA office – the PLA moved into offices that were previously used by a private company and it was not at that time, properly fitted out. Risks included:
 - ✓ break-ins and unauthorised access
 - ✓ lack of adequate security and duress alarms and
 - ✓ unauthorised visitors

- Threats to information and data –

In the early days we had not thought about things like soundproofing or the incidence of illegal listening devices – some of the risks included:

- ✓ lack of capacity to sweep for illegal listening devices

- ✓ loss of laptops and data and
- ✓ inadequate disaster management strategies.

- Staff –
 - ✓ lack of relevant support mechanisms
 - ✓ small number of staff and unplanned leave and
 - ✓ ethical dilemmas and threats.

- Financial systems and records – in a small agency it is difficult to ensure separation of duties so there are risks in handling cash and using credit cards, some risks include:
 - ✓ misappropriation of cash and
 - ✓ misuse of corporate cards.

- Other Risks –
 - ✓ breakdown of important networks and relationships with clients/stakeholders and the lack of strategies in place to recover lost ground
 - ✓ inadequate Code of Conduct and
 - ✓ inadequate computer system.

These risks have been comprehensively addressed through the work we have done to establish, amongst other things, strong financial and administrative policies and procedures, including strengthening the PLA Code of Conduct, appropriate security arrangements and good clarity around job roles and responsibilities. We have introduced thorough complaint procedures and provisions to protect whistleblowers, and we strive to maintain high staff morale. Perhaps most importantly since the

2001 CMC review, the PLA now undertakes regular comprehensive risk reviews and provides a written report to the Authority with comment on how identified risks are managed.

I want to turn now to talk in greater depth about four broader risks that have become strong themes for the PLA.

These risks are more challenging to address and respond to, and relate to perception and misperception about the sex industry and the PLA's role in regulating it. In my experience to date, one of the more challenging aspects of the PLA's work has been managing perceptions.

Perceptions are not always created as a result of an event or thing but are sometimes deliberately manufactured to achieve the specific purposes of a stakeholder. Less so now perhaps because of the strength of our networks and the relationships we have established, but in the early days there were those who sought to promote negative perceptions of the PLA to shore up their own profile.

Most government agencies will have to manage perceptions at some time, but for the PLA, it is an imperative that can be neither underestimated nor ignored. The PLA continues to be conscious of the role that perceptions play as we work towards achieving the objectives of the Act.

1. The perception of industry capture

From the word go we have been acutely aware of the perception of industry capture. While industry capture is a very real risk for the PLA, my focus today is on the perception by some that the PLA has been captured.

In providing advice to Government, and through the dual experiences of licensing and compliance monitoring, the PLA has at times been required to comment on the operational difficulties of the Prostitution Act.

For example, within the first six months of the Act's operation, the PLA articulated concern about the application of the town planning rules relating to development applications for brothels. Some local governments had deliberately blocked the location of brothels in their region. What was curious at the time was that some of these local government areas had reputations of having high levels of illegal and legal prostitution activity and yet chose to opt out of the legal framework.

While these issues were eventually solved through appropriate amendment to the Act which compelled local government to approve, in certain circumstances, the establishment of brothels in appropriate areas, it was at the expense of some sectors of the community seeing the PLA as actively promoting and advocating on behalf of the sex industry.

Another perception of industry capture has arisen through the PLA's attention to the financial viability of licensed brothels.

The regulation of prostitution can only really be achieved when the majority of the sex industry comes within the legal framework. Unless the legal industry has the tools to enable it to capture a market which is largely serviced by the illegal industry, it can perhaps do no better than take second place.

The PLA has recognised that the licensed industry in Queensland, in its present form, is not yet capable of competing on a commercial basis with the illegal industry.

While some licensed brothel owners compare the operations and expenses of licensed brothels with the operations and expenses of illegal operators I personally do not see this as a useful exercise. I think you can no more compare these as you could the operations and expenses of a pharmacy with that of an illegal drug dealer.

To ensure the growth of a sustainable licensed sex industry in Queensland the Government must look at the available opportunities to enhance the commercial attractiveness of licensed business and so entice those who are currently operating illegally, into the licensed industry.

Over the years the industry has advocated several options they see as closing the commercial gap between themselves and the illegal operators. While some of these are under consideration by Government, some in the industry see the PLA's lack of ability to influence or indeed demand that Government effect change, as supporting the illegals and in some very extreme cases, in the early years, the PLA was perceived to have set up the licensed industry to deliberately fail.

While the PLA generally has an effective and co-operative relationship with brothel owners and managers as a group, it is our one on one relationship with our clients where we have worked hard and which are pivotal to managing perceptions.

2. Recruitment and staffing: the perceptions of prospective employees

We realised early on that one of our greatest assets was also one of our principle risks. Our staff.

Recruitment is a big deal for the PLA. It is more than filling positions with people who can meet the selection criteria. It is about engaging people who are able to cope with the nature of the industry in a way that is relaxed, while at the same time professional.

We have always had very strong interest in the positions we have advertised, particularly in the compliance area. Our first round of recruitment for Compliance Officers led to over 100 applications. Saying that however, our aim is to present our work to prospective employees in a way that ensures the interest of suitable people.

It is not unusual for the PLA to lose temporary staff from employment agencies after the first week because of the things that they are sometimes exposed to. Even taking phone messages or hearing the details of a complaint has been more than some can cope with.

If I may share with you, I have been the contact person for a number of jobs advertised by the PLA and as a result have had some outrageous conversations with prospective applicants. For example, I have been asked how long have I have been out of the industry, I have been told that I have a great voice for phone sex, I have been told that he, the interested applicant, has been seeing prostitutes for over 10 years and so he would be good for the job because he knows everything about them, I have been asked how many brothels does the Government own and the doozy was a question about if he got the job was he entitled to staff discounts at brothels.

Early on, the PLA created two Compliance Officer positions to undertake the work of compliance monitoring. Compliance officers are our frontline workers, the staff who are most often the

‘face’ of the PLA to licensees, managers and sex workers, and are the individuals who are on-site and therefore most at risk of developing a ‘dangerous liaison’. As a consequence of the high degree of onsite work required of these officers, we decided they should operate as mixed gender teams. Also, due to the close nature of their relationship with the sex industry, they would need to undergo psychometric testing prior to recruitment. Applicants also undergo extensive personal probity investigations and the positions are only offered on a permanent three year term. Once employed at the PLA it was important to have relevant training and appropriate systems in place as well as their confidence of my support in their onsite work.

Another critical element in supporting our staff is creating an appropriate, relevant and supportive work environment. Our workplace culture is fairly organic and provides opportunities for staff to de-brief, purge, off-load or just ‘have a laugh’ about issues they deal with or are confronted with at work; after all, these are not always things that they can take home and discuss with their partners and families.

We have a saying at work that a normal day at the PLA would make an average person blush.

We also get to hear of and see first hand the very worst aspects of the industry. Just because our core business is licensing and monitoring we are certainly not quarantined from dealing with people who are involved in the illegal industry. We can be bruised just as easily as the next person. Even when I think I have heard it all after seven years in this role, I can still be utterly stunned by the things I am told. On these thankfully few occasions, we see our work mates as a soft place to fall.

Remember earlier when I spoke of some conversations I had with prospective job applicants, well, on this one occasion I accompanied a colleague to a licensed brothel for the purposes of its first inspection after opening for business. We were duly stationed with the Manager at the front reception desk reviewing the surveillance and security systems in place, when a prospective client entered the reception area. The Manager, obviously comfortable with our being there, turned to the client, began her spiel, described the sex workers on shift and explained how the service would operate. Without further ado, the client pointed to my work colleague and asked how much she charged for an hour. Without waiting for a response he then said he would “take her”. This is just one of a million examples I can give you but the need for us to be able to share and sometimes have a laugh about these times with our work mates in a protected and understanding environment is obvious.

3. The sex industry’s perception of the PLA

We have been conscious of the need to gain not only the trust of the community and Government, but also the trust of the sex industry itself. In fact, without the confidence of the sex industry, our effectiveness in achieving our objectives can be significantly compromised.

The sex industry has traditionally only had negative associations with State authority, and the PLA has in many respects been faced with an uphill battle in forging relationships with sex workers (particularly through our role of regulating prostitution advertising) and others who have are involved in the industry.

We felt the need for the PLA to be perceived as an agency that will respond appropriately to industry concerns, that will maintain

the anonymity of individuals in the sex industry, that can address complaints effectively and that can collaborate with other agencies to improve the industry.

We have tried to meet with and listen to sex workers, brothel owners and managers from both legal and illegal, so that we create a profile as an agency that understands the industry.

In promoting this profile however, it can lead to another risk, which is a mistaken perception of partisanship with the industry. There is a danger, unless this is carefully handled, that participants in the sex industry can come to expect the PLA to be an advocate for the industry in a way that would jettison the PLA well beyond the boundaries of its statutory obligations.

Gaining the trust of the sex industry cannot be achieved at the expense of the regulatory role we are committed to undertake.

Trust in us by some people in the industry is sometimes no more than just a lingering scent, especially when, as an agency, there comes a need to exercise our authority. They perhaps mistake friendliness and empathy as a sign of weakness. Generally though, communicating and liaising with the industry in an environment where the boundaries are clear and recognised by all up front and educating the industry about the role of the PLA is sometimes the closest we can come to smoking a peace pipe. Nevertheless, it is a fine line, and one that we walk every day.

4. Debunking public misperception of the sex industry

Prostitution is distasteful to most people. It is a dirty subject for the majority of the wider community, and nobody wants a brothel in their local area.

Jo Public imagines that a brothel has sleazy music blaring, huge flashing neon signs with half naked women disporting themselves out the front. Jo assumes that drug use goes hand in hand with prostitution, that the workers are ridden with sexually transmissible diseases, and that clients are violent and threatening characters that might prey on any woman they see in the street. Jo also fears for the moral danger he imagines is about to descend on his innocent family, his small children, his young daughters. The average ‘family’ man or woman fears the impact that even driving past such an establishment might have on their children.

Of course, none of these images are borne out in the real world of the prostitution industry. The majority of workers and clients cannot be distinguished from any other average rate-payer; in fact, look around you here today – there may be at least a handful of you here who have been either a client or a sex worker, and mostly, nobody else would be any the wiser.

Perhaps one of our biggest risks is that the public believes that the sex industry can be ignored or else enforced out of existence. But the sex industry is undoubtedly here to stay. As Justice Bill Carter, former Chair of the PLA, used to say: “Sex sells; there are those who are willing to purchase it, and there are those who are happy to sell it.” As a permanent feature of our social landscape, it is important to educate the community about the kinds of people we are talking about so that the public understands that sex workers and their clients deserve protection and fair working conditions.

I would like to illustrate this point by telling you about a protest meeting that I attended a number of years ago. The meeting had been organised by religious groups, where the local newspaper had reported that a planning application had been received by the

Council for a brothel. I attended the meeting and listened to the vocal few who were adamant that their town would not be the location of a licensed brothel. Afterwards, I was approached by the State Manager of a Queensland Health funded sex worker organisation and was invited to attend a small informal meeting between her and some local sex workers. What was interesting was at the meeting one of the sex workers commented that the most vocal man at the meeting was none other than one of her best clients. This goes to show that even the most morally righteous of us are not necessarily immune to the temptations of the flesh.

These perceptions that I have discussed are just some of the issues that must be considered when working towards the goal of preventing corruption through regulating prostitution.

It is critical to ensure a sustainable licensed industry and one that is attractive enough to entice the illegal industry to join. It is critical for prostitution regulation and its worthy objectives, to be perceived by the community as a valuable goal. It is critical that those who object to having a licensed sex industry can access relevant information to better inform themselves. It is critical to have a healthy organisation to undertake the work of licensing and monitoring on behalf of the community. And it is critical that the sex industry has faith in the Government mechanism established to do the job.

Closing quote.

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