

HUMAN RIGHTS COMMISSION

Discussion Paper No. 8

Prostitution and Human Rights:
A Western Australian Case Study

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This is the eighth of the Human Rights Commission's Discussion Paper series.

The Discussion Paper reports the results of a study undertaken by Dr Judy Edwards for the Council for Civil Liberties in Western Australia in 1984 and 1985. The contract with the Council was for a report containing a balanced discussion of alternative legislative approaches to prostitution in Western Australia, and of the human rights associated with those approaches. There was to be Community involvement in the study.

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FOREWORD

Early in 1984 the Human Rights Commission invited individuals and organisations in Western Australia wishing to undertake research on human rights issues to submit proposals to it for consideration. Among the proposals selected was one from the Council for Civil Liberties in Western Australia for a grant to assist it in exploring how law and practice relating to prostitution in Western Australia, then under review, could be modified to improve the observance of the human rights of those involved in prostitution.

The problems associated with prostitution were at that time under consideration in a number of States and the Commission regarded the proposal from the Council for Civil Liberties as an opportunity to support a study in which human rights aspects would be given special prominence. The human rights the Commission saw as particularly relevant are contained in the International Covenant on Civil and Political Rights (ICCPR) and in the Convention on the Elimination of All Forms of Discrimination Against Women (Convention) and the associated Sex Discrimination Act 1984. Among the rights particularly involved are:

the right to privacy (ICCPR Article 17);

the right to freedom of association with others (ICCPR Article 22);

the right to immunity from Cruel, inhuman or degrading treatment or punishment (ICCPR Article 7);

the right to freedom of expression (ICCPR Article 19);

(iv)

the rights of the family (ICCPR Article 23);

the right to liberty of movement (ICCPR Article 23);

the right to liberty and security of person (ICCPR Article 9);

the right to recognition as a person before the law (ICCPR Article 26);

the right of women to special protection in work (Convention Articles 2 and 11); and

the right of women to protection from exploitation through prostitution (Convention Article 6).

References are made in the text of the paper attached to these rights, but there is less discussion of them, of their implications and of the way in which their conflicting requirements should be met in practical situations than the Commission would have hoped. Nonetheless, the Commission has felt it desirable that the study be published because it focuses attention on issues related to the containment of prostitution, as distinct from its prohibition. It also discussed the way in which alternative policies could be implemented, and records the perceptions of individuals and organisations in Western Australia concerning prostitution.

The Commission issues this paper in the hope that it will stimulate discussion of the human rights aspects of prostitution, having in mind the many rights involved and that there are also many individuals and groups within the community whose rights are affected, including:

prostitutes, both men and women;
police;
welfare and health workers;
local communities;

(v)

concerned organisations; and
individuals.

The Commission, while not necessarily accepting all the arguments and conclusions in the study, believes it is valuable and that it is important that discussions about prostitution are carried on with an awareness of the human rights involved. The Commission expresses its thanks to the Council for Civil Liberties and to Dr Edwards for the effort they have put into the project and their commitment to the human rights issues it entails.

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1.

INTRODUCTION

The past decade has seen the worldwide emergence of a new politics of prostitution. Women working as prostitutes have begun to organise collectively, to speak out and to press for change. This action has met with little public opposition. Rather, the community is increasingly curious about the situation and those involved.

Prostitution first came to be recognised by some West Australians as a 'serious social problem' in the late 1890s.¹ Despite changes in community attitudes, the law and its application, many of the concerns expressed then are still being echoed now. In mid 1983 as a result of the prominence given by the media to problems associated with prostitution, and complaints about the structure of prostitution in Victoria and New South Wales, the Western Australian Council for Civil Liberties (hereinafter referred to as the WA CCL) formed a sub-committee to examine prostitution from a human rights perspective. Responding to the challenge by the Minister for Police in W.A., Jeff Carr, that 'if someone is recommending a better system, we will be happy to look at it'², the WA CCL sought funding to study this issue in greater depth. The Human Rights Commission of Australia wished to investigate the potential for infringement of the most basic human rights inherent in an activity that has an illegal element to it or that has an 'unofficial' form of control over it.

The issue of prostitution has often been discussed in the context of health, morality, legality or public nuisance. Rarely have the rights of the people directly involved in or affected by prostitution been addressed. By assisting the WA CCL to investigate and comment on the policy of containment in W.A. it was hoped that broad human rights issues as well as human rights issues specific to prostitution in W.A. would be effectively canvassed.

A grant was subsequently obtained from the Commission for a project on 'The Human Rights Implications of Legislation on Prostitution - Western Australia - A Case Study'.

The terms of reference of this project are:

1. to examine the present policy of containing prostitution;
2. to explore alternatives to this policy as they would affect all members of the community;
3. to address the question of what form legislation should take which would be consistent with the rights recognised under the Human Rights Commission Act 1981 (Cwlth) and the Sex Discrimination Act 1984 (Cwlth); and
4. to canvass community attitudes to prostitution.

The project was undertaken by Judy Edwards, Vice-President of the WA CCL who used a variety of methods to obtain information for this project. Interviews were conducted with prostitutes, customers, people connected in some other way with prostitution and members of the public. Written information was sent to over 200 groups in W.A. seeking their views on prostitution. A public seminar on 'the Human Rights Aspects of Prostitution' was held in Perth on 8 December 1984. For further information on methodology see Appendix I.

For the purposes of this project, prostitution is defined as 'the provision of sexual services, by an individual of either sex, for financial gain'. Although this definition includes male prostitutes the main focus of the project is on female prostitutes and male customers. There are two reasons for this:

1. The law seems to treat male and female prostitutes quite differently; and
2. The informal controls on male prostitutes, the attitude of the community and the problems encountered by male prostitutes, are very different to those of the female prostitute.

Human rights are defined as the rights and freedoms recognised in the International Covenant on Civil and Political Rights (referred to as the ICCPR or the Covenant) ratified by Australia on 13 August 1980 and the Convention on the Elimination of All Forms of Discrimination Against Women (referred to as the Convention) which was ratified on 28 July 1983. There is also reference to 'entitlements' throughout the project. These are privileges, rights or entitlements that people may think they should receive but are not, however, set down in either of the international instruments.

PART 1 - BACKGROUND INFORMATION

A. THE LAW AND PROSTITUTION IN WESTERN AUSTRALIA

Prostitution as such is not illegal in Western Australia. That is, the act of selling sexual favours is not against the law in W.A. This however does not apply to male homosexual prostitution nor to acts of prostitution which involve anal intercourse between people of the opposite sex. These acts are illegal in themselves and anyone who performs them is committing an offence in this State under ss. 181 and 184 of the Criminal Code.

Although prostitution is not illegal, many acts ancillary to it are. These are covered by sections of the W.A. Criminal Code, the Police Act (1892-1982) and to a lesser extent the Local Government Act (1960-1982). The offences under the Criminal Code are triable before Judge and Jury; those under the Police Act and Local Government Act are dealt with in Courts of Petty Sessions, before a Magistrate.

The law is mainly concerned with three practices associated with prostitution. These are soliciting, keeping a brothel and living off the earnings of prostitution.

1. Soliciting

Soliciting customers in a public place is an offence under the Police Act, which defines three specific types of soliciting - ordinary, riotous or indecent, and persistent.

Ordinary soliciting is covered by s.59 of the Police Act. This is the invitation of trade by a prostitute in a public place. The maximum punishment for this offence is a fine of \$40 or one month imprisonment.

Riotous or indecent soliciting is an offence under s.65(8) of the Police Act and involves a maximum penalty of \$500 fine or six months imprisonment. This refers to a 'common prostitute' behaving in a riotous or indecent manner in public.

Persistent soliciting, the maximum penalty for which is a \$1,000 fine or twelve months imprisonment, is an offence under s.76G(1)(b) of the Police Act.

2. Keeping a brothel

Keeping a brothel in Western Australia is an offence under both the Criminal Code and the Police Act. Section 209 of the Criminal Code provides for a maximum penalty of three years imprisonment for this offence. It appears however that proceedings are rarely taken under this section, as it gives the defendant the option to be tried before a Judge and Jury. Prosecutors prefer to use the relevant sections of the Police Act. This is simpler, cheaper, quicker and usually just as effective as far as the Prosecutor is concerned.³ Section 76F of the Police Act makes the keeping of a brothel an offence, with a maximum fine of \$100 or six months imprisonment for a first offender. The penalty increases to \$200 or twelve months imprisonment for second and subsequent offences.

This section also deals with managing or acting and assisting in the management of any premises used for the purposes of prostitution. As a consequence, it can be used to prosecute madams who run brothels and prostitutes found working in brothels, the latter being prosecuted for assisting in the management of the brothel.

It would appear that escort agencies may also fall under s.76F of the Police Act in W.A. This follows a case dealing with the identical South Australian statute, in the High Court of Australia in 1972, in Samuels v. Bosch. The court ruled that escort agencies are premises for the purpose of prostitution.

This section is also relevant to a person who conducts prostitution in his/her home. In this situation where premises are being kept as a place of residence the prostitution is regarded as being incidental, and therefore no offence is being committed .4

3. Living off the earnings of prostitution

Pimping or living off the earnings of prostitution is an offence under the Police Act. Section 76G of the Police Act makes it an offence to knowingly live wholly or partly off the earnings of prostitution. The maximum punishment for this is a \$1,000 fine or twelve months imprisonment.

There are also a number of other provisions relating to prostitution. However it appears that these are rarely invoked. They include:

Section 191 of the Criminal Code, dealing with procurement of a woman to become a prostitute, carries a maximum penalty of two years imprisonment for this offence.

Section 194 of the Criminal Code, making it an offence to detain a woman in a brothel against her will, or having a woman under 21 years of age on the premises, allows for a maximum penalty of two years imprisonment.

Section 65(9) of the Police Act makes it an offence to habitually consort with (amongst others) known prostitutes.

Section 42 of the Police Act gives the police power to remove, amongst others, any 'common prostitute' from what may be loosely termed places of public entertainment.

Section 195 of the Criminal Code makes it an offence for a person involved in running a brothel to permit a male under 18 years of age to resort to the brothel for the purposes of sexual activity with a female. This is punishable by a maximum of two years imprisonment.

There are further provisions in s.206 of the Local Government Act which confer on Councils, inter alia, the right to make by-laws for the suppression and restraint of brothels and for prohibiting a person from keeping or managing, or assisting in the management of, a brothel, house of assignation, a place used for habitual prostitution etc.

These powers do not concern the police but rather the local authorities who have the responsibility of enforcing them, for example by utilising local council orders on noise abatement.

B. THE NATURE AND EXTENT OF PROSTITUTION IN WESTERN AUSTRALIA

Prostitution, as defined previously, is 'the provision of services of a sexual nature, by an individual of either sex, for financial gain'. An exact account of prostitution is always difficult to provide. This is due to a number of factors including the ubiquitous and changing nature of prostitution and the movement by prostitutes in and out of the profession and between different settings.

The following report is limited by these factors and also by the time and financial restraints placed on this project.

Prostitution in W.A. exists in a number of forms

1. Brothels and massage parlours ('parlours')

There are about fifteen premises operating in Perth and the inner suburbs. Services include massage, masturbation of the male client by the prostitute ('hand relief'), sexual intercourse, oral sex and anal intercourse. There is an overlap of services offered by massage parlours and brothels, with most massage parlours being fronts for brothels. It is believed that two parlours limit their services to 'hand relief' only. There is a male sauna where it is alleged that prostitution occurs between men.

Prices vary - with sexual intercourse for approximately 15-20 minutes costing \$20-\$30 and additional charges being made for extra services such as oral sex.

The worker generally receives 40% of the fee, 50% going to the madam and the remainder for taxation. In some cases the prostitute keeps the 'extras' money. This means that often a worker receives only \$8 for the act of sexual intercourse. Taking into account the amount of idle time that may be experienced, it is apparent that working in a parlour is not necessarily a high earning occupation.

The premises differ considerably in size and in the quality of their fittings. They range from being basically comfortable to quite lavish, with spa baths and saunas in addition to bedrooms. It has been stated that a number of premises have inadequate bathroom facilities and that it is not possible for the worker to shower between clients if desired.

There tends to be a high turnover of women working in brothels and some movement of workers between brothels.

2. Escort agencies

The exact number of escort agencies operating in Perth is difficult to ascertain. This is due to some agencies advertising under more than one name and phone number and some brothels (approximately nine) offering a visiting escort service. There are around seven escort only services employing women, and two employing men. Virtually all customers are male. The client contacts the agency and an arrangement is made for a woman (usually) to visit the client at his hotel/motel room or home, or at a hotel/motel room arranged by the agency. The majority of such contacts are sexual in nature, although agency operators and workers report that a small number of clients are not particularly interested in sex but seek company instead.

Prices range from \$60 for straight-forward sexual intercourse for 30 minutes to \$100-300 for at least an hour's company and sexual activity. The amount received by the worker varies, 20% is usually kept by the agency for taxation purposes and a further percentage is retained for management costs.

It seems that most prostitution in W.A. occurs in brothels and massage parlours or through escort agencies.

3. Private operators

There are a growing number of men and women who work periodically as solo agents, offering sexual services for financial reward. They work from home and/or offer visiting services to their clients. The range of activities available is similar to brothels and escort agencies.

The act of selling sexual favours by these solo operators is not illegal.

This work is usually initiated by advertising a contact phone number in the weekend or daily press. Both private operators and escort agency managers report that a single advertisement may result in 150 to 300 phone calls. Actual encounters resulting however may be only 5-20% of the number of phone calls.

Prices vary from \$60-\$80 for straight-forward sexual intercourse for 30 minutes, to around \$300 for an hour's company and sexual activity.

The frequency and level of activity of these operators varies considerably. Some report advertising only a few times a year, and subsequently seeing a small number of regular clients at intervals. Others arrange many contacts in a short space of time. This may be when money is needed for a particular purpose.

It appears that only those engaging in this work as their main source of regular income pay tax. It was stated that this was a set amount each week based on expected earnings as an 'entertainer'.

Escort service workers and solo operators reported a preference for these types of operation. They stated that the interaction with the client was less cold and more like a relationship. At the same time, however, they were very concerned about their physical security, the risk of violence and the social isolation inherent in this mode of employment.

4. Street prostitution

There are relatively few street prostitutes in Western Australia. This work is regarded by other prostitutes as the lowest rung on the employment ladder. Mostly street workers are women who are unable, or prefer not, to obtain employment in a brothel. Those under 21 years of age or with a hard drug addiction are generally unable to work in a brothel.

These women appear to have poor working conditions and are constantly worried about being arrested. Business is conducted in parked cars, parks, car parks and back streets. As a group they are extremely vulnerable and have a high risk of being beaten, robbed or raped.

5. Child prostitution

This received considerable attention in Perth in early 1985, following the arrest of four boys, aged from 12 to 16 years, for loitering for the purposes of prostitution in the Supreme Court Gardens in central Perth. Isolated incidents have been known to occur previously and the Premier of W.A., Brian Burke, stated that social workers deal with about eight specific cases of child prostitution annually.⁵

It is difficult to ascertain the exact number of children engaged in this activity. Obviously not all see social workers! It has been stated that this has been occurring for a number of years, involving small numbers of males.⁶

6. Prostitution in country areas

6.1 Kalgoorlie

Kalgoorlie is unique in Western Australia, having been a brothel town continuously since 1895. Currently there are four brothels situated on one block of Hay Street, just behind the town's main centre. The number of prostitutes varies from about ten to thirty women.

Services, charges and taxation arrangements are similar to Perth brothels. There are a number of differences however. Prostitutes must live on the premises and pay the madam a portion of the fee or a fixed amount of rent each week. Workers solicit from their rooms, talking to potential customers as they pass by.

Kalgoorlie has the reputation of being a place where prostitutes can save money. This may be due to the restrictions placed on these women rather than increased pecuniary reward. These restrictions are discussed under 'containment'.

6.2 Other country centres

It is generally agreed that Kalgoorlie is the only centre outside the metropolitan area where organised prostitution occurs. It has been alleged however that tours to the country by 'see through' barmaids and raffles with one or two of these women as the prize, are fronts for prostitution. It is believed that this practice occurs mainly in isolated mining towns.

Other incidents reported include women touring the North West of Western Australia in caravans, for the purpose of prostitution. Generally the police act promptly to move them on.

Problems said to be associated with prostitution

a) Sexually transmissible disease (STD)

The risk of sexually transmissible disease is seen by the public as the most common problem associated with prostitution. Generally this is blamed on the prostitute. However many studies have revealed that this is not the case. Statistics from the South Australian Venereal Disease Clinic revealed that prostitutes constituted only 2.5% of the notified cases of gonorrhoea in 1977-78.⁷ The most common source of infection of most sexually transmissible diseases is a 'casual' sexual partner followed by a 'constant' friend or fiance.⁸

Prostitutes are often more knowledgeable about sexually transmissible diseases than the general public. They not only have regular check-ups but also inspect their customers for visible signs of disease. Some seek further protection by insisting that condoms are used.

Particular risks for prostitutes are herpes, cancer of the cervix, non-specific genital infection and the Acquired Immune Deficiency Syndrome (AIDS).

- Herpes. This virus is extremely difficult to cure and prevent. Prostitutes are at particular risk of acquiring and transmitting this infection, as it may be present without symptoms.
- Cancer of the cervix (neck of womb). Female prostitutes are believed to be a high risk group for this disease.⁹ This may be because their increased sexual activity results in exposure to other possible causative factors, for example herpes and vaginal wart infections. It is particularly important that prostitutes have regular cervical smear tests as early changes, which could lead to cancer of the cervix, can then be treated.

Non-specific genital infection. This is also known as non-specific urethritis (NSU). It is thought that the majority of people with this disease are infected by a microbe called Chlamydia. Despite difficulty isolating this organism it appears to be increasingly common. At the Sydney STD Clinic this is the most common major organism detected in female patients (40% of whom are prostitutes) ¹⁰ If not detected and treated this organism may result in tubal and uterine infection in women.¹¹ This could lead to infertility.

Acquired Immune Deficiency Syndrome (AIDS). Reports have appeared recently of female prostitutes in the U.S. contracting AIDS. This is a serious situation as it is often a fatal disease which can be transmitted sexually. Factual, non-judgmental community education about this syndrome is urgently required.

b) Drugs

There is considerable debate about whether addiction to drugs leads to prostitution or vice versa. Prostitutes addicted to hard drugs are regarded as a liability and have difficulty finding employment in brothels and escort agencies. Often they must resort to working from the street. A larger problem in fact seems to lie with heavy marijuana, alcohol and tobacco use and the abuse of tranquillisers and sedatives.

A number of prostitutes interviewed stated that 'they never saw a client straight' but used marijuana, alcohol, sedatives or tranquillisers to enable them to cope with the situation.¹² It was stated that 'the more out of it you are, the more money you receive'.¹³

c) Crime

It is generally considered that the illegal status of prostitution gives rise to a close connection between it and organised crime. A related example is the criminalisation of normally socially accepted practices, such as drinking and gambling which tend to result in an opening for organised crime and corruption.¹⁴ Although police corruption is often said to accompany prostitution, there is little available evidence linking prostitution to organised crime or police corruption in Western Australia.

d) Local nuisance

This does not seem to be a particular problem in Perth and no actual instances of local nuisance were reported to the project officer. It is noted that in the past some residents in the vicinity of brothels have complained of increased noise and traffic.

e) Offence to the public

Soliciting is one of the aspects of prostitution which can give offence to members of the public. There is little evidence of street prostitution in Perth and soliciting does not appear to be the problem it is in some other parts of Australia.

Prostitution is openly advertised in newspapers in Western Australia; however this seems to result in little community reaction.

f) Moral aspects

There are many arguments relating to the moral aspects of prostitution. These are important because they often determine one's perception of rights. However, agreement is hard to reach and it is best if the matter of morality is kept separate from the issue of human rights, otherwise it is too easy to argue that some people are immoral and so have no rights.

At the Public Seminar on 'the Human Rights Aspect of Prostitution' (see Part 3A(6) for details) it was agreed that justice for those involved as either client or worker is more important than the morality of the situation.

ENDNOTES - PART 1

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PART 2 - CONTAINMENT OF PROSTITUTION

A. CONTAINMENT - THE THEORY

Looking at the laws relating to prostitution it is apparent that criminal offences are being committed frequently in this State; and yet the police often decline to prosecute. This is because they exercise their discretion to prosecute or not, in line with the policy of containment. To understand how this situation has evolved, it is useful to look at some of the ways prostitution in Western Australia has been dealt with in the past.

It has long been assumed that prostitution in Western Australia is inevitable if not necessary. Even before the turn of the century authorities tried to find a way to minimise 'the harmful effects' prostitution had on the community. In particular, they were concerned with five 'nuisances' believed to occur as a result of prostitution. These were:

- disturbance to neighbours in the vicinity of brothels as a result of drunken and rowdy customers or excessive traffic;
- the detrimental 'moral' effect on women and children in a community where prostitutes are visible;
- the decrease in property values near brothels;
- d) the spread of venereal disease from prostitutes to their clients; and
- e) the exploitation of prostitutes by landlords and bludgers (pimps) ,¹

The organisation of prostitution in Western Australia underwent a major transformation between the gold rushes of the eighteen nineties and the end of the World War I. As a result of these changes, 'prostitution came to be segregated in semi-official brothels supervised by the police'.² This change occurred not by legislative enactment, but rather through a change in the

attitude of local government and police authorities. In fact, at the time of the outbreak of World War 1, and the accompanying increase in prostitution in Perth, the policy systematically moved brothels to Roe Street, near the police station and lock-up.

There have been a number of other events affecting the control of prostitution in W.A. One was the closure of Roe Street in Perth in 1958. After the sale of properties where brothels were situated (when the land became vested in the Commonwealth of Australia) there was a dispersal of brothels both in the inner city and suburbs of Perth. Following attempts to enforce the law more strictly³, the early nineteen seventies saw the emergence of massage parlours and escort agencies. These happenings presented the police with considerable problems in controlling prostitution.

A rather different situation occurred in Kalgoorlie. Prostitution flourished in this area during the gold rushes, around the turn of the century. Following the gold boom peak in 1903, there was a general decline in the demand for prostitution. This resulted from women settling with their husbands (after the opening of the water pipeline) and a drop in the number of men passing through this area. Increasing resistance to prostitution followed.

During the years 1905-10, the Kalgoorlie Municipal Council, the police and the magistracy quietly combined forces to set up a segregated vice area. Women outside the condoned area were selectively prosecuted until by 1910 all Kalgoorlie's remaining dozen or so brothels were located in Hay Street.⁴ Prostitution in Kalgoorlie has remained limited to this location ever since.

The first official mention of a policy to control prostitution was during 'the Western Australian Royal Commission into matters surrounding the administration of the law relating to

prostitution' of 1975-76. The Commissioner was The Honourable J.G. Norris, formerly a Supreme Court Judge in Victoria. Norris described 'a practice which evolved from the experience of the consorting squad' designed 'to control and contain the evils associated with prostitution'.⁵ He stated that it certainly was not set down in writing, nor was it known to the public. He believed the revelation of this practice by the Commission could make the task of controlling prostitution more difficult. Norris concluded by endorsing this policy of containment.

The first published version of this policy appears in the Dixon Report, tabled in the Western Australian Parliament in 1982. Dixon enquired into police actions regarding allegations of graft and corruption within the Western Australian Police Force. His report includes a letter from the Commissioner for Police outlining this policy. The Commissioner wrote that the basis of this policy was the recognition that prostitution itself was not unlawful in Western Australia and that it was inevitable in any society. The aims of this policy of conditional tolerance were 'to contain the number of operators of such premises to an acceptable and manageable level, whilst achieving a maximum level in standards of conduct and health with minimum public inconvenience or nuisance'.⁶ He stated that he believed this policy was correct and that it was intended to pursue this policy while current legislation prevailed.

Dixon also approved of the policy of containment. It is important to realise however that both Norris' and Dixon's acceptance of containment was based on seeing it as the only possible response to prostitution within the bounds of the current legislation.

For most of this century then the underlying assumption appears to have been that prostitution should not or could not be eradicated, but, rather must be controlled. This control initially appears to have evolved as the changes outlined above

occurred and it seems there has been little community or legal input into this process. Even though the nature and principles of this control have been made public a situation of power vested with self selected arbiters remains the current system.

The situation of containment is not unique to Western Australia. In general three systems are used by western society to deal with prostitution. These are:

a) Suppression of prostitution

This makes prostitution itself a criminal offence and seeks to prohibit the practice. Both the prostitute and the customer may be prosecuted.

b) Abolition of the laws regulating prostitution

This is the reverse of suppression. Prostitution is not regarded as an offence but other laws e.g. zoning and noise, are used to control any problems associated with prostitution.

Regulation

This entails the registration and supervision of prostitutes by plain clothes police. The aim is to control prostitution, based on the belief that it cannot be eradicated. Public health and order are of paramount importance. Prostitutes are registered, but prosecuted only if they violate laws, such as loitering or soliciting. This is the situation which best corresponds to containment in W.A. As is the case in W.A., 'most types of regulation have developed by more or less arbitrary action on the part of the police and without the deliberate and express sanction of a competent legislative authority^{1.7}

B. CONTAINMENT - THE PRACTICE

The aim of containment is to allow prostitution to occur, but to minimise problems thought to be associated with it. Particular

emphasis is placed on keeping it relatively free from criminal participation, sexually transmitted disease and drug abuse; preventing the exploitation of juveniles, and the exploitation of women by men; and decreasing annoyance to the public.^a

It affects the people involved in prostitution in the following ways:

1. Employees

1.1. Brothels

Women wishing to commence work in a brothel in Perth must first register with the Vice Squad at Police Headquarters (usually on a Monday). Registration involves stating one's real name (proof required), age (must be over 21 years), marital status, address and car licence plate number. The woman is then photographed. Polaroid film is used, so there are no negatives.

Conditions of employment in a brothel include:

- that the worker does not have an alcohol or drug problem that interferes with her employment;
- that the worker has weekly screening tests for sexually transmitted diseases, preferably at the Special Clinic in Perth. It was reported that the clinic phones the brothel when a woman does not attend.⁸ The madam then bars the woman from work until she has been examined.

The madam generally informs the Taxation Department when a new woman commences work. An officer from the Compliance Branch of this Department then issues the woman with a file number for taxation purposes.

In Kalgoorlie the same points as above generally apply. However, there are also a number of more stringently enforced local 'rules'. These rules are based on unwritten convention. These are that prostitutes are not allowed to visit hotels, TAB (betting) shops or attend social functions in Kalgoorlie.⁹ Other restrictions are the limited association allowed with

local people, with 'relationships' outlawed and restricted access to public entertainment, including the local swimming pool. Prostitutes in Kalgoorlie must live on the premises.

1.2 Escort agencies

Owners are required to provide the Vice Squad with details of their workers. These are similar to the particulars given at registration for work in a brothel; however a photograph is not required.

The responsibility for health checks lies with the agency owner. This is usually passed onto the workers, who make their own arrangements. This is generally a weekly screening for sexually transmitted diseases.

1.3 Private operators

Workers in this sector reported that either they contacted the Vice Squad before commencement or that they were contacted some time afterwards. They are not required to 'officially register'.

In some cases it was stated that the Vice Squad had discussed basic guidelines for health and security.

2. Management

2.1 Brothels

Generally, madams co-operate with the police and express satisfaction with their dealings with them. They often pass on any information about criminal activity that they encounter in their work. Any woman who is visibly affected by drugs or alcohol is sacked and illegal drugs are not permitted on the premises. There was general confidence that any trouble in a brothel, e.g. violence, would be quickly dealt with after a phone call to the Vice Squad.

There are conflicting reports about the conditions of buying or taking over a brothel. Some comments were made that only women approved by the Vice Squad could buy or manage brothels. It was also asserted that brothels could only be run by women who had previously worked in the industry. It appears that the number of premises is limited and that this number has not changed in recent years.

The practice of periodically arresting and charging madams and prostitutes working in brothels seems to have been suspended during the past few years.

It is apparent that brothels, due to their nature, are fairly easy for the police to control and regulate. By the same token madams appear to wish to remain out of any public spotlight and to quietly continue their business.

2.2 Escort agency owners

It was alleged that only women approved by the Vice Squad are able to buy these agencies. It was further stated that when non-approved women go ahead with purchase, agency workers are harassed and arrested and conditions made difficult for operations to continue.

Women opening or taking over escort agencies may be given guidelines by police which they often develop further. These include strategies to increase their workers' security and steps to take in the event of problems. Owners co-operate with the police and convey to them information they consider may be useful, such as evidence of criminal activity, including attempts to sell stolen goods or drugs to prostitutes.

3. Street and child prostitution

The police seem to be intent on stamping out these practices in line with the philosophy and assumptions of the containment policy as outlined previously.

In purely practical terms, containment could be said to be working. The number of premises used for prostitution appears limited and an acceptable standard (but whose?) of conduct of the participants prevails.

Brothels appear to be managed satisfactorily and to be free of 'bludgers' (i.e. pimps), and do not sell drugs or alcohol. The threat of sexually transmitted disease is diminished by the regular examination Tinmates¹⁰ undergo. Prostitution appears to cause few complaints from the public.¹¹

However, some people involved in prostitution have identified a number of problems with the policy of containment.

C. CONTAINMENT - PROBLEMS AND IMPLICATIONS FOR RIGHTS AND ENTITLEMENTS

Prostitution is known to have occurred in most civilisations since time began. Even though this activity is not unlawful in Western Australia, the legal system makes it extremely difficult to engage in prostitution without breaking the law. The Criminal Code and Police Act of Western Australia cover a variety of offences associated with prostitution. These include soliciting, loitering, living off the earnings, procuring and keeping premises where prostitution occurs.

It is obvious that these laws are frequently and repeatedly violated. It is equally obvious that to a large degree this goes unheeded by the community. These statutes based on eighteenth century English law, are now out of step with changed community attitudes and practices.

Since the 1890s the supervision of prostitution in Western Australia has moved from a classical abolitionist system, embodied in the law, to a de facto regulatory one. This continues in the exercise of conditional tolerance - the policy of containment.

The precise nature and extent of prostitution in Western Australia is difficult to assess. Although virtually confined to Perth and Kalgoorlie, prostitution involves some hundreds of men and women, in diverse settings, with varying activities and services. By law and convention, the Police Force are charged with overseeing this situation.

It could be argued that the policy of containment works, in the sense that it certainly appears to achieve its stated aims.

This results in prostitution in brothels being closely monitored and practices such as child and street prostitution being outlawed.

However there is little information that reveals exactly what constitutes containment. This causes problems for workers and confusion in the community.¹² As one working woman said 'we are not talking about corruption but about the unwritten permission that happens and can be suddenly withdrawn'.¹³

Many questions remain unanswered. What are the conditions of containment? When do they change? What guides the police to decide who should operate, under what circumstances? Why should the police have this power in the first place? Who are they accountable to? What are the 'rare exceptions that necessitate positive actions by way of rigid policing of existing laws' ?¹⁴ How acceptable is this policy to the public, prostitutes and customers? What is the legal basis of this low level, low visibility exercise by the Police Force?

Certain aspects of the policy of containment show little regard for normally accepted rights and conventions:

- a) The policy is not clearly defined.
- b) It is applied selectively and even basic instructions are not always standard.
- c) No appeal system exists if permission to operate is refused.

d) There is no avenue for public input or review.

This results in an infringement of the rights of prostitutes - a denial of freedom of information and a loss of equality before the law. It also leaves the police enforcing this policy open to allegations of its misuse. The subsequent public disquiet can only lead to a loss of confidence in the Police Force. The community is entitled to be informed of the nature, application and basis of this policy.

In many ways containment deludes the public. It keeps prostitution hidden, out of public sight, and masks the real situation.

The practice of containment currently violates some of the most basic human rights and civil liberties of the parties involved.

1. Prostitutes

1.1 Registration

Workers in brothels commented on 'the humiliation of visiting Central (Police Headquarters) for registration'.¹⁵ Particular concern was expressed at being photographed. Despite assurances that this photo would be returned if requested when a woman ceased working, it was reported that this is almost impossible to achieve.

The keeping of records for this purpose represents an invasion of privacy and raises the possibility of future anguish, embarrassment and blackmail. This practice is of doubtful legal standing and may constitute a violation of Articles 7 and 17 of the ICCPR.

1.2 Health checks

No one would deny the theoretical value of regular screening of prostitutes for sexually transmitted disease. However as mentioned previously prostitutes are less likely to transmit venereal disease than enthusiastic amateurs. To be really effective, screening would need to be performed after each client. It is discriminatory to force prostitutes to have regular health checks when clients are not required to do the same. When having these checks prostitutes are entitled to a non-judgmental service. Also prostitutes are entitled, if they so wish, to insist that their customer wears a condom. This would help decrease the incidence of sexually transmitted disease. The Articles involved in this instance would be 3,7 and 17 of the ICCPR and the assumptions underlying the Convention.

1.3 Taxation

While there is general agreement with the principle of paying tax, disquiet was expressed about aspects of this practice. Complaints were made about the frequency of visits by members of the Compliance Branch of the Taxation Department. Concern was also expressed that the taxable threshold of \$4,595 was not recognised and that women were not entitled to tax rebates.

This presents a particular blow as many women work only part of the financial year and their involvement in this activity stems from economic necessity. Prostitutes cannot claim the cost of tissues, condoms or other items required for their work, as tax deductions.

A rather cynical comment was made: 'I object to the Government, which has made some aspects of prostitution illegal, living off "immoral earnings"' .16

The taxation system discriminates against prostitutes on the grounds of their occupation. Their income, although obtained from an illegal activity, is taxable, and yet workers are denied any deductions or rebates. The behaviour of taxation officers

also calls for comment. Although diligent, they show little regard for prostitutes' privacy, calling in the early hours of the morning and encouraging prostitutes to work harder!¹⁷ Again, in contravention of Article 17 of the ICCPR.

1.4 Freedom of movement and association

Prostitutes in Kalgoorlie, more so than in Perth, are denied some of their most fundamental rights.

Article 12 of the ICCPR states that everyone shall have the right to liberty of movement and freedom to choose their residence.

However, in Kalgoorlie these and other rights are denied to prostitutes who are not allowed to have relatives within a 500km radius, cannot have their brothers to visit, cannot have relationships with local people and are not allowed on licensed premises or in private homes (unless chaperoned in the latter!). They must live on the premises, are subject to dusk to dawn curfew and cannot move freely about the town.

1.5 Freedom of speech and expression

Violation of this right was highlighted when two prostitutes alleged they were forced to leave Kalgoorlie after they gave a television interview in July 1984.¹⁸ Prostitutes in both Perth and Kalgoorlie are reluctant to talk about their employment for fear it may be jeopardised.

There was further evidence of the containment policy interfering with this right when some people involved in prostitution sought Vice Squad approval before speaking to the project officer.-⁹

Freedom of speech and expression is recognised as a basic human right and is covered by Article 19 of the ICCPR.

1.6 Safety

Major problems arise when escort agencies operate without police approval. This stems from a belief held by some prostitutes, that Vice Squad assistance will not be available when problems arise, such as clients refusing to pay, stealing from the worker and threatening or using violence.

For example, it was alleged that in late 1984 a worker from a non-approved agency was bound, gagged and bundled into the boot of a car when she visited a client. Threats were then made to her life unless she promised to reform. She escaped from the client without further injury some hours later. This incident was not reported to the police. Workers and owners **are reluctant to contact the police because they fear exposure of their activities and conflict with the law.**²⁰

Because of their illegal status it is difficult for prostitutes to appeal under Article 26 of the ICCPR to equal protection under the law.

1.7 Private operators

There were few reports of problems with the practice of containment. However some complaints were made by people offering less conventional services. One person who called herself a prostitute but who didn't charge a fee, alleged telephone harrassment by the police.²¹ One male stated that he had been told by the Vice Squad that he would 'be okay, so long as he stuck to female clients' .²² Although not particularly concerned, he felt that given the situation wherein he was not 'allowed' to have male clients, but other males were, this was somewhat unfair. Workers in the private sector reported the following difficulties that were seen as inherent to their mode of activity:

They cannot employ or work with others. For instance they cannot employ a receptionist.

b) They cannot use other premises.

They cannot live with others as flat mates.

d) There is considerable social isolation.

e) They were tied to the phone or had to leave it unattended.

f) The risk of physical danger was increased by not having another person to check on them.

Some stated that if they resolved these difficulties they would instantly become illegal operators.

1.8 Male prostitution

As this is becoming increasingly common, the community needs to consider this issue and decide on a course of action. This will involve examining matters such as homosexuality, female clients, juveniles and AIDS. It is unjust to ignore the situation and pass all responsibility to the police.

2. Clients

2.1 Loss of equality before the law

Both solo and agency workers gave disquieting reports about methods of dealing with problem clients. One alleged that if a client threatened violence or refused to pay, a note would be taken of his car licence plate number and the Vice Squad phoned. They would 'catch him and sort him out before he even got home'.²³

Another stated that following a serious assault in the course of her work, the assailant received 'only a \$50 fine, but a bashing in the cells'. Although 'normally I'd be outraged by such a solution this was the only justice I could expect!'²⁴

The alleged police dealings with troublesome or violent clients indicate that this group suffer a loss of equality before the law. Like all members of the community, innocence must be assumed until guilt is proven. Clients believe they have few rights and little recourse to the law if offences occur at the time of their assignation, e.g. if their wallet is stolen. These rights, of equality before the law, are outlined in Articles **9, 10, 16** and 26 of the ICCPR.

2.2 Consumer protection

Under the current system clients have no privileges as consumers and no consumer protection. They cannot be assured of the quality of service or premises. However, even if prostitution were legalised it is highly unlikely that clients would complain to Consumer Affairs because of the social stigma attached to prostitution. Nevertheless, it should at least be possible for a client who does wish to complain to do so.

3. The Police

The policy of containment raises problems for the police. According to Jock Fraser, the Secretary of the Police Union, prostitution and containment are issues dodged by all politicians, leaving the police scapegoats and open to bribery.²⁵

3.1 Police discretion

It is generally accepted that a large measure of discretion plays a major part in police activity involving prostitution.²⁶ Ultimately this has resulted in a small group of detectives, the Vice Squad, controlling prostitution.

Rather than relying on individual or collective discretion the members of this squad (and prostitutes) should have an overall policy guide that is clear, consistent and enforceable. The present policy of conditional tolerance does not meet these criteria.

Members of the Vice Squad were interviewed in the course of this project. Although they were helpful, regulations prevent them from being quoted. They appear to work hard and to be concerned about many aspects of the situation.

4. The Community

Many of the rights and privileges outlined for clients and the police apply to the community. Others include:

4.1 Freedom of information

Article 19(2) of the ICCPR states that everyone shall have the freedom to seek and receive information. It could be argued that in relation to prostitution this right is currently denied to the community, as it is almost impossible to ascertain exactly what constitutes the policy of containment, how it is governed and how it is practised. Members of the community have the right to this information and the obligation to assess and evaluate the situation.

4.2 Family

Males in the community who are married to, or in a de facto relationship with a prostitute, are discouraged by law from living with their spouses, particularly if unemployed, for fear of being charged with living off the earnings of prostitution. This means that a family often cannot live together, in contravention of Articles 17 and 23 of the ICCPR.

D. RECOMMENDATIONS

Containment must be fully and publicly explained and its ramifications spelt out. Other options should be examined.

If it is to continue, or until another system takes effect, the policy and operation of containment should:

34.

- a) be defined in writing;
- b) have its records of operation accessible to the public, but at the same time respect the privacy of individuals;
- c) be publicly reviewed at regular intervals; and
- d) incorporate an appeal system.

This is not a justification of containment. Rather it is an interim practical step to ensure increased respect of the rights of the individuals involved and greater public accountability.

Certain aspects of containment warrant examination and explanation, for example, non-reporting of life threatening incidents to the police. This is a particularly serious matter. Workers in the prostitution industry must act responsibly to prevent incidents such as these. However, their position with respect to assaults would be greatly improved if they were reassured that complaints and information offered to the police were taken seriously.

ENDNOTES - PART 2

1. Raelene Davidson, 'Dealing with the "Social Evil"' in Kay Daniels (ed.), So much hard work, Fontana Books, Sydney, 1984, p.163.
2. *ibid.*, p.162.
3. Western Australia, Royal Commission Into Matters Surrounding the Administration of the Law Relating to Prostitution, 1975-76, Report, Perth, June 1976, pp.14-15.
4. Davidson, *op. cit.*, pp.169-172.
5. Western Australia, Royal Commission, *op. cit.*, pp.18-19, 144.
6. O.F. Dixon, Report on action taken by police regarding allegations of graft and corruption in the Police Force, W.A., March 1982, p.16.
7. Davidson, *op. cit.*, p.163.
8. Interview C11, confidential.
9. The West Australian (4 July 1984) 12. These comments were made by Superintendent Val Ridley, regional police officer for Kalgoorlie.
10. 'Inmates' was used in this sense by Dixon, *op. cit.*, p.74.
11. The project officer received no information of instances of public nuisance during the months October 1984 - March 1985.
12. This was highlighted by comments made at a public seminar on prostitution, 8 December 1984. See p.51.
13. Interview C7, confidential.
14. Dixon, *op. cit.*, p.14.
15. Submission C4, confidential.
16. *ibid.*
17. Interviews C23, C25, confidential. It was stated that officers of the Compliance Branch of the Taxation Department had visited after midnight, urging these people to work harder.
18. The West Australian (4 July 1984) 12.
19. Interviews C8, C29, confidential.
20. Interview C7, confidential. This type of situation is also mentioned in the Women's Electoral Lobby (N.S.W.), Submission to the Select Committee upon Prostitution, September 1983.

21. Interview C13, confidential.
22. Telephone interview C9, confidential.
23. Interview C8 confidential.
24. Telephone interview C6, confidential.
25. The Daily News (30 January 1985) 1.
26. Western Australia, Royal Commission, op. cit., p.164.

PART 3 - COMMUNITY ATTITUDES TO PROSTITUTION**A. ATTITUDES TO PROSTITUTION IN WESTERN AUSTRALIA**

It is important that community attitudes to prostitution be canvassed. Attitudes are based on values and beliefs. They determine behaviour and opinion, and influence the perception of rights. An assessment of community attitudes to prostitution reveals what its members feel about the practice of prostitution, how they regard the rights of the people involved and whether changes are needed to protect or enhance these rights. It is also crucial to ascertain the views of the two groups most intricately involved, prostitutes and their customers, as well as the broader community. Appendix I (Methodology) provides details of how the following information was obtained.

1. Prostitutes**1.1 The people involved**

In common with most parts of the world, prostitutes in Western Australia are men and women who generally see sex as their most saleable commodity. These workers range in age from teenage years to late thirties/early forties and come from varied backgrounds. Most engage in this activity for reasons related to their economic circumstances.

'I never dreamt I would get into this but when my situation became desperate this seemed the only course open.¹¹

'With my job and a \$3,000 plus bankcard debt, what else could I do? '2

Prostitution is generally viewed as a secondary activity and most workers describe themselves primarily as mother, student, unemployed or in terms of some other occupation.

1.2 Their perception of prostitution

Almost exclusively, prostitution is regarded by prostitutes as a job. Its major advantages are the income and the hours. The Income can be quite high, particularly for women. In some sectors the hours are flexible and compatible with the demands of domestic work and child care. Workers see themselves as providing a service the community expects and demands, and they point out that if there were no clients, prostitution would not exist. The major disadvantages are the risk of sexually transmitted disease, social isolation, problems with relationships and a mistrust of men.

1.3 Why prostitution exists

Many believe prostitution exists to satisfy men's need for sexual release. A corollary of this is 'the safety valve theory'. This is the proposition that prostitution, by satisfying men's sexual needs, prevents rape. This theory has been refuted, but is nonetheless still widely held.³

One woman observed that clients saw her for the following reasons:

- Unsatisfactory relationships. The most common reason by far.
- Sexual adventure. Some are simply seeking a variety of sexual contact, others an ego boost.
- Loneliness. People who would otherwise have **n2** contact with the opposite sex.
- Deviation. Psychological problems which must be hidden from society, for example transvestites.⁴

A number of prostitutes feel that their activity saves relationships and marriages and 'keeps families together'.⁵

Minority comments include a belief that prostitution services should be available to women, not just men and anger at the 'safety valve theory' - 'why should one group of women have to bear the brunt of being the "outlet" for men'.⁶

1.4 Rights

Prostitutes differ in their perceptions of their rights and how they are exercised. A small number maintain that they are happy and that the present situation does not interfere with their rights as individuals. Others feel differently and voice objection to the registration procedure required for brothel employment.

Comments on rights focus on:

- (a) The legal status of prostitution with regard to finance.

This causes difficulties when obtaining finance, renting a house or even renting a television. However, it does not preclude taxation, and yet it is almost impossible to exercise eligibility for tax deductions and rebates which are available to other workers under taxation regulations.

- (b) Negative community reaction to prostitution

Workers feel this threatens their right to self determination. They regret being secretive and leading double lives but see few other options. Many report the loss of friends when they have disclosed the nature of their work. Abusive phone calls and harassment, both of them and their children, follow if their operation becomes more visible; for example, if their name is published in a newspaper court report.

(c) Working conditions

Many feel they have the right to better conditions, particularly if they work in a brothel. 'My comment is, what rights? They don't have any rights. They (generally) can't choose their hours, their days off, their prices, even their services' .⁷ Agency employment appears more tolerable.

(d) The question of exploitation

Few believe they are exploited but many believe the working conditions amount to exploitation. A number asserted that in some situations customers are exploited; for example, the price is increased if they don't like him. Often there is little perception on the part of prostitutes, of their rights. 'I didn't realise how my rights were affected' is a frequent comment.⁸ Few people interviewed realised that they had the right to question the circumstances surrounding prostitution in Western Australia.

1.5 Changes

Opinions are fairly evenly divided between continuing containment or the decriminalisation of activities associated with prostitution. About half those interviewed feel that containment works reasonably well, although decriminalisation is acceptable. The remainder believe that containment interferes with their rights and that it should be replaced by a system of decriminalisation with regulations.

Many of this group's beliefs and attitudes to prostitution are similar to those held by clients and the community.

2. Clients

2.1 The people involved

People utilising prostitution services in Western Australia are generally male, of all ages and marital status and from all social backgrounds. The numbers are probably substantial. Kinsey reported that 65% of American men had visited a prostitute in their life time.⁹ McLeod has stated that in Birmingham, England, the ratio of clients to prostitutes is 17:1.¹⁰ This figure is comparable to that reported in the U.S.A.¹¹

The community tends to have fixed views of people who visit prostitutes. Often there is a belief that the utiliser (a male) is a social misfit and therefore this is part of his pathological behaviour. Consequently there is surprise that respectable men visit prostitutes. Customers in Western Australia reflect the same broad cross section of the community who utilise the services of prostitutes in other countries.

2.2 Why they go

Men interviewed gave a variety of reasons for visiting prostitutes. These fell into three categories.

a) Sexual relief This was the commonest reason given by clients interviewed.

'It provides an outlet for males - for their God given desire. '12

'Men have a stronger sex drive and so turn to prostitution.'¹³

b) Emotional needs

These appeared to centre around loneliness.

'The company is important, sometimes we just talk.'¹⁴ Employing the services of a prostitute 'gives a sense of worth - women have families for this'.¹⁵ A number maintained that this activity improved their marriage.

C) Specific activities

These involved oral sex, anal intercourse and to a lesser degree practices such as bondage and discipline. 'The girls will do what the wife won't', was a regular comment.¹⁶

Most of the respondents visit or had visited prostitutes on a regular basis, for example once a fortnight. Some preference was expressed for escort agencies and private operators. These women were said to be 'less cold and to talk more' and tended to be 'girls who put some feeling into it'.¹⁷

2.3 Why prostitution exists

In the main, customers believe prostitution exists to satisfy men's sexual urges. They see a number of advantages with commercially available sex. The service is straightforward, less expensive and very discreet. 'I'm anti-pub and anti-pick up, besides it costs less.'¹⁸

One younger man thought prostitution exists because 'the male ego doesn't allow you to say you can't get it (sex)'.⁻⁹

There was little recognition of women's roles in prostitution. One spoke of a woman's financial position attracting her to prostitution. Another acknowledged that sex and love are not necessarily equated and that this can lead to problems, such as the service providers appearing disinterested. The risk of sexually transmitted diseases was a major concern.

2.4 Their rights

Again, respondents had little concept of their rights. With direct questioning 80% of the customers said that the current situation did not interfere with their rights. However **60%** of these outlined instances where their rights were infringed! These situations involved the community taboo on visiting prostitutes. Evidence of this taboo came with the reluctance of these men to identify themselves.

Responses concentrated on:

a) Community attitudes to prostitution

'Why should it be hidden away?'¹²⁰; 'why is it in the sleazy sections of the city?'¹²¹,

b) The risk to personal privacy

'I don't feel guilty, but I don't particularly want to be seen'.²² 'You've got to be careful going in and coming out.'²³

Customers feel they are entitled to these services and to be able to seek them without fear of harassment or embarrassment.

2.5 Changes

All respondents believe changes should occur to bring the situation out in the open. Two thirds support either decriminalisation or legalisation.

3. Pilot survey of attitudes to prostitution held by members of the Western Australian Council for Civil Liberties.

It was initially planned to design a questionnaire and distribute this as widely as possible, to canvass community attitudes to prostitution. However time and financial constraints made the task impractical, and instead a pilot survey was carried out, involving members of the WA CCL. Although this is a selected, possibly biased group, it is still worthwhile to consider their responses. Questionnaires were sent to 120 CCL members in October 1984. Thirty-five (29%) replies were received. (See Appendixes I & IV for further details of methodology and a questionnaire.) A summary of responses follows:

- Uncertain - 10%
- No response - 10%

Two thirds of this group believed sexual relief was the sole purpose and function of prostitution. The remainder believed it was coupled with some other reason, for example women using prostitution as their income. A typical comment was 'some sexual needs, for some people, are never met by existing institutions.'²⁴

Problems in society leading to prostitution were seen to be:

- the emphasis on sex in advertising and the media
- the double standard that men, but not women should be sexually experienced

Summary of the survey

Members of the WA CCL believe prostitution arises from the need to satisfy men's sexual urges or as a result of problems in society. It is seen as inevitable in western society. Two thirds disagree with the policy of containment of prostitution and think that it restricts the rights of the people involved. Over three quarters believe legalisation or decriminalisation should replace containment. The trend towards a lower acceptable age for clients than workers probably reflects a concern for prostitutes' welfare. However given that most respondents assumed prostitutes to be female and customers male, this trend may reflect the 'sexual double standard'.

4. Submissions

Letters were sent to 143 women's, service, church, community and political groups asking for their opinion or policy on prostitution, and their comments on the human rights aspects of prostitution.

4.1 Community groups

Fairly detailed submissions were received from the following groups. The contents have been briefly summarised.

Australian Democrats

The Australian Democrat proposal for prostitution is covered by their policy on law reform:

'48.(b) Legal controls on prostitution will cover health standards, town planning, public solicitation, exploitation of prostitutes, procuration for the trade and working conditions.'

This probably amounts to legalisation of prostitution.

b) Centrecare - Catholic Counselling and Welfare Services

This submission commences with the premise that prostitution arises from a lack of rights; rights to adequate income, housing, employment, education and nurturing relationships. Prostitution is seen as causing grave injustice to women by the lack of caring and commitment by customers and inequality before the law, with prostitutes but not customers being prosecuted. It concludes by rejecting legalisation, as this implies society's approval of prostitution.

c) The Country Women's Association of W.A. (Inc.)

The majority of members of this organisation favour legalisation of prostitution. Six critical factors are listed. These are health, rape/sexual assault, minors, location, income and morality. Arguments for and against legalisation, in terms of these factors, are summarised. It is noted that men and women are involved, both as clients and prostitutes and that the law should take this into account.

d) The Doctor's Reform Society of W.A.

According to this Society the current legal situation, in attempting to enforce sexual morality, impinges on the rights of individuals. The rights of prostitutes, their families and clients are briefly outlined. Recommendations are that the activities associated with prostitution be decriminalised and that it be treated as a commercial matter. Community education is seen as a crucial factor. Emphasis should be placed on:

- an understanding of human relationships, including sexual activity;
- drug education

The Family Planning Association of Western Australia (Inc.)

The Family Planning Association believes there is no place for criminal law in the domain of adult sexual expression. It recommends decriminalisation of the activities associated with prostitution. This would safeguard the rights of all parties involved in prostitution. Advantages of decriminalisation are listed. The Association views registration for health checks as impractical. It advocates comprehensive community sexuality education and encourages responsibility. Normal market forces are seen as developing high health preventative standards.

It is suggested that a joint consultative committee be set up to reconcile:

- the legal requirements of State and local government
- the medical aspects, from both the public health and individual's perspective

f) The Western Australian Women's Advisory Council

The Women's Advisory Council believes decriminalisation is the best course of action in relation to prostitution. This decision is based on injustices resulting from the present law, the undesirability of strengthening this law, and evidence of Problems with legislation, including the attitude of prostitutes that any form of licensing is degrading. Decriminalisation would mean treating prostitution as a business rather than criminal activity. It would be subject to the controls normally governing business; for example, location, parking, access etc.

Advantages to the community, prostitutes and the police are outlined.

Other suggestions are:

that the words 'massage' and 'health' be prohibited in relation to prostitution

that decriminalisation be reviewed after three years operation

g) Women's Electoral Lobby (W.A.)

This submission points out that prostitution has occurred in Australia since colonisation. In the past, prostitutes have been society's scapegoats and borne the burden of guilt in this situation. However prostitution would not exist if economic circumstances did not force women to engage in it and if there were no clients. WEL asserts that neither participant should suffer discrimination nor be stigmatised. Legalisation and attempts at prohibition result in an erosion of prostitutes' freedom. Decriminalisation, treating prostitution as a business venture, is suggested. This would give women workers increased protection by the law. Their income, lawfully acquired, would be taxable and at their disposal.

h) Letters of support

Letters of support were received from a number of organisations. Although interested, they felt they lacked the expertise and/or resources to contribute a submission. These organisations were:

- Parents Without Partners W.A. (Inc.)
- W.A. Venereology Society
- Equal Opportunity Resource Centre (Inc.)

Disabled Advocates and Self Help (Inc.)

4.2 Local government

Letters were sent to twenty-four metropolitan, city and town councils seeking their policies and opinions on prostitution. There were six replies. Three of these state that a policy has not been formulated because prostitution is illegal. Other replies are outlined below.

City of Perth

This Council has no policy on prostitution. Furthermore it is asserted that because prostitution is illegal the Council is unable to exert control through, for instance, town planning. Concern is expressed with the increasing incidence of adult only cinemas, strip tease and peep shows. Town planning measures to deal with this are being examined.

b) City of South Perth

This response was in the form of a resolution passed at the Council meeting of 28 November, 1984. It states that it has been the Council's policy to refer the matter of prostitution to the

police, where any instances have come to the notice of residents. In addition, even if prostitution is legalised, the Council would not allow any premises in its city to be used for such a purpose.

Other sources have indicated this local government area is a popular locality for meetings of escort agency workers and their clients.²⁵

c) City of Stirling

The Mayor reported that his Council had considered the land use and zoning aspects of prostitution. This has human rights implications - protecting the rights of those disadvantaged by the presence of a brothel or 'indeed, the operator of a brothel in the "right" zone' .²⁶ His Council's main concern is that as prostitution is generally regarded as illegal, controlling brothels under zoning regulations appears impossible. The City of Stirling had raised this matter with the Local Government Association in 1982; however the majority of Councils had voted against the idea of amending legislation to facilitate control. Disappointment was expressed with this decision as it was believed Stirling had been seeking to solve a problem which exists and which other local governments have encountered.

4.3 Individual submissions and comments

Written and oral submissions were obtained from members of the public who contacted the project officer following media publicity. There is general agreement that prostitution will always exist and cannot be eradicated. Dissatisfaction is expressed with the current policy of containment. Suggestions to ameliorate the situation include the location of brothels in specially zoned areas, a review of prostitutes' working conditions and having prostitution overseen by some body other than the police.

5. Kalgoorlie

5.1 Prostitutes

Comments from women in Kalgoorlie have been incorporated in the section 'CONTAINMENT - PROBLEMS AND IMPLICATIONS ON RIGHTS AND ENTITLEMENTS'.

Two points need to be made:

- workers in Kalgoorlie feel that they have more control over their working conditions than in Perth
- however, compared with prostitutes in Perth there are many more restrictions placed on their lifestyle. They believe this situation should be rectified.

5.2 Local people

Those interviewed stated that prostitution has always occurred in Kalgoorlie and would continue to do so. It is seen as a financial asset, providing work for local trades people and boosting tourism. Prostitutes are perceived as doing a job and prostitution as an essential community service that 'makes it safer for women to walk the streets'.²⁷ Few people think any change is warranted.

5.3 Local government

An interview was conducted with the Mayor of Kalgoorlie, Mr R. Finlayson. He asserted that prostitution is acceptable in his community. He believes no infringement of rights occurs. Mr Finlayson said that although there had been problems in the past, containment had changed and was now working well, to the satisfaction of the police, madams and the community. He was concerned with the health aspects of prostitution but could see no practical solution beyond the weekly screening of prostitutes for sexually transmitted diseases.²⁸

6. Public seminar.

A public seminar on 'The Human Rights Aspects of Prostitution' was held by the Human Rights Commission and the Council for Civil Liberties on Saturday 8 December 1984. The aims were to provide information about the law, to consider and discuss the issue of prostitution and to seek community attitudes and opinion. The program featured:

- a paper on 'Prostitution and the Law in Western Australia'
- a panel discussion with prostitutes answering questions from the floor

the British film 'Prostitute'

a panel discussion with representatives from the Uniting Church, the Women's Electoral Lobby, the Council for Civil Liberties and a retired Superintendent of Police

There was basic agreement that prostitution cannot be eradicated and that the current situation impinges upon the rights of people engaged in prostitution. Those present considered the highlights of the seminar to be:

- listening to prostitutes tell of their work, the current situation and possible change
- the high level of participation by all present

Attitudes to prostitution varied. Women identifying themselves as feminists view it as exploitation; prostitutes see it as a complex occupation requiring practical change; a number of people visualise a problem that will only be solved by legalisation and strict control; and civil libertarians concentrate on workers' and clients' lack of freedom and rights. It is clear that attitudes to prostitutes have changed as a

result of the seminar. A number of individuals commented that they had been forced to reconsider their views and that they had not realised prostitutes could be intelligent, articulate or male!

The major issue was containment. Strong dissatisfaction with both the principle and practice of containment was expressed.

Points of concern were:

- its discriminatory nature, allowing only certain brothels, madams and prostitutes to operate
- the seemingly arbitrary, undefined criteria of the policy
- the failure to recognise the rights of prostitutes, police or community

Other discussion centred on morality, local government involvement and legislative change. The general consensus was that justice is more important than conventional morality, and that justice is not being done. There were calls for increased local government involvement in supervising prostitution. The favoured legislative change was decriminalisation. However it was observed that this would have to involve careful consideration of all aspects of prostitution.

B. ATTITUDES AND RIGHTS

Prostitution is not a world apart but a frequently occurring activity within our everyday community. Common beliefs and assumptions, however, distort its significance and mask the wider social ramifications. An examination of community attitudes to prostitution uncovers these assumptions and their social implications.

Only when these are clear can the rights of those involved be fully discussed.

Prostitutes' and clients' viewpoints are essential in this process. By speaking out, prostitutes decrease their mysteriousness and obscurity and give a more accurate picture of the women and men who work as prostitutes, and clients reveal they are ordinary people rather than a deviant group. It is important that both groups state their views, needs and expectations, thus enabling the wider social problems which prostitution reflects to be identified and tackled.

As can be seen from the preceding sections, attitudes vary. There are, however, some common themes.

1. Attitudes to prostitutes

There has been a significant shift in attitude away from the concept of prostitutes as 'the low, dirty class of women'²⁹, or as people engaging in this activity for sexual enjoyment.

The community is beginning to accept that for many of the people involved, prostitution is just a job. This change in attitude derives in part from a recognition of the relative poverty of women. Their lack of education, training, employment or an adequate social wage, coupled with the major responsibility for parenthood, makes prostitution an economically attractive occupation. These issues are starting to be actively addressed with the formation of prostitutes' collectives, support from the churches and community groups, and programs of affirmative action and equal opportunity.

2. Attitudes to sexuality

The pervading view is that male and female sexuality is fundamentally different. Therefore it is assumed that:

prostitution is needed to satisfy men's sexual urges (and to decrease the incidence of sexual assault)

women have an inferior sex drive, 'needing' relationships rather than sexual activity

The biological basis for this view has been refuted and the assumptions are now being questioned.³⁰

Almost certainly these differences are socially determined and reflect the different positions of men and women in western society. Traditionally men are expected to be strong, active and to seek sexual pleasure; women are perceived as passive, receptive and use sex rather than enjoy it. These notions of gender and sexuality support institutionalised female prostitution. Female prostitution in turn supports this ideology.

On the other hand, sexuality can be defined as the integration of the somatic, emotional, intellectual and social aspects of a sexual being in ways that are positively encouraging and that enhance personality, communication and love.³¹

Such a recognition of the wider meaning of sexuality, and a less rigid view of male and female roles, is a precondition for improving rights in this area and is in keeping with Article 5(a) of the Convention.

3. Attitudes to marriage

There is a mixed attitude to clients of prostitutes. On the one hand they are regarded as a group of deviants and yet it is also assumed that prostitution 'provides ordinary men with something they cannot otherwise get'³² and that this can save marriages and keep families together. The community seems to reject the possibility that sexual contact (even within marriage) may lack affection and shared satisfaction or that a demand for prostitution may be created by deficiencies within a marriage.

It is further believed that the majority of men who visit prostitutes are single and a smaller number are 'strangers, perverts or physically repulsive'.³³ Interviews with clients and prostitutes reveal this is not the case.

4. Perception of rights

The degree to which those interviewed perceive the relevance of the notion of rights varies considerably.

Prostitutes feel they have few rights and even less power. Clients believe they have rights but are unclear how far these extend. The community believes it has the right to expect respect for certain values.

The question of rights is critical. Awareness that one has rights and an appreciation of these, are important prerequisites for self-determination of all people. Community education continues to be a critical factor.

C. RECOMMENDATIONS REGARDING RIGHTS AND OPTIMAL ENTITLEMENTS

The following are suggested as rights and optimal entitlements and emanate from information in the preceding sections and discussion with community groups. Some are rights as defined in the International Covenant and Convention and others are entitlements as perceived by the people interviewed.

1. Prostitutes

Prostitutes (male and female) feel they are entitled to:

- do with their bodies what they want
- define their sexual orientation, including preference
- choice of contraception and free screening for sexually transmissible diseases
- run their own business, without interference, including the ability to advertise and to be taxed

- refuse service

They have a right to:

- adequate medical care and protection of their health (Articles 11(1) (f) and 12 of the Convention)
- freedom of association with others and freedom of movement and residence (Articles 12 and 22 of the ICCPR)
- privacy (Article 17 of the ICCPR)
- normal industrial safeguards (wages, conditions etc.) (Article 11 of the Convention)
- equality before the law (Article 26 of the ICCPR and Article 15 of the Convention)

2. Clients

Clients (male and female) have the right to:

- privacy and confidentiality (Article 17 of the ICCPR)

They feel they are entitled to:

- protection of their health
- consumer protection (including quality and variety of services)

3. Family and associates of prostitutes have a right to: privacy and confidentiality (Article 17 of the ICCPR)

- free association (Article 22 of the ICCPR)
- equality before the law (Article 26 of the ICCPR)

4. The Community

Members of the community should participate in the decision about whether or not prostitution should occur and should seek to protect the rights of all involved. The community therefore has the obligation to determine safeguards such as:

- the age at which people may engage in prostitution or be clients
- how to minimise disruption to the public
- controls on soliciting, advertising and procuring
- ways of protecting the intellectually or physically disabled

Members of the community should recognise and work towards everyone's entitlement to:

- an adequate income
- suitable housing and childcare
- express one's sexuality
- education about these and other rights or entitlements

ENDNOTES - PART 3

1. Telephone interview C10, confidential. Telephone interviews are hereafter designated as TI.
2. TI C6, confidential.
3. Susan Brownmiller, Against our will, Penguin Books, 1976, pp.390, 392.
Jane Root, Pictures of women: sexuality, Pandora Press, London, 1984, p.76.
4. Submission C2, confidential.
5. Interviews C5, C9, C17, confidential.
6. Submission C1, confidential.
7. *ibid.*
8. Interviews C2, C8. Evidence at Public Seminar on Prostitution, 8 December 1984.
9. Marcel Winter, Prostitution in Australia, Purtaboi Publications, N.S.W., 1976, p.245.
10. Eileen McLeod, Women working: prostitution now, Croom Helm, London, 1982, p.12.
11. *ibid.*, p.13.
12. TI C71, confidential.
13. TI C73, C75, C70, confidential.
14. TI C76, confidential.
15. TI C72, confidential.
16. TI C70, confidential.
17. TI C74, confidential.
18. TI C70, confidential.
19. TI C75, confidential.
20. TI C72, confidential.
21. *ibid.*
22. TI C76, confidential.
23. TI C71, confidential.
24. Comment by survey participant, confidential.
25. Interview C29, confidential.

26. Correspondence from The Mayor, City of Stirling, 2 November 1984.
27. Interview with local resident CA, confidential.
28. Interview with Mr R. Finlayson, Mayor of Kalgoorlie at his chambers, 9 November 1984.
29. Miriam Dixon, The real Matilda, Penguin Books, Vic., 1976, p.102.
This comment was made to the 1915 N.S.W. Select Committee on the Prevalence of Venereal Disease.
30. Mary McIntosh, 'Who needs prostitutes?' in Carol Smart & Barry Smart (eds), Women, sexuality and social control. Routledge and Kegan Paul, London, 1978, pp.53-64.
31. This is taken from the World Health Organisation definition of sexual health, outlined in the Submission to the Council for Civil Liberties in response to their request of October 1984, Family Planning Association of Western Australia (Inc.), November 1984.
32. Comments by survey participants, confidential.
33. McIntosh, op.cit., p.53 quoting Kingsley Davis 'The sociology of prostitution' (1937) 2, American Sociological Review, 755.

PART 4 – LEGISLATION RELATING TO PROSTITUTION

To a large extent the law plays a central and defining role in the lives of prostitutes and contributes to their isolation as a socially distinct group. As discussed previously, current Western Australian law and the policy of containment are unacceptable for many sections of the community, and therefore it is imperative that other systems used to deal with prostitution be examined. Options that take into account the rights of different sections of the whole community can then be suggested to replace containment.

A. THE OPTIONS

1. Prohibition and suppression of prostitution

This policy is based on moral and religious objections to prostitution and a view that the law has an important influence in determining social attitudes and affecting behaviour.

A system of suppression makes prostitution itself a criminal offence and prohibits any activities that promote, organise or facilitate prostitution.

Arguments in favour

1.1 Moral and religious beliefs

Supporters of this policy believe prostitution is morally wrong as it encourages sexual intercourse outside marriage. They believe it should be prohibited because it undermines community values and threatens society's survival.¹

1.2 Exploitation of women

Feminists and others regard prostitution as degrading and exploitative of women. The United Nations Convention for the Suppression of Traffic in Persons and the Exploitation of the

Prostitution of Others also holds this view.² However, Australia is not a signatory to this Convention. Theoretically the exploitation of women engaged in prostitution would cease if prostitution was eradicated, however this would require wide ranging changes in society rather than just legislative change.

1.3 Clients prosecuted

In theory at least, clients would be liable to prosecution if the act of prostitution was illegal. This could be seen to redress the current situation where prostitutes only are prosecuted. If one is morally opposed to prostitution then it would be seen as only fair and right that all persons connected with the act of prostitution should be liable to prosecution.

Arguments in opposition

1.4 The effectiveness of the system

Suppression inevitably results in prostitution being driven underground, and often into the hands of illegal enterprise.³ Further injustice then occurs.

In practice arrest rates reveal a sexual bias favouring male clients. One U.S.A. study showed this to be two male clients to every eight female prostitutes arrested.⁴

1.5 Lack of community support

The small survey that was conducted on human rights aspects of prostitution indicated community agreement in Western Australia that suppression of prostitution is objectionable. This concurs with a survey carried out for the Royal Commission into Human Relationships.⁵ Only 2% of the respondents considered prostitution as a criminal act calling for police action and jail.

1.6 Ethical considerations

The principle that private sexual morality is not a matter for the law, is widely recognised. This has been acknowledged with the distinction in law between prostitution itself and related activities. There is little evidence that society would now assent to such a fundamental change as outlawing prostitution.

1.7 Practical aspects

Suppressing prostitution is a mammoth task that requires considerable resources. This task is not regarded by the community as a priority for the scant police resources available. The general view is that this money and manpower would be better utilised in other areas. To be effective, uniform Australian legislation prohibiting prostitution would be required. This would be virtually impossible to achieve.

1.8 Rights

Suppression would result in increased infringement of the rights and entitlements of clients and the community but more especially of prostitutes. This would stem partly from prohibiting prostitution but also from the fact that it would continue to occur illegally. Individuals involved could not be guaranteed protection by the law.

Conclusion

1.9 Suppression and prohibition of prostitution would erode rights of those involved in it, is unacceptable to the community and is impractical to implement.

2. Strengthening the law

Proponents of this view believe that the law has an impact upon prostitution by deterring and stigmatising prostitutes. Tightening the law would make it more efficient and prevent this

'immoral and degrading practice'. Specifically the law should (continue to) prevent offence to public order and the exploitation and coercion of women.

Arguments in favour

2.1 Protecting public order

Strengthening the law would stamp out child, street and male prostitution and protect the community from the more visible aspects of prostitution.

2.2 Decreasing organised crime

It has been asserted that there is a substantial link between prostitution and organised crime. Douglas Meagher, Q.C. has stated that the utter degradation of the women involved in prostitution as a result of the practices of organised crime is so significant that it warrants the closest and most intensive operations of law enforcement agencies throughout Australia.⁶

2.3 Health aspects

More stringent controls on health checks and increased prosecution of male prostitutes has been suggested to combat the risk of sexually transmitted diseases, including the Acquired Immune Deficiency Syndrome.

Arguments in opposition

2.4 Increased penalties not effective

Increased monetary penalties have not proved effective as a deterrent in other countries. Furthermore, increased penalties may result in prostitutes shifting outside the law and containment.

2.5 Rights

These have been outlined in the section on containment. Strengthening the laws would aggravate the infringement of prostitutes' and clients' rights and would do little to enhance community rights.

Conclusion

2.6 Strengthening the law would not secure the rights of those involved in prostitution and may in fact drive prostitution further underground, bringing an even greater deterioration in rights.

3. Abolition of criminal penalties

Abolitionists believe that although prostitution is undesirable in principle, it is impossible to eradicate it by the use of the Police Force. Under this system the act of prostitution is not an offence but the public nuisances associated with the operation of prostitution are. Thus the individual only comes to the attention of the police when his/her behaviour infringes certain standards. This is often rather loosely described as decriminalisation.

Arguments in favour

3.1 Elimination of the legal category of prostitution

The Western Australian Criminal Code and Police Act refer to offences committed by 'common prostitutes'. The expression 'common prostitutes' is not defined by statute (but is found in English legislation). Total abolition of all laws relating to prostitution would result in the elimination of the legal category of 'prostitute' and 'the elimination of all legal forms which differentiate between "nice" women and "bad" women'.⁷

Further support for decriminalisation comes from the N.S.W. Catholic Social Welfare Committee. They view decriminalisation (the end of unjust victimisation of prostitutes) as 'a way for some to break out of the cycle of deprivation', whether it be social, economic, or drug or violence - dependence.⁸

3.2 Private morality and the law

Abolition of the criminal penalties associated with prostitution is in keeping with the notion that private sexual morality is not the concern of the law. This view was endorsed by the Royal Commission on Human Relationships.

Social policy should be neutral towards the fact of prostitution. 'By recommending decriminalisation we do not imply approval or encouragement of prostitution, but merely that we regard such legislation as an inappropriate use of the criminal law, '9

3.3 Advantages for the police

Abolition of criminal penalties would reduce the constant flouting of the law and free the police from the onerous task of prostitution regulation.

3.4 The concept of 'victimless' crime

This refers to acts and offences in which 'the victimisation is remote and uncertain or where no-one identifies as a victim' .¹⁰ For example, vagrancy, drunkenness, soliciting. Enforcement of laws dealing with victimless crimes involve police, or other official, discretion, which may give rise to unfair discrimination. The absence of a 'victim" also leads police to use methods such as entrapment or other invasions of privacy which many in the community do not find acceptable.]⁻¹ The abolition of criminal penalties for activities associated with prostitution would do much to ensure the human rights of prostitutes.

Arguments in opposition

3.5 Problems arising with the removal of police control

It has been suggested that the abolition of criminal penalties would encourage 'pimps, bludgers and criminals to enter the field'¹² of prostitution. Serious drug, crime and health problems could result. A proliferation of brothels is also foreseen as a consequence of abolition although there is conflicting evidence for this.¹³

3.6 Problems with soliciting

The increase in street soliciting that may occur if this offence is decriminalised is commonly used as an argument against abolition. This situation arose in N.S.W. after the repeal in 1979 of the Summary Offences Act 1970 (N.S.W.). Legislation was introduced in 1983 to prohibit soliciting in or near certain public places, for example churches, schools.

3.7 Morality and the law

Many who hold the view that prostitution is morally wrong believe that it should continue to be regarded as a criminal activity and that the State should support their view.

Conclusion

3.8 The abolition of criminal penalties for activities associated with prostitution would ensure that prostitutes and their customers enjoy the same human rights as any other member of the community. However, such a system would also need to incorporate safeguards to protect the community's rights and interests. This option will be considered more fully in the section 'Decriminalisation'.

4. Regulation of prostitution

This policy is based on a belief that prostitution cannot be eradicated and therefore must be actively controlled, with the object being to safeguard public order and health. The imposition of legal controls is often referred to as legalisation and some suggested controls include registering individual prostitutes, restricting street activity and brothels to 'red light districts' and limiting the ownership of brothels. Compulsory health checks are usually also advocated.

Arguments in favour

4.1 Control of prostitution

It has been suggested that regulation allows tight control of prostitution. Implementation of the suggestions above (registering prostitutes etc.) would set defined limits and enable strict police supervision.

4.2 Community interests

Regulation could state explicitly how, when and where prostitution may be practised. This information would be available to the broad community and the resulting increase in awareness would create better police - community relations.

4.3 Prostitutes' working conditions

Regulation could possibly ensure better working conditions and prostitutes would be legally entitled to benefits such as worker's compensation and sick leave.

4.4 Effect on sex crimes

It is often stated that legalisation of prostitution would reduce sex crimes such as rape. There is however no substantive evidence to support this.¹⁴

Arguments in opposition

4.5 Regulation not effective

Some overseas experience, for example in West Germany, has shown legalisation of prostitution in brothels (Eros Centres) to be ineffective as a means of regulation. This system is unacceptable to clients and prostitutes and both seek alternatives. As few as 12% of prostitutes are officially registered in West Germany¹⁵; the remainder work illegally. These women are likely to be abused and exploited as in other systems where prostitution is illegal. To guarantee that prostitutes operate in State brothels, there would have to be penalties for prostitution occurring in other situations, which then leads to infringements of the rights of illegal prostitutes. Regulation obviously requires considerable resources and the willingness, or coercion, of the prostitutes, to participate.

4.6 Opposition from prostitutes

Prostitutes are almost universally opposed to legalisation.

This is based on:

- objections to registration. The licensing of individual women is viewed as degrading, prevents anonymity and makes leaving prostitution more difficult.
- exploitation. Women are often charged exorbitant rents for their rooms and have little control over their work.¹⁶ 'When the government becomes the management of the prostitution business, laws decide how and where we should work, how much we should work and how much we should charge.'¹⁷

difficulties associated with being independent of the system. Women attempting to work outside the system would have great difficulty staying out of the hands of individual pimps and illegal organised pimping.

4.7 Increasing traffic in women

It is apparent that in some situations prostitution and trafficking in persons are related. This was recognised by the League of Nations in 1927, which believed that legalisation of prostitution stimulated traffic in women, for the purpose of prostitution. Even today it is said that forced prostitution and traffic in persons still exist in West Germany .18 Brothels and Eros Centres are seen as the basis for this.¹⁹

4.8 Corruption

A system of licensing and registration may lead to abuse and corruption in the granting of licences.²⁰ If the number of licences available is limited, the chances of bribery and dishonesty in their distribution increase.

4.9 Ethical objections

One implication of legalisation which is unacceptable to many groups in the community is the State's apparent recognition of prostitution as a social necessity. This was the basis for rejection of legalisation by the Wolfenden Committee.²¹

Opinion in opposition to legalisation ranges from the feminist argument that it institutionalises women's poverty, by assuming that men will always be buyers and women sellers²²; to 'a practice which is morally wrong does not become right because it is made legal in the eyes of the law'.²³

4.10 Rights

The rights of prostitutes become open to violation under this system with possible trafficking in women and exploitation (Article 6 of the Convention). It could be argued that there is invasion of privacy through compulsory health checks and registration (Article 17 of the ICCPR); however prostitutes themselves are not unified in their attitudes towards compulsory health checks.

Conclusion

4.11 The regulation of prostitution through legalisation is opposed by prostitutes and clients alike and there is considerable community resistance as it is seen to imply the State's approval of this activity.

5. The situation in other parts of Australia

Criminal laws relating to prostitution are, generally speaking, uniform throughout Australia. They are based on the English system in which prostitution is not illegal but some activities associated with it are offences. Laws in New South Wales and Victoria will be studied more closely as there are a number of significant differences and they could be models for Western Australia.

5.1 New South Wales

This is the only State in Australia to have decriminalised some aspects of soliciting. However, although homosexuality itself has been decriminalised, prostitution law generally only relates to women.

a) Prostitution and the criminal law

N.S.W. legislation deals with soliciting, keeping a brothel, living on the earnings of prostitution, advertising prostitution and procurement.

Soliciting. This act by male and female prostitutes is not itself illegal. It is an offence however to cause serious alarm or affront to the public²⁴ or to solicit in a public street near a dwelling, school, church or hospital.²⁵

Keeping a brothel. It is no longer an offence to keep a brothel²⁶; however it is an offence to permit prostitution in a massage room, sauna bath, etc.²⁷ It has been suggested that this provision prevents people entering brothels as a result of false advertising.²⁸ This provision appears to cover only female prostitution.

A person who manages a brothel, however, could be prosecuted for keeping a disorderly house.²⁹ The Disorderly Houses Act 1943 (N.S.W.) gives the police wide powers and its function is to permit the closure of unacceptable brothels.

Living on the earnings of prostitution. This is an offence under s.5 of the Prostitution Act 1979 (N.S.W.). It appears to apply only to female prostitution.

Advertising prostitution. Advertising premises or persons available for the purposes of prostitution is an offence under s.8 of the Prostitution Act.

Procuration. It is an offence to procure a person for the purposes of prostitution. This is covered by s.91A of the Crimes Act of 1900 (N.S.W.).

A Select Committee of the N.S.W. Legislative Assembly was appointed in 1983 to 'investigate and report upon the public health, criminal, social and community welfare aspects of prostitution in New South Wales'. This report is due to be released in mid 1986.

b) Prostitution law and rights

Two comments can be made regarding rights and N.S.W. prostitution laws.

Soliciting

This is one of the most emotive aspects of prostitution legalisation. However, there is no agreement on just how Offensive or otherwise soliciting is. It tends to occur only where business is likely to eventuate and these areas are usually well known - for example, to taxi drivers.

Male and female prostitution

The law in N.S.W. discriminates against prostitutes according to their sex. Although men and women prostitutes can be prosecuted for soliciting in certain public places, for example near a school, the offences of living on the earnings of prostitution, procurement and advertising prostitution, appear to apply only to female prostitution.

5.2 Victoria³⁰

The situation in Victoria has been referred to by a former W.A. Police Minister as the option favoured by members of the Western Australian Government.³¹

Prostitution and the criminal law

Prostitution, including male and homosexual prostitution, is not illegal as such in Victoria. Certain prostitution-related activities, however, are criminal offences. These include street soliciting, living on the earnings of prostitution, ownership and management of brothels, and exploitation and procurement.

The Town Planning (Brothels) Act 1984 (Vic.), enacted in July 1984, abolishes penalties for some of these activities when they occur in brothels with a valid planning permit.

b) Town planning legislation

In the past decade attempts have been made to regulate the location of brothels in Melbourne using town planning Provisions. This was done by permitting massage parlours in certain zones. This measure was largely unsuccessful as the vast majority of brothels continued to operate without valid town planning permits.

This situation culminated in the establishment in 1984 of a Working Party on the location of brothels and the implementation of some of its recommendations in the Town Planning (Brothels) Act 1984.

This Act recognises brothels as a legitimate land use, subject to the approval of the responsible planning authority. The Act covers the location and ownership of brothels, prostitution-related activities occurring in brothels and penalties for brothels operating without permits.

The location of brothels. Brothels are prohibited in residential areas and can only operate when permitted by the local Council.

Ownership of brothels. A permit cannot be granted to a person convicted of a drug or other serious criminal offence. A person may not have an interest in more than one permit.

Prostitution related activities. Living on the earnings of prostitution, keeping a brothel and using premises for prostitution are no longer criminal offences in brothels with planning permits.

Penalties for brothels operating without permits. A fine of up to \$6,000 for a first offence, up to \$9,000 for a second or subsequent offence and an additional penalty of \$600 for each day the brothel is open may be imposed on brothels without planning permits.

Owners of existing brothels had 12 months from 2 July 1984 to apply for a permit. A moratorium on prostitution-related offences in established brothels was in force during this time. Certain other parts of the Act have not yet been proclaimed.³²

An inquiry into prostitution was established by the Victorian Government on 7 September 1984. This is examining the social, economic, legal and health aspects of prostitution. The inquiry was due to report to the Government in early 1986.

c) Prostitution law and rights

Soliciting

Victorian law covers both prostitutes soliciting for clients and clients soliciting for prostitutes. This provision is uniquely Victorian and has no counterpart in Australia or England. It was introduced to stamp out 'gutter crawling' in St Kilda, which is the habit of a car 'crawling' along the road near the pavement to enable the occupants to solicit a prostitute.

Although such an approach is possibly theoretically desirable (in terms of treating prostitutes and clients equally), difficulties arise when trying to prove that a person went to a public place to find a prostitute. Most convictions are obtained by having plain clothes policewomen pose as prostitutes. This practice may not be acceptable to sections of the community and raises questions of ethical police practice.

Prostitution - legal or illegal according to its setting

Victoria moves a step further - by comparison with other Australian States - in the differential application of the law, depending on which area of the industry prostitutes are involved.

In Victoria prostitutes who work for escort agencies and visit clients in hotels and motels do not commit an offence. Prostitutes working in approved brothels do not commit an offence. Prostitutes working from brothels without a valid Planning permit do, however, commit an offence.

The setting rather than the Danner in which prostitution is conducted is the basis for prosecution.

This is a departure from previous legislative approaches, in which laws have usually been framed to prevent public nuisance from visible prostitution. It remains to be seen how effective this policy is, and how acceptable it is to the community.

B. DECRIMINALISATION

There is general agreement that prostitution exists and will continue to exist in Western Australia. Although this situation is not necessarily desirable, it is recognised that it will only cease with drastic social change and reorganisation. It will be apparent from Parts 1 and 2 of this study that the present law relating to prostitution and the policy of containment of prostitution violate the rights of those involved and the community in general.

Optimal prostitution legislation must protect the human rights of individual women and men, the rights of groups in need of special protection such as children and the intellectually handicapped, and of the general public. Most of these rights have been identified in this report.

Options for prostitution legislation have been outlined in the preceding pages. Decriminalisation of the activities associated with prostitution, with appropriate safeguards, is the option most acceptable in terms of respecting both community rights and the rights of those involved in prostitution.

This option would ensure for all members of the community:

- the right to liberty and freedom of movement (Article 12 of the ICCPR)
- the right to equality before courts and tribunals (Article 26 of the ICCPR)
- the right to recognition as a person before the law (rather than being designated a 'common prostitute') (Article 16 of the ICCPR)
- the right to privacy and reputation (Article 17 of the ICCPR)
- the right to freedom of thought and expression (Article 19 of the ICCPR)
- right of free association (Article 22 of the ICCPR)

All these rights are also recognised in the Human Rights Commission Act 1981 (Cwlth).³³

Discrimination against women and men, who are involved in or affected by prostitution, would be diminished by decriminalising prostitution related activities as they would have:

- the right to protection from discrimination by legislative change (Article 2 of the Convention)
- the right to be viewed as an individual and not as a member of a stereotyped group (Article 5 of the Convention)
- protection from all forms of trafficking in women and the exploitation of prostitution of women³⁴ (Article 6 of the Convention)
- the right to work (Article 11(1)(a) of the Convention)

- the right to protection of health and safety in working conditions (Article 11(1)(f) of the Convention)
- the right to financial credit (Article 13(b) of the Convention)
- the right to education (Article 10 of the Convention)

These rights are set out in the Sex Discrimination Act 1984 (Cwlth).³⁵

Effective and acceptable decriminalisation would be achieved by the repeal of those sections of the law which make certain prostitution-related activities criminal offences. This could be backed up by the implementation of measures regulating certain aspects of prostitution.

1. Repeal of the law

The main impact of this change would be on the offences of soliciting, living off the earnings and keeping a brothel.

1.1 Soliciting

This is probably the most emotive aspect of prostitution as far as the community is concerned. A solution which in theory is compatible with the rights of all involved is that chosen by N.S.W. legislators. Soliciting by male and female prostitutes is permissible but is an offence when conducted in public, in a church, school or hospital; or in public in the vicinity of a dwelling, school, church or hospital. In practice, however, many N.S.W. prostitutes regard this change as regressive.³⁶

1.2 Living off the earnings of prostitution

Repeal would entitle prostitutes to their taxable earnings which would be available to them to dispose of as they wish.

1.3 Keeping a brothel

Abolition of this section would result in prostitution being recognised as a commercial/service activity. Imposition of restrictions on zoning, size of premises, noise, advertising and health standards similar to those placed on conventional commercial activities would follow (Article 11 of the Convention).

1.4 Employment benefits

With prostitution recognised as legitimate work, a prostitute would be entitled to unemployment benefits, pensions, worker's compensation, superannuation (Article 11(1)(f) of the Convention).

2. Safeguards

The following measures would need to be considered

2.1 Health

(a) Sexually transmissible diseases (STD)

It is both impractical and, some say, discriminatory to oblige prostitutes to register for health checks. If treated as a commercial activity, normal market forces would go some way to ensure a high standard of health of the workers.

(b) Acquired Immune Deficiency Syndrome (AIDS)

The emergence of this syndrome calls for special measures and other preventative measures, for example condom usage should be encouraged. Considerable community education about this disease is urgently required. However, it is beyond the brief of this project to discuss the issue more fully.

(c) Drugs

Programs aimed at preventing drug addiction in the general community need to be implemented. If there are fewer drug addicts then there will be fewer women needing to resort to prostitution to finance their drug habit.

2.2 Local nuisance

This would be controlled by limiting soliciting to certain areas and brothels to certain zones.

2.3 Taxation

If prostitutes' incomes were lawfully acquired they would be required to pay taxes at the conventional rate and would be entitled to the usual rebates and deductions.

2.4 Minors

Measures would need to be taken to ensure that only people above a certain community determined age could visit or be employed in a brothel.

2.5 Advertising

Usual commercial/service restrictions would apply.

2.6 Crime

The option of refusing permits for brothels to people whose previous convictions for criminal offences have not been expunged should be considered. However, in relation to this point it would be useful to consider the experience of other countries.

C. RECOMMENDATIONS

The following recommendations are made after considering the rights of prostitutes, clients and all members of the community.

1. Criminal penalties for offences related to prostitution should be abolished.
2. Soliciting in certain public places, should, as in New South Wales, be treated as an offence.
3. Safeguards should accompany this decriminalisation of prostitution-related activities. Particular emphasis should be on creating a balance between the rights of all individuals. The following areas are of particular concern.
 - health, including STD, AIDS, drug and alcohol dependency
 - nuisance to the public
 - taxation
 - minors
 - criminal involvement in prostitution

It is apparent from this project that many sections of the community are concerned about prostitution and its effects. In this light the following recommendations are made:

4. Further programs for community education about people's rights in general, as well as the rights of minority groups, such as prostitutes, should be implemented.
5. Dissemination of information about sexual health, especially all aspects of sexually transmissible disease, is necessary to enable all members of the community to exercise their rights and responsibilities in this area.

CONCLUSION

It is naive to assume that decriminalisation or any other legislative change will drastically alter the practice of Prostitution. The social problems prostitution reflects must also be identified and tackled.

The law however is too important an influence to ignore. Legislative change accompanied by community debate and education will do much to ensure the rights of all involved or affected by prostitution.

The rights recognised in the Human Rights Commission Act and the Sex Discrimination Act which require particular protection in relation to prostitution are:

- Articles 1, 5(a), 6, 11, 12 and 13 of the Convention
- Articles 2, 7, 12, 14, 16, 17, 19, 22, and 26 of the ICCPR.

ENDNOTES . PART 4

1. Victoria, Inquiry into Prostitution, Options paper, November 1984, p.73.
2. Under this Convention, States Parties agree to punish any person who, to gratify the passions of another: procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person; keeps or manages, or knowingly finances or takes part in the financing of a brothel; or knowingly lets or rents a building or other place, or any part thereof, for the purposes of prostitution of others.
3. Claude Jaget (ed.), Prostitutes - our life, Falling Wall Press, England, 1980, p.18.
4. Eileen McLeod, Women working: prostitution now. Croom Helm, London, 1982, p.21.
5. Royal Commission on Human Relationships, Final report, Vol. 5, AGPS, Canberra, 1977, p.63.
6. Douglas Meagher, Organised crime, Papers presented to 53rd ANZAAS Congress, Perth, Western Australia, 16-20 May 1983, AGPS, Canberra, 1983. p.38.
7. Helen Mills, 'Prostitution and law' in Kay Daniels (ed.), So much hard work, Fontana Books, Sydney, 1984, p.313.
8. New South Wales Catholic Social Welfare Committee, Submission to the Select Committee of the Legislative Assembly Upon Prostitution, Sydney July 1984, p.3.
9. Royal Commission on Human Relationships, op. cit., p.71.
10. Victoria, Inquiry into Prostitution, op. cit., p.80.
11. ibid., pp.80-81.
12. O.F. Dixon, Report on action taken by police regarding allegations of graft and corruption in the Police Force, W.A., March 1982, p.73.
13. South Australia, Legislative Assembly, Report of the Select Committee of Inquiry into Prostitution, 1980, p.19.
14. Susan Brownmiller, Against our will, Penguin Books, 1976, p.76.
15. Jaget, op.cit., p.20.
16. Ulla Ohse, Forced prostitution and traffic in women in West Germany, Human Rights Group, Edinburgh, 1984, p.42.
17. Jaget, op.cit., p.18.

18. Ohse₁ op.cit., p.4.
19. ibid., p.43.
20. South Australia, Legislative Assembly, op.cit., p.18.
21. Royal Commission on Human Relationships, op.cit. p.70
22. Jaget, op. cit., p.19.
23. This was one argument against legalising prostitution that appears in a submission from the Country Women's Association of W.A. (Inc.) to the Premier of Western Australia, January 1984.
24. Offences in Public Places Act 1979 (N.S.W.), s.5.
- 25 Prostitution (Amendment) Act 1983 (N.S.W.) s.8A.
26. This was abolished with the repeal of the Summary Offences Act 1979.
27. Prostitution Act 1979 (N.S.W.) s.6.
28. Victoria, Inquiry into Prostitution, op. cit., p.49 quoting Mr K. Gabb in N.S.W. (Assembly) 23 April 1979.
29. Disorderly Houses Act 1943 (N.S.W.).
30. For an informative review of Prostitution Law in Victoria see the Options paper released by the Victorian Government's Inquiry into Prostitution in November 1984.
31. The West Australian (10 November 1983) 4.
The West Australian (30 January 1985) 3.
32. The section prohibiting a person from holding an interest in more than one planning permit, or the section enabling the Supreme Court to declare premises to be a proscribed brothel had not come into effect at November 1984. (See Inquiry into Prostitution, op.cit.,p.33.
33. See Appendix II for relevant articles of the International Covenant on Civil and Political Rights upon which the Human Rights Commission Act 1981 is based.
34. Note that this is the exploitation of prostitution of women, not the exploitation of women. Many prostitutes do not believe they are exploited but rather that some of their conditions amount to exploitation. Decriminalisation of prostitution-related activities would improve prostitutes' working conditions and diminish their exploitation.
35. See Appendix III for the relevant articles of the Convention on the Elimination of All Forms of Discrimination Against Women. The Sex Discrimination Act

1984 gives effect to certain provisions of this convention and seeks to eliminate, as far as possible, discrimination against all people on the grounds of sex, marital status and pregnancy.

36. Interviews on the ABC radio program 'Background Briefing', 1 May 1983 on the topic of prostitution in New South Wales after Prostitution Act 1979.

APPENDIX I - METHODOLOGY

The project commenced on 1 October 1984 following negotiations between the WA CCL and the Human Rights Commission of Australia. This culminated in an agreement that the project would receive funding of \$4,900.

A. The following strategies were adopted to inform the community of the project and to seek maximum public input:

1. On 1 October 1984 letters were sent to sixty-five church, community, political, service and women's groups, advising them of the project and seeking their group's opinions, ideas and policy statements on prostitution. In early November similar letters were sent to a further seventy-four women's, community and interest groups.

Fairly detailed submissions were received from seven groups, letters of support from four groups, telephone calls enquiring about the project from seven groups and ongoing contact was established with two groups.

2. Media interest in the project was high in the first week and continued throughout the duration of the project. Support from the media contributed to the success of the project.

Following virtually every media report, people contacted the project officer. This was most significant in the first two weeks of October 1984, when forty-one people with some connection with prostitution offered to be interviewed as part of the project.

3. Between 23-25 October 1984 letters were sent to twenty-four metropolitan local government councils seeking their policies and opinions on prostitution. Letters were received from three city councils outlining their policy and a further three replied expressing their inability to respond.

4. Letters were sent to three shopping centre managers seeking their permission to have stalls to distribute literature explaining the project and inviting community response. No replies were received and this avenue was not pursued.

5. A sheet outlining the project aims and seeking community contribution was distributed to members of the public, and at various meetings, including one to set up a branch of the Australian Collective of Prostitutes in Perth.

Considerable emphasis was placed on informing the public about the project as this appeared to be the most effective way of gathering input from prostitutes and clients - traditionally the two groups most difficult to contact in this situation.

B. Having established contact, interviews were conducted with and submissions obtained from the following groups:

1. Prostitutes

Contact was made with a total of twenty-two prostitutes - twenty female, two male. There was a total of twenty-five face to face interviews with eleven people, following initial telephone contact. Telephone (only) interviews were conducted with six people and written submissions were received from five others. These are designated as interview/submissions 'Cl-36, confidential' in this report.

2. Clients

Information was received from twelve clients. Ten were interviewed over the telephone, one sent a written submission and there was one face to face interview. Conversations commenced with an explanation of the project and responses to the questionnaire used in the WA CCL survey, were sought. Further open-ended questions followed.

Clients' ages ranged from 32-67 years, with three not recorded. Only two had never married.

Clients are designated 'C70-81, confidential' in this report.

The difficulty of gaining access to prostitutes and clients is well documented. Eileen McLeod, author of Women working: prostitution now spent nine months achieving an interview target of thirty prostitutes and twelve months for twenty clients.

3. People with other connections with prostitution

Face to face interviews were conducted with a taxi driver, a man who called himself a pimp, medical practitioners and lawyers involved professionally in this area, and members of the Vice Squad.

4. Residents of Kalgoorlie

The project officer Judy Edwards and the secretary of the WA CCL Gwen Truslove visited Kalgoorlie from 9-11 November 1984. Interviews were conducted with the Mayor of Kalgoorlie and townspeople. Attempts to contact madams in Kalgoorlie were unsuccessful.

As a result of this visit, a number of people involved in prostitution in Kalgoorlie subsequently contacted the project officer.

C. A pilot questionnaire, designed to survey community attitudes to prostitution was sent to one hundred and twenty members of the WA CCL. Thirty-five responses were received. The questionnaire was not distributed to the public as the project had insufficient resources to design an optimal questionnaire, to distribute it widely or to collate the resulting data.

D. A public seminar on 'the Human Rights Aspects of Prostitution Legislation' was conducted jointly by the WA CCL and the Human Rights Commission, as part of the project. This was held in the Perth Town Hall on Saturday 8 December 1984.

The seminar was publicised by advertisements in community papers, information on radio, and programs were sent to 140 community groups.

The aim of this seminar was to provide information about prostitution and the law (a need identified in the pilot survey); to stimulate discussion about legislative options; and to seek community opinion on prostitution.

Approximately forty people attended the entire seminar, the numbers rising to nearly seventy during the screening of the controversial film 'Prostitute'.

A request from the media for television coverage of this event was rejected as this was unacceptable to a number of the seminar participants.

E. Prior to the commencement of the project, the project officer visited the research officers for the N.S.W. Parliamentary Select Committee Upon Prostitution, and sought practical advice from this group. Contact was also made with Ms Marcia Neave, the Commissioner for the Victorian Inquiry into Prostitution. Both these sources supplied valuable information about prostitution law in their States.

During the last three months of 1984, the WA CCL President, Brian Stafford, visited police and local government authorities in Holland. The information he obtained regarding the Dutch situation provided useful background information.

**APPENDIX II - THE INTERNATIONAL COVENANT ON CIVIL
AND POLITICAL RIGHTS**

Only those parts of the Covenant relevant to this project are included.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons of his arrest and shall be promptly informed of any charges against him.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. ...

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

**APPENDIX III - CONVENTION ON THE ELIMINATION OF ALL FORMS OF
DISCRIMINATION AGAINST WOMEN**

Article 1

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.

Article 5

States Parties shall take all appropriate measures:

- (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;
- (b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Article 6

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

- (a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;
- (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging co-education and other types of education which will help to achieve this aim, and in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;
- (h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to work as an inalienable right of all human beings;
- (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
- (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
- (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

- (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
- (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

- (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

Article 12

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

Article 13

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to family benefits;
- (b) The right to bank loans, mortgages and other forms of financial credit;

**APPENDIX IV - QUESTIONNAIRE ON THE HUMAN RIGHTS
ASPECTS OF PROSTITUTION**

W.A. Council for Civil Liberties Project - October-December 1984

ALL QUESTIONS ARE OPTIONAL AND CONFIDENTIALITY IS
RESPECTED. COMMENTS WOULD BE APPRECIATED.

1. Details of participants Age_____

Sex Male/Female

Which **DNE** of the following groups do you
belong to?

Prostitute

Customer

Member of the public

No comment

2. What do you think of the present policy of containment of
Prostitution in W.A.?

AGREE

DISAGREE

DON'T KNOW

COMMENTS:

3. Do you believe that the present policy interferes with the rights of:

(a) Prostitutes (male and female)? YES

NO

DON'T KNOW

LaMMI-Ta

(b) Customers?

YES

S

NO

DON'T KNOW

COMMENTS:

4. Does prostitution in any way interfere with your life in the community?

YES

NO

DON'T KNOW

COMMENTS:

5. Do you think that prostitution in W.A. should be:

CONTAINED

**(Current
policy)**

PROHIBITED

LEGALISED

DECRIMINALISED

COMMENTS:

6. At what age should people be able to be involved:

(a) as prostitutes _____

(b) as customers COMMENTS: _____

7. Why do you think that prostitution exists? What function does it serve?

COMMENTS:

Please return to GPO Box T1816, Perth. 6001

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