

THE ROAD TO DECRIMINALISATION: THE PROSTITUTION LAWS IN NEW SOUTH WALES

A paper from the Australian Prostitutes Collective

The State of New South Wales (NSW) has a unique role among Australian states in the administration of laws on prostitution. It is the only Australian jurisdiction which has developed a policy of decriminalisation.

To demonstrate this and to trace the development of this policy, this paper outlines the extent of the legal sanctions on prostitution in the states of Australia and reviews the historic events of NSW which has led to its unusual situation.

A checker-board pattern

Australia at the moment does not have a unanimous policy on prostitution across its various jurisdictions, for each of its six states and two territories vary considerably in legal detail. Moreover, each has different attitudes in its treatment of prostitution offenders due to law enforcement policies by each State's police department. This, however, usually reflects the extent of conservatism in the State Government which has control over the police.

It is not, as is sometimes supposed, the development of separate colonial legislative systems which has resulted in this legal chaos. Whilst prior to Federation in 1901, when Australia was granted self-government as a commonwealth of states by Great Britain, each Colony (the six Colonies of Australia became the six States with Federation) had been free to construct its own statutes, the over-riding domination of Great Britain ensured that basically legal policies towards prostitution were merely local variations of the prevailing English laws.

What has led to the current checker-board situation of prostitution laws across Australia are recent responses or reactions to changing attitudes worldwide depending on the extent of conservatism and liberalism existing in the prevailing State Governments as individual legislative bodies. Thus, in four of the six States there exists laws that criminalise prostitution, in one State, Victoria, we see a system of legalisation or regulation, and in NSW a definite policy of decriminalisation has evolved. The two territories have clung more closely to the colonial laws of the States which possessed jurisdictional and administrative control over them.

Let us now look very briefly at the States varying policies and jurisdictional powers over prostitution.

The States of Tasmania, Western Australia, South Australia

and Queensland, the Australian Capital Territory, and the Northern Territory, follow variations of criminalising prostitution related activities. Of these, South Australia is in transition, with the strong possibility of adopting decriminalisation as its prostitution policy in the very near future, much to ^{the} chagrin of the State's heavy handed police force, the two Territories have stabilised with rather lenient policies but with strict police surveillance, Western Australia is a virtual police state so far as prostitution is concerned with almost total control by the police over prostitution businesses, and Tasmania and Queensland, the most conservative States with almost puritan attitudes, are very repressive jurisdictions. Thus, extremes are quite apparent.

In the Australian Capital Territory, whose laws are based on an early (prior to 1911, when this territory was ceded to the Federal Government) NSW legislation, punishment for breaking a prostitution law is relatively light and the last arrest for prostitution took place in 1978. The police, however, keep a keen eye on the eight prostitution businesses in Canberra, and exercise their powers of entry periodically. The only incidence of 'busting' (arresting) any inmates of parlours (brothels) is where drugs are found in spontaneous police searches and the place is forced to close under the drug laws. The Northern Territory is also somewhat lenient and its laws have not altered very much from those colonial and early state statutes of South Australia, which administered the Territory until 1911.

At the opposite extreme is Queensland, where the repressive laws are loaded with heavy penalties. A recent judicial report to the State Government has called for even more repressive laws, making the operation of a prostitution business virtually impossible. Police in this State respond to their ultra-conservative, near fascist Government's attitude on prostitution with constant raids upon parlours and a rotation system of arrests amongst workers. The imbalance of this system implies corruption in the ranks of police officials. Tasmania has in the past adopted a similar policy of dealing with prostitution, but this is no longer necessary since prostitution in that State has been driven underground and no visible form of the industry exists. In South Australia before the current 'soft-line' adopted by the State Government police were very active oppressors of prostitution activities, until about the only form of prostitution permitted by them was escort services:

In Western Australia the police for all intents and purposes run

prostitution. Only 15 brothels in Perth and 4 in Kalgoorlie are allowed to operate, all workers are obliged to register at the local police station, including proving their identity through documentation and being fingerprinted, and restrictions are placed on workers, who are refused the right to socialise beyond the brothel in Kalgoorlie under threat of police action, deregistration and escorted out of town. Police in this State still apply the antiquated term "common prostitute" legally to workers after registration and use it to perpetuate the stigma of prostitution to those who participate in it.

The State of Victoria in recent years has adopted a system of legalisation, or regulation of prostitution under State jurisdiction. This system depends on the registration of houses of prostitution, which are given the legal term "brothel". A permit to operate is issued to those brothels which have successfully acquired approval to establish premises for prostitution purposes from local municipal councils. A right of appeal to the State Government exists in the case of unjustified rejection of applications of brothel owners by councils. However, due to the costs of appeal cases and the overload of cases to be heard, many owners are forced to continue operating without a permit, or in other words, they face very heavy penalties for operating "illegal premises". To give you some idea of the chaotic and ponderous nature of this system, which was introduced in mid-1984, at the end of the "amnesty period" held for a year to mid-1985 to give everyone a chance to lodge applications and make necessary adjustments, less than a third of the seventy applicants had been granted permits. Of the 150 brothels in Victoria, less than a half had even bothered to apply for permits; the rest were sceptical and/or had perceived the problems ahead and decided to take their chances illegally. Workers who were unable to get jobs in the few fortunate or selected brothels either also took chances in an illegal brothel or worked the streets, hotels or some other arena of prostitution considered illegal by the State. Police are on the brothel payrolls to turn the other way, and councilmen are offered bribes to support applications. The system of legalisation in Victoria has not 'broken-down' as has been suggested, but, as elsewhere in the world where legalisation or regulation has been adopted, it simply has never worked, and offers us a further example that State control over prostitution is an impractical solution to political, economic and social incorporation of the industry into modern society.

In a progressive sense, New South Wales stands out as a practical

for the rest of Australia. It is still early days and the road to decriminalisation is experimental. The road is a rocky one with an uncertain future. A recent decision by a NSW Parliamentary Select Committee investigating prostitution in the State has recommended a licensing system based on industrial environmental factors, and the Vice Squad have stepped up intimidation tactics based on moralising attitudes, using fringe laws which have escaped repeal in past reforms. These are in the melting-pot of legislative changes for the immediate future.

How NSW steered itself onto the road to decriminalisation is an interesting story in view of the repressive systems of law which have existed with regard to prostitution throughout much of the State's recent history. The history of this development can be seen in three broad phases:

The Colonial Period from 1788 to 1908

The Criminalisation Period from 1908 to 1979

The Decriminalisation Period since 1979 to the present

The rest of this paper will trace this history.

Colonial New South Wales: from a shipload of whores to laissez faire

The Colony of New South Wales was founded as a penal settlement in 1788. Its first English settlers consisted of military administrators and personnel, civilians attached to these, five shiploads of convict men, robbers, pilferers, poor men and Irish rebels, and one shipload of "whores", as all convict women were considered. If they had not been regarded as prostitutes in England before transportation, they had to prostitute themselves on the voyage to seamen and officers to survive during their penal servitude to obtain favours from soldiers, officers or free settlers, or were assumed to be "whores" by officials. The First Fleet of 1788 had a discrepancy between the sexes of about 100 in favour of males. Fifty years later when the transportation of convicts to Australia ceased there were three men for every woman. This situation, rather than produce a heavy demand for wives, created an ideal of the free roaming Australian male, the bushman and his male companions or 'mates' to which women were relegated to the periphery of the Australian society. This situation also produced an environment of prostitution, of the male as well as female kind.

In the 1850s the gold rushes provided further imbalances between the sexes. These also provided an expanded arena for prostitution.

With prostitution on the goldfields, prostitution in Sydney did not flourish, but in fact increased as men left for the goldfields and deserted their families. The wives of these men had little choice but to prostitute themselves in order to support their children, and with shiploads of gold seekers, not to mention seamen, arriving in the port of Sydney, there was no shortage of paying customers.

In the late 19th Century Sydney entered the Industrial Revolution and as with other cities of the world the growth of urbanisation brought great poverty to the working classes. Single women, widows and deserted wives were among the prime victims of the city and the system, and many turned to prostitution to survive. An official estimate of 1885 thought 13 women worked in prostitution, which represented some 1.25% of the total female population of Sydney. Due to the semi-tropical climate of Sydney outdoors prostitution was the most popular form of working. Very few brothels existed. Open air prostitution provided the women a freedom not experienced indoors. The women who worked the streets and parks of the city adopted a laissez faire approach to prostitution. They operated as independent vendors, but often either hired a thug for protection or had a lover/husband standing nearby to deter violent actions from clients.

The laws throughout this period were regurgitated English laws given local modification. A law existed to fine and jail "brothel keepers", but this was mainly to discourage exploitation of women. Besides, very few houses were used for prostitution in colonial Sydney, so that the law was largely ineffective anyway. As for street prostitution, which most workers practiced, there were no laws dealing with soliciting. Although, based on existing English laws, women could and were often arrested for lewdness, drunkenness, and foul language regardless ^{of} whether they were guilty or not of the offence. Law enforcement authorities had discretionary powers of arrest and intimidation, and responded to individual women according to bias, morals or discrimination depending on the officer involved.

NSW only moderately responded to the contagious diseases legislations of England and some of the other Colonies. Thus, no controversy over the issue of punishing and quarantining women for the spread of sexually transmissible diseases arose in NSW, and the Colony had no lock-hospital for confining infectious women such as had been built in Tasmania.

By and large, NSW seems to have been quite liberal in its attitude towards prostitution throughout its colonial period.

The 'Bad Women' of Sydney: NSW creates a legal fiction

Early this century NSW responded to the world wide trend of creating laws to eradicate prostitution under a widespread belief that prostitutes were the cause of infectious diseases and that a 'white slave' racket existed across the world. In 1900 the State had adopted anti-homosexual laws as a response to the legal homophobia of Great Britain at the time, and this no doubt had an intimidatory effect on whatever male prostitution existed in Sydney. In 1908, seven years after the end of colonialism, a law was introduced to effectively discourage, if not terminate, street prostitution. At the same time it became an offence for anyone to live on the earnings of a prostitute. Thus, in one swift sweep of the legislative pen the law turned both the prostitute and her protector from merely an immoral couple to criminals facing gaol sentences.

A more incidious outcome was the fact that women in prostitution had little choice but to seek the help of more powerful protectors than their husbands, lovers or hired bouncers. They needed protection from the law now. The only source with this kind of power was the criminal underworld, already well organized in importing opium, dealing in sly grog and illegal gambling networks. For criminal bosses it was a simple matter to add prostitution to their repertoire of activities. They were the only ones able to offer working women havens from the law, and with the resources to pay off the cops, councilmen and politicians. But there was a price. The women lost their freedom and became employees of male bosses. The law had effectively ended the laissez faire prostitution of colonial times. The law had not only created big business prostitution but had introduced a legal creature, the criminal or bad woman of prostitution. The legal concept of the bad woman was embodied in the term 'known prostitute' which was written on the records of women charged and penalised for prostitution; either way, the notion of bad woman forced those so called to seek the company of criminals and become the victims of police intimidation tactics for the purposes of extortion.

Only a few of these so-called bad women were able to elevate their criminal status to compete with the criminal bosses. One such woman was the well-known Sydney character, Tilly Devine, who began as a street prostitute, and in 1925 bought a house in East Sydney which she turned into a brothel. In a few years she owned a string of bordellos. But to protect her interests from rival criminal organizations she was forced to hire the uncertain loyalties of male hoodlums and standover gangs. One woman who never acquired madam status but through her cunning and beauty

maintained some control over her own destiny was Nellie Cameron. But her price was to take as lovers some of the most vile gangsters of Sydney in the 1920s and 1930s. In the end Nellie, who had been shot three times, developed a malignant cancer as the result of one bullet wound and she ended her own life out of despair at the age of 41. For women to assert control in prostitution a heavy price was demanded and extracted.

In the late 1920s women generally were the first to feel the bite of the coming Depression. Following a series of entrenchments in traditional male occupations numbers of young women were forced to seek prostitution for financial relief. The State Government responded to the increase in numbers of prostitutes by introducing two further laws in 1928. The so-called Vagrancy Law was determined by a person's inability to show a legal income. It was used mercilessly against women in prostitution. The so-called Consorting Law made it an offence for anyone to associate with a 'known prostitute' and was a favourite of police for arresting women found in the company of one another in prostitution. Thus, by the end of the 1920's, in the wake of women gaining some measure of control in prostitution and on the verge of massive unemployment, the legal oppression of prostitute women was complete: they were arrested for working as prostitute and/or for not acquiring an income through the legal definition of occupation; they were isolated from one another under threat of arrest, and they were isolated from emotional companionship by threats of arresting their lovers for living off their earnings.

The Great Depression of the 1930s exacerbated the situation. Men, unable to support their wives, or in the search for work, left women to survive the best way they could. The only option for many of these women was prostitution, in spite of the heavy repressive laws. An intolerable situation had developed, which, although understood by the Government, was not relieved legislatively. Rather, the police eased off. But this meant demands for payment to individual policemen under threat of arrest. Thus, the institution of 'weighing-in' (weekly payments to policemen by prostitutes) became established in desperate financial and legal circumstances.

Whilst the Second World War brought relief from the Depression, it also brought thousands of willing customers to the shores of Australia. These customers were American G.I.s. The Depression had always been largely a period of male economic deprivation. For women, it had no clear historic boundaries, for they were still financially deprived during the War. Some found employment in the industrial war effort, but others had to turn to

of the many service-type employments created by the presence of well-paying American servicemen. Prostitution was only one kind of occupation encouraged by the upheavals of the War. Free-lancing prostitute women invented a new term, 'good-time gals', to disguise the nature of their associations with American servicemen, as well as avoid identification with women working in the brothel quarter of Sydney.

After the War came a new socio-economic incentive for prostitution: the migration of thousands of European men to Australia to escape the aftermath of war-torn European economies. The brothel sections of Sydney boomed, and street prostitution drew a new lease on life. A moral backlash followed. Led by the Council of Churches such pressure was put on the State Government that it was forced to close the brothel quarter with heavy police actions in 1962. But, in a quirk of legalistic fate, a court decision constituted a brothel only as having more than one woman working in a house. Armed with this loophole in the law a whole chain of single women brothels sprung up across East Sydney. While these houses had the sanctity of law, the women did not and the Government response was to step up the arrests of workers. Throughout the 1960s Sydney witnessed one of the most extensive periods of repression of prostitution in which the women were the chief victims ever known across the world. The rate of convictions for the period 1963 to 1970 did not number less than 10,000 per year. In view of the fact that an estimated 500 women worked in prostitution in Sydney during this time, this must be one of the worst examples of a legal oppression of women in modern history.

The State Government decided that the situation needed reforming in order to close the little one-woman brothels permanently. In 1968 amendments to existing anti-prostitution legislation allowed the police to carry out a massive raid on the brothel quarter which in fact resulted in the arrests of only a handful of women, but a large number of clients and even larger number of tourists were bundled into the police wagons. But, the effort was a success so far as the Government was concerned because the brothel quarter of East Sydney existed no more after that.

In 1970 the Government introduced a new piece of legislation which it called the Summary Offences Act. Into this Act were incorporated most of the existing prostitution laws. If the State Government had thought to more easily deal with prostitution under the one set of laws, it had not counted on yet another of those socio-economic incentives which have always given prostitution the right shot in the profit-making arm. This time it was the Vietnam War, as Sydney was elected a major Rest & Recreation

location for American servicemen on leave. R & R customers meant an expansion of prostitution and a further headache for the Government as it sought to pacify outraged moralists and find a solution to the situation. The Government sought a solution through repression. Police were called on to clamp down on street soliciting and massage parlours, which had sprung up to replace the little one-woman brothels and to attempt a clandestine form of street prostitution. Three squads made nightly sorties into areas where streetwalkers were known to operate. Although no less than 3000 convictions for street soliciting a year was a heavy oppression borne by the women, police repression ensured that the rate of arrests did not reach the 1960s figures. Police extortion attained unprecedented proportions with every streetwalker paying out \$50 to each of three squads once a week, and massage parlour owners paying \$1000 a month to keep from having their place raided. One woman, Shirley Brifman, in 1971 attempted to expose the extortion of 34 servicemen, but was later found dead. The lesson has since not been lost to every woman in prostitution.

If police manipulation of prostitution weren't enough, new criminal organizations with international links replaced the previous brothel chain proprietors. These organizations had strong political connections and control over drug networks. After a series of gangland killings and bombings, powerful bosses took control of prostitution, tying it inexorably with the heroin trade.

With such changes occurring in the underworld and prostitution growing by every new heroin addicted woman under the 'protection' of crime bosses and police extortionists, the State Government was at the end of its tether. But, other changes were in the air, political changes and social changes, that would put the Government on the road to decriminalization.

Prostitute Victim: Whores without laws

A number of factors led to the radical changes in policy towards prostitution in NSW. The strongest wind of change carried the messages of civil liberties and social reform from Western centres of culture. In 1976 a change in Government with a swing from a conservative majority to a new liberalism meant the adoption of fresh attitudes. Finally, among left wing political groups there arose a concern for the social victims of crime. The movement against victimless crimes and legal victimization of women in the mid-1970s embraced two influential groups, the Civil Libertarians and Humanists, who pressured the new reformist State Government into repealing the laws which victimized women in prostitution. The Government

response was the repeal of the Summary Offences Act, including the laws on soliciting and cohabiting with known prostitutes, in 1979, and the introduction of the so-called Prostitution Act. In short, what all this legislative action amounted to was an end to some 70 years of direct victimization by law of women in prostitution. The Prostitution Act did not restrict street soliciting, nor did it stop women from working in a brothel. But it made it an offence to work in a massage parlour, and it opposed anyone living on the earnings of prostitution. The object was not only an end to the legal victimization of workers but ~~their~~ financial victimization by brothel owners and pimps as well. The problem was it also victimized husbands and de facto husbands of the women and denied these women the right to choose to support whomever they wished. Another law contained in the Act was that regarding advertising prostitution. It prohibited direct advertising, which reflected society's moral attitudes and perpetuated stigma.

While the Prostitution Act at least seemed headed in the right direction if still far from perfected, a number of indirect laws on the statutes made running a house of prostitution a risk, with the ultimate loss of employment for those working in it. The most notorious of these were contained in the so-called Disorderly Houses Act, whereby a brothel could be closed under a Supreme Court order once police provided the court with evidence of prostitution within.

No sooner had the legal reforms become known widely than the Churches expressed outrage, particularly an ultra-conservative fundamentalist organization calling itself the Festival of Light. Members of this group staged protests outside Parliament House and in front of selected brothels. At the same time an action group comprised of trendy residents who had moved into an unofficial red light area (a brothel quarter since the 1920s) lobbied the Government for a return of anti-prostitution laws. Their chief target was some 100 streetwalkers, many of whom were heroin addicts, and their campaign tactics included lies to the press that perpetuated ugly myths about prostitution. They claimed that the women dropped used condoms and syringes on the sidewalk, and that the women's pimps openly threatened residents. None of these accusations had a grain of truth in them, but the State Government weakened as suggestions of political corruption and a protest outside the home of the State Premier in which residents threw condoms on his lawn had an effect in forcing a compromise. A new law which prohibited street prostitution in residential areas followed and a police blitz resulted in driving a number of women to another area, others out of independent street prostitution and into controlled brothel

situations, and at least 25 young women straight into jail.

If the removal of street prostitutes from residential areas weren't enough for the conservative elements of Sydney society, inner city trendies and religious fanatics, the police made an all out campaign to remove the brothels from residential areas^{/by} using the Disorderly Houses Act. While the larger houses run by powerful agents withstood the assault through lengthy court appeals and paying off the cops, the smaller brothels of independent workers and co-operatives of women were forced into oblivion. As many of these provided work for older workers in the twilight of their working lives, these women were forced to endure the humiliation of re-turning to streetwalking alongside much younger women or to have to work in parlours where managements demand half their take.

These events aside, the situation in NSW for prostitution is far more favourable for those working in it than it has ever been. It is a complete reversal of the situation of ten years ago when every worker paid a cop, the threat of police raids hung over every parlour and brothel, and there was no opportunity for the enterprising worker to set herself up independently. Nowadays since the repeal of the Summary Offences Act in 1979, the law allows a woman to choose to work in prostitution without legal encumbrance provided she is over 18, works on the street in a non-residential area, or works in a brothel that does not refer to itself as a massage parlour. In the case of prostitute men, since the removal of the anti-homosexual laws in the crimes statutes in 1984 they are no *more* legally handicapped than the women. The recent recommendations by the NSW Parliamentary Select Committee Upon Prostitution will make the situation even more favourable for workers, with the repeal of the Disorderly Houses Act, amendments to the law on advertising, living on the earnings of a prostitute and street soliciting, and lowering of the age restriction from 18 to 16.

The one problem that might arise is environmental restriction, which is very likely to take place in the near future. This means that the idea of decriminalisation in support of the notion that prostitution is a private act between consenting adults will not be a reality. But it also means that if prostitution is to be treated like any other industry with all attendant environmental laws not only will the industry be granted some dignity at last but society will have acquired a maturity in Sydney not experienced elsewhere since the Middle Ages, the pre-European Far East or the time of the early Near Eastern Civilizations.

Conclusion: No way back

In Australia the State of NSW has been the first to push the barriers to decriminalisation thanks to the timely synchronization of the civil rights aftermath with a reformist State Government. As the history of prostitution in NSW demonstrates this has been a remarkable change in the legislative heart. No legalisation experimentation took place in the switch from criminalisation to decriminalisation.

While total decriminalisation is still a pipedream, the decisions by the NSW Parliamentary Select Committee Upon Prostitution seem to be making that pipedream closer to reality. If prostitution is ever to be totally accepted and absorbed into the community, a day which may come only when sex and sexuality is totally liberated (which might also mean the demise of prostitution itself), it may have to do so with the status of a licit industry alongside entertainment or health industries. As such it will have to accept the fact that regulation will be an inevitable part of being granted an industrial status in society. Those of us in the industry now should welcome this development for it will bring prostitution entirely out of the shadows, so long as industrial regulation is based only upon environmental necessities and not on a moral fiction.

In the meantime NSW heads in the right direction for most of us in the industry, and with the Australian Prostitutes Collective gaining a permanent foothold in welfare and health through the power of government funding there is an active force on hand to ensure that it keeps heading that way.

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