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# **THE SEX INDUSTRY IN NEW SOUTH WALES**

**A REPORT TO THE NSW MINISTRY OF HEALTH**

THE KIRBY INSTITUTE, FACULTY OF MEDICINE  
UNIVERSITY OF NEW SOUTH WALES

Dedicated to the late Dr Christine Harcourt – a rare and sensible voice in sex work research and policy for 30 years.

# The Sex Industry in New South Wales

## A Report to the NSW Ministry of Health

**Basil Donovan and Christine Harcourt**

The Kirby Institute, University of New South Wales  
and Sydney Sexual Health Centre, Sydney Hospital

**Sandra Egger**

Faculty of Law, University of New South Wales

**Lucy Watchirs Smith, Karen Schneider, Handan Wand and John M Kaldor**

The Kirby Institute, University of New South Wales

**Marcus Y Chen and Christopher K Fairley**

School of Population Health, University of Melbourne  
and Melbourne Sexual Health Centre

**Sepehr Tabrizi**

Royal Women's Hospital, Melbourne

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# Executive summary

The Law and Sexworker Health (LASH) team are leading international authorities on the public health and legal aspects of sex work – combining over 100 years of multidisciplinary research experience into sex work in NSW, interstate, and internationally.

Like most Australian Governments, NSW periodically reviews its legislative approach to prostitution. Independent of this process, the LASH team was compiling extensive data on the prostitution laws in NSW; prosecutions (2000–2006) resulting from those laws; the reactions of local government; the structure and function of the sex industry in Sydney; the demographics, behaviour, health, and welfare of a representative sample of brothel-based sex workers in Sydney; and the operation of health promotion and clinical services. The NSW Ministry of Health contracted the LASH team to compile this Report in order to better inform NSW policy considerations.

The LASH team had been funded by the National Health and Medical Research Council to investigate if the various legislative approaches across Australian jurisdictions were associated with different health and welfare outcomes for the sex workers. Three capital cities were selected and the LASH team focused on urban brothel-based female sex workers for comparability reasons, and because such women provide the bulk of commercial sexual services in Australia. Perth was selected because most forms of commercial sex are illegal, Sydney because adult sex work is largely decriminalised, and Melbourne because sex work is 'legalised': that is, either brothels or individual sex workers must be licensed. Unlicensed brothels or sex workers in Melbourne remain criminalised.

In brief, the LASH team determined that:

- Sydney has a diverse and open sex industry. Compared to other Australian cities Sydney's sex industry is commensurate with the size of its population. NSW men are infrequent consumers of commercial sexual services, with only 2.3% purchasing sexual services in any one year, similar to the Australian average. The number of sex workers in Sydney brothels was similar to estimates from 20 years ago. These data confirm that the removal of most criminal sanctions did not increase the incidence of commercial sex in NSW.
- Despite several remaining laws against prostitution-related activities, offenses finalised in the NSW courts were overwhelmingly concentrated on the street-based sex industry. A third of those who were prosecuted were male clients of street workers. Over the seven-year period, 2000 to 2006, there were no prosecutions against several prostitution laws.
- Sydney brothels are widely dispersed in inner urban and suburban areas, and they attract few complaints from neighbours. Because of difficulties in gaining development approval from local councils many Sydney brothels operate without approval, they are often small with poor occupational health

and safety standards, and may masquerade as massage parlours. There are periodic reports of local government corruption, but no evidence of widespread police corruption around sex work.

- Compared to sex workers surveyed in Melbourne's licensed brothels and in Perth, brothel-based female sex workers in Sydney were better educated, and were more likely to have been born in an Asian or other non-English speaking country. In contrast to these other cities, the Sex Workers Outreach Project (SWOP) and the Multi-cultural Health Promotion team at the Sydney Sexual Health Centre have been actively working with and have had full access to this sector for 20 years. As a result the migrant sex workers in Sydney have achieved similar excellent levels of sexual health as their local counterparts.
- Condom use at work approaches 100% in Sydney brothels and when the LASH team tested the Sydney sex workers the prevalence of four STIs – chlamydia (2.8%), gonorrhoea (0), *Mycoplasma genitalium* (3.6%), and trichomoniasis (0.7%) – was at least as low as the general population.
- In general Sydney brothels workers enjoyed levels of mental health that were comparable to the general population. However, 10% of the Sydney women were found to be severely distressed on psychological testing (the Kessler-6 scale): twice as often as the general population. Psychological distress was strongly associated with injecting drug use.

Based on these findings and a review of the recent literature on the outcomes of various legislative approaches to prostitution, the LASH team developed the recommendations that appear in the following section.

## Recommendations

- 1. The NSW Government's legislative reforms of 1979 and 1995 should be endorsed.** These reforms that decriminalised adult sex work have improved human rights; removed police corruption; netted savings for the criminal justice system; and enhanced the surveillance, health promotion, and safety of the NSW sex industry. International authorities regard the NSW regulatory framework as best practice. Contrary to early concerns the NSW sex industry has not increased in size or visibility, and sex work remains stigmatised.
- 2. Licensing of sex work ('legalisation') should not be regarded as a viable legislative response.** For over a century systems that require licensing of sex workers or brothels have consistently failed – most jurisdictions that once had licensing systems have abandoned them. As most sex workers remain unlicensed criminal codes remain in force, leaving the potential for police corruption. Licensing systems are expensive and difficult to administer, and they always generate an unlicensed underclass. That underclass is wary of and avoids surveillance systems and public health services: the current systems in Queensland and Victoria confirm this fact. Thus, licensing is a threat to public health.
- 3. The Department of Planning, in consultation with local government, community representatives, and the Health Department, should endorse planning guidelines for brothels.** The inadequacies of council responses to brothel development applications can be addressed by the State Planning Department endorsing the *Sex Services Premises Planning Guidelines 2004*, with appropriate updates and amendments.
- 4. Decriminalisation of the adult sex industry means that prime responsibility for the industry has moved from the police to local government. Local government should be resourced by the state for this role, and supported by WorkCover.** Decriminalisation in NSW has been associated with many local governments refusing to approve development applications for brothels. This has resulted in substantial legal costs and, in isolated instances, corruption by local government officials. Refusing development applications has also fostered the growth of brothels masquerading as massage parlours. Overseeing brothels to ensure compliance with occupational health and safety standards requires suitably qualified staff, perhaps best managed by WorkCover. WorkCover should implement a system of active staff and performance management in the compliance area, and develop a rigorous review and audit system for the compliance function with a high-level manager overseeing the process.

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MASQUERADING  
AS MASSAGE  
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5. **The NSW Ministry of Health should commission a review of clinical and health promotion services available to sex workers.** Our suggestion is that the process be led by the STI Programs Unit in consultation with the Sex Workers Outreach Project (SWOP) and the Kirby Institute. The current high levels of occupational safety and historically low levels of sexually transmissible infections (STIs) in most sex workers provides an opportunity to rationalise and better target health service provision where it can provide the greatest benefit; for example, new brothel workers and street-based sex workers. Clinical screening and health promotion guidelines should be evidence-based and distinguish between higher and lower risk sex workers. Data on the sexual health of regional and rural, Aboriginal, street-based, male, and gender diverse sex workers should be sought and collated.
6. **The NSW Government, in consultation with local government and street work communities, should investigate more effective and humane approaches to the problems posed by street-based sex work.** Street-based sex work is politically challenging everywhere, and NSW is not exceptional, as traditional working areas become gentrified. Street sex workers are among the most traumatised people in the sex industry. Though they are the smallest component of the industry, street sex workers are the major target for police prosecutions because of their high visibility. The aim of the investigation should be to explore methods of reducing the street presence and vulnerability of sex workers by means such as ensuring an adequate supply of indoor alternatives; including approving brothels, and supporting more 'safe house' facilities.
7. **Considerations should be given to supporting research into the health and welfare of NSW sex workers outside Sydney; including the structure and determinates of the industry, and the knowledge, experience and behaviour of the workers.** The LASH and Sydney Sexual Health Centre (SSHC) studies were limited to urban female brothel-workers in Sydney. Parts of regional NSW have significant numbers of sex workers, many of whom are in contact with regional sexual health services. Such research could inform clinical service delivery and health promotion programs (see Recommendation 5).
8. **For health and safety reasons and in order to meet best practice in a decriminalised environment the word 'brothel' as defined in the legislation, should not apply when up to four private sex workers work cooperatively from private premises.** All of the evidence indicates that private sex workers have no effect on public amenity. Exempting this group from planning laws that pertain to brothels will limit the potential for local government corruption. The New Zealand experience provides a successful precedent for the four worker model.

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# Background

In 1995 the sex industry in New South Wales (NSW) was effectively decriminalised by the *Disorderly Houses Amendment Act 1995* that allowed for the legal operation of brothels subject to approval under planning laws. This was the culmination of a process begun in 1979 when street soliciting was decriminalised by the repeal of the *Summary Offences Act*. There is growing evidence that better public health outcomes occur when sex work is decriminalised and health promotion and outreach programs are properly resourced (Rekart, 2005; Donovan et al., 2010a), however most jurisdictions continue to criminalise their sex industries.

Decriminalisation has now been in operation in NSW for 16 years. Over that period there have been other major changes with potential impacts on the sex industry in NSW. These include immigration and growing HIV epidemics to our north, and increasing STIs across Australia. As NSW was a pioneer in the decriminalisation of prostitution, it is timely to review the status of its sex industry. This could prove useful to other jurisdictions that are considering decriminalisation, as well as highlighting remaining issues that need to be addressed in NSW.

## Legal responses to sex work

The Australian Constitution does not grant general criminal law powers to the Commonwealth Government and thus prostitution laws are matters for the State and Territory Governments. Since the 19th century all Australian jurisdictions and New Zealand (NZ) had criminalised most activities around prostitution but in the later part of the 20th century these laws became increasingly diverse (Harcourt et al., 2005). Most recently, NSW and the Australian Capital Territory (ACT) and NZ largely decriminalised prostitution (see Table 1, overleaf).

Earlier, the Victoria and Queensland governments had introduced licensing systems for brothels and some sex workers in the shadows of the emerging HIV/AIDS epidemic and extensive police corruption, respectively. The remaining states retain a variety of criminal laws against brothel-keeping and other prostitution-related activities (see Table 1), but these seem to be infrequently policed and debates and enquiries about prostitution law reform are ongoing. Notably, a majority of Australians have long favoured a move away from criminal sanctions (Weitzer, 2009), and enforcing prostitution laws is unpopular with police forces (McDonald, 2004).

As governments considering prostitution law reform have a number of options, it is useful to briefly review these options in the Australian context – more data and discussion are available elsewhere (Harcourt et al., 2005). Broadly, these options are:

1. **Criminalisation.** Otherwise known as prohibition or abolitionism, this legal approach has traditionally been seen as the most appropriate societal or moral response to conduct associated with the trade in

sexual services. Criminal sanctions focus on related activities such as soliciting, brothel-keeping, and procuring, rather than the act of prostitution itself.

Though criminalisation is the most common response globally, police discretion is often exercised to permit certain activities notwithstanding the criminal prohibitions. This tension between law and policing has a demonstrated potential to result in police corruption and abuse. Criminalisation may exacerbate opportunities for coercion and exploitation by encouraging sex workers to seek the protection of pimps and criminals (Harcourt et al., 2005). There is no evidence that criminalisation reduces the incidence of prostitution (Abel, 2009; Rissel et al., 2003; Neave, 1988) and the Australian public no longer see it as a preferred option (Weitzer, 2009).

2. **Decriminalisation.** The removal of most of the criminal penalties applying to adult prostitution is based on an essentially pragmatic acceptance that sex work is here to stay, so priority is given to protecting human rights and the public health. Restrictions on sex work remain, but these are normally administered by local government rather than the police (Harcourt et al., 2005).

In theory, decriminalisation could result in a more 'normalised' sex industry with improved working conditions (including paid leave, superannuation, security, and occupational health and safety programs), taxation obligations, reduced police corruption and a reduction in the involvement of organised crime. However, such advances are often slow and patchy (Harcourt et al., 2005). As they do not acquire criminal records, sex workers find it easier to move out of a decriminalised industry into alternative employment.

Better health outcomes for sex workers are typically reported from decriminalised systems such as the Netherlands, Germany, and NSW (Rekart, 2005; Donovan et al., 2010) though such jurisdictions usually also have strong public health systems. The NSW decriminalisation model has been commended by international authorities as best practice (Rekart, 2005; Jeffrey & Sullivan, 2009) and was influential in law reform in New Zealand (Ministry of Justice, 2008).

3. **Licensing.** Often called 'legalisation', under this system either brothels or individual sex workers can apply to the state for a license to operate. Seen as a means of excluding undesirable persons from the industry and of enhancing government control over the number, location, and operation of brothels, licensing has never lived up to expectations. Unlicensed premises and sex workers remain criminalised, and the unlicensed sector normally comprises a large proportion of the industry (see Table 1, overleaf).

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**Table 1** Australasian legal responses to sex work

	<b>Criminalised</b>	<b>Licensed ('legalised')</b>	<b>Decriminalised</b>
<b>Jurisdiction (year of change)</b>	WA, SA, NT, Tas	Vic (1984) Qld (1992)	ACT (1992) NSW (1995) NZ (2003)
<b>Proportion of sex workers operating illegally</b>	>80% (typically, only private or escort work is not illegal)	Vic ~50% Qld ~90% (inc. unlicensed brothels and street workers)	<2% (street workers in the wrong location)
<b>Corruption potential</b>	Police	Police Local government Medical	Local government

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In Queensland, for example, after 20 years of operation, only 25 brothels (less than 10%) have joined the scheme (Prostitution Licensing Authority, 2009).

Licensing systems are self-serving, expensive and exclusive, often pushing sex workers onto the street (Harcourt et al., 2005), while undermining access by surveillance and health promotion programs (Chen et al., 2010; Harcourt et al., 2010; Rowe, 2011).

As well as being questionable from a human rights perspective, mandatory sexual health screening of sex workers in Victoria has been shown to waste millions of dollars (Wilson et al., 2010) and to displace higher risk patients from finite public health services (Samaranake et al., 2010).

- 4. The Swedish Model.** In 1998 the Swedish Government introduced a 'new' system that has attracted international attention largely because of its claimed novelty. Positioning sex workers as victims, the Swedes claim to be unique by decriminalising sex work while imposing criminal sanctions on their clients. In other words, purchasing sexual services is a crime while selling such services is not. However, criminal sanctions against clients are common around the world (Brewer et al., 2006), including NSW (p47), so the Swedish model is not as novel as claimed. Curiously, the only evaluation of the legislation by the Swedish Government presented no data on numbers of prosecutions. While they claimed to have reduced the prevalence of street prostitution, this had been offset by substantial increases in indoor prostitution (Swedish Institute, 2010). As most prostitution-related activities remain criminalised in Sweden, even the claim of providing benefit for the women is arguable (Dodillet & Östergren, 2011).

The distinctions between these systems may be largely illusory, with substantial overlap.

Policing practices are usually more important than the law. Even though Thailand's large sex industry is criminalised, it is lightly policed and socially tolerated. By contrast, despite superficially moderate sanctions, 50,000 sex workers are incarcerated in China every year for a period of two years of brutal 're-education', with a high re-offending rate. As the Chinese system expands so do the epidemics of HIV and other STIs in China (Tucker et al., 2010). One can only speculate on the sorts of arrangements the other 99% of Chinese sex workers has reached with the police to avoid detention.

## Anti-trafficking measures

Much of the hard line position against the liberalisation of prostitution legislation is driven by concerns about the trafficking women and children for sexual slavery. Most of these claims are anecdotal but there clearly are issues in Europe where women from Eastern Europe and the former Soviet Union have been taken illegally to brothels in more affluent western European and Middle Eastern countries, including Turkey and Israel (Cwikel et al., 2008). There is also a long history of trafficking in India (e.g. from Nepal to Kolkotta and Mumbai) and around the Thai-Burmese border.

Some individuals in Australia contend that hundreds of Asian women are trafficked to brothels in Australia but present little evidence. The Federal Government, in response to international anti-trafficking agreements funded a large-scale investigation into these allegations (*Inquiry into the Trafficking of Women for Sexual Servitude*, June 2004). It was recently reported that, since 2004, 119 women 'discovered' in NSW have been involved in a Commonwealth Government support program for people

trafficked into the sex industry, but there have only been a handful of successful prosecutions. Recent brothel raids in Gladesville and Eastwood resulted in a few men being charged with drug offenses and bail breaches only (*Sydney Morning Herald*, 8/10/2011). Trafficking charges in relation to prostitution are hard to prove (David, 2008).

The LASH team found no evidence of recent trafficking of female sex workers in the Sydney brothel survey (see *The size and structure of the sex industry in NSW*, page 16) or in a clinic study (Pell et al., 2006). This was in marked contrast to the 1990s when contacted women from Thailand were common in Sydney (Brockett & Murray, 1993; O'Connor et al., 1996; Payne C, 1997).

## Public health responses to sex work

Australian sex workers have achieved substantial improvement to their sexual health since the 1980s and this appears to have been sustained (Lee et al., 2005; Donovan et al., 2010a). This has been attributed primarily to the consistent use of condoms by sex workers with commercial partners (Harcourt et al., 2001; Lee et al., 2005). Most Australian jurisdictions have supported health promotion programs targeting sex workers for over 20 years (Donovan & Harcourt, 1996). Highly successful harm reduction programs have also resulted in HIV not entering the sex industry in any substantial way through drug injection (Donovan et al., 2010).

However, there are ongoing changes with potential impacts on the sex industry. These include demographic changes through migration and travel (Pell et al., 2006), prostitution law reform, and an increased incidence of HIV infection and other STIs in Australia and in neighbouring countries (Kirby Institute, 2011).

Demographic changes within the Australian sex industry include an increased number of migrant sex workers from high HIV prevalence countries in Asia. This has been most marked in NSW (O'Connor et al., 1996; Pell et al., 2006) and to an extent in Victoria and WA (Donovan et al., 2010b). However, female sex workers in Australia who are HIV-positive are rare (O'Connor et al., 1996; Kirby Institute, 2011), but with the ongoing potential for this situation to change.

## Health promotion

In response to the HIV epidemic, a range of initiatives were implemented in Australia in the 1980s that have contributed greatly to the health of sex workers. Among these initiatives was the formation of community-based organisations representing at-risk groups with the mandate of providing health education, community support and advocacy. They did so with the assistance of health professionals and national and state AIDS funding (Mulhall et al., 1995a; Donovan & Harcourt, 1996).

Specifically, as a national and probably international first, in 1986 the NSW Health Department provided funding to the NSW branch of the Australian Prostitutes' Collective (APC) – a community organisation that had begun peer education and support activities in Sydney as early as 1983 (Donovan & Harcourt, 1996). The APC, with the support of the Health Department, was instrumental in persuading brothel managers and workers to adopt safer sex practices (Bates, 1990). Condom use in brothels rose from under 11% of sexual encounters to over 90% between 1985 and 1989 and the health of sex workers improved commensurately (Donovan & Harcourt, 1996). However, ideological disputes between members of the APC led eventually to a break-up of the organisation in 1988 (Harcourt 2002: 136–143).

The government saw the value of continuing the ground-breaking work of the APC and in 1990 it funded a new organisation – the Sex Workers Outreach Project (SWOP) – administered by the AIDS Council of NSW (ACON), a prominent, community based non-government organisation. The new organisation was funded to deliver HIV/STI information and education to the sex industry. There were initial community concerns that it would lack the strong advocacy and political roles undertaken by the APC but over time the organisation became widely acceptable to sex workers and owners in the sex industry. Through its accumulated knowledge base SWOP has been able to support law reform and to seek improvements in working conditions in the industry (SWOP, 1994). Today, SWOP and its regional branches provide peer education through outreach and shopfront services and delivers resources to sex workers throughout NSW. SWOP has developed strong collaborative partnerships with other public health services (Pell et al., 2006).

Similarly, AIDS education programs for the general public increased awareness among sex workers' clients of the importance of safer sex (Donovan et al 1996). Following the decriminalisation of brothel prostitution, NSW Health gave additional support for work place reform for sex workers (NSW Health & WorkCover, 1997).

Also of note was federal support, initiated in the mid-1980s, for needle and syringe programs (first introduced privately by health professionals in NSW), methadone maintenance programs and other related resources aimed at drug injecting communities throughout Australia. These programs continue to have positive benefits for injecting drug users including those working in the sex industry (Donovan & Harcourt, 1996).

## Sexual health services

The 1980s and 1990s also saw an increase in the number and quality of clinical sexual health services in many parts of Australia (Donovan & Harcourt, 1996). In 1988, the Australasian College of Sexual Health Physicians was

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incorporated as a professional training body, and became a Chapter of the Royal Australasian College of Physicians in 2004. Similarly, sexual and reproductive health nursing was recognised as a specialist area and the Australian Sexual Health Nurses Association was established in 1991 (Mulhall et al., 1995b).

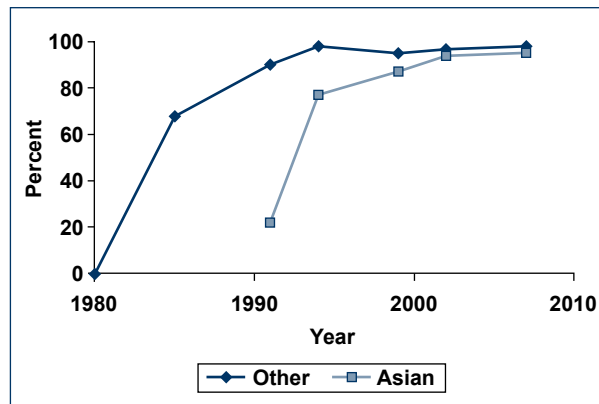
These developments fed into career structures and allowed clinical staff to become better consultants and advocates on behalf of their priority populations, including sex workers. Also, in 1985 Medicare began to allow rebates for STI-related consultations for sex workers with private doctors, although there are still restrictions on rebating pathology testing. In all Australian jurisdictions, GPs provide most of the STI screening for sex workers and their clients.

In some NSW public sexual health centres, culturally-specific resources have been developed to address the unique needs of non-resident sex workers. The first and still the largest such initiative was in Sydney where the Multicultural Health Promotion Project was established in 1990 at the Sydney Sexual Health Centre (SSHC). The Project includes Asian language clinics and outreach services employing Asian peer educators and is conducted in collaboration with SWOP (O'Connor et al. 1996; Pell et al., 2006). NSW has the most extensive network of sexual health services in Australia, and all treat sex workers as a priority population. Nevertheless, local gaps in health promotion and health care delivery have been identified in NSW (Berg et al., 2011).

## Sexual behaviour

The health promotion programs and HIV prevention services provided by health professionals and community-based groups led to a dramatic increase in condom use by Australian brothel sex workers since the 1980s (Harcourt, 1994; Harcourt & Philpot, 1990). Since the mid-1990s repeated surveys of female sex workers working privately or in brothels in other states show almost universal condom use with clients (Harcourt et al., 2001; Perkins & Lovejoy, 2007; Pyett et al., 1996; Lee et al., 2005; Donovan et al., 2010). Importantly, Asian sex workers are now as likely to use condoms at work as their resident peers (Figure 1).

In other research, sex workers who are young and inexperienced, sex workers who are drug-dependent and male sex workers have been found to use condoms less consistently (Harcourt, 1994; O'Connor et al., 1996; Morton et al., 1999; Minichiello et al., 2001; Minichiello et al., 2000; Pell et al., 2006; Roxburgh et al., 2008; Roxburgh et al., 2006). Street sex workers in Melbourne and Sydney have also reported lower rates of consistent condom use at work than brothel workers (Morton et al., 1999; Harcourt et al., 2001).



**Figure 1** The proportions of Asian and non-Asian brothel-based sex workers in Sydney that reported condom use for vaginal or anal sex with all clients, 1980–2007. (Source: Donovan et al., 2010a.)

Sex workers, regardless of their age, sex, ethnic background or type of sex work are much less likely to use condoms with non-paying partners, similar to the general population (Fox et al., 2006; Harcourt, 1994; Prestage et al., 2007; Pyett et al., 1996). Inconsistent condom use with non-paying partners is associated with a low perception of risk and the use of condoms to differentiate sexual activity with private partners.

## STIs and HIV

Due to the consistent use of condoms by sex workers Australia has seen a steady decline in STIs in sex workers and their clients (Harcourt, 1994). These low levels of STIs have been maintained over the last decade (Donovan et al., 2010; Lee et al., 2005). In a Melbourne study, unprotected sex with non-paying partners was the major risk factor for incident STIs (Lee et al., 2005). Nevertheless, because the same sex workers consistently use condoms at work, further transmission to their clients is largely averted (Wilson et al., 2010).

There is still no documented case of a female sex worker in Australia acquiring or transmitting HIV infection at work and HIV in female sex workers remains rare in Australia (Kirby Institute, 2011). The few resident female sex workers identified as HIV-positive have all had IDU as the probable source of infection (Harcourt, 1994).

The prevalence of STIs among certain groups of sex workers tends to be higher. For example, in one review of medical records in Sydney, almost one third of male sex workers had one or more STIs at clinical presentation, which was double the prevalence of STIs among female sex workers (Estcourt et al., 2000).

Female sex workers from Asia, young sex workers, those who engage in high levels of illegal drug use, and street sex workers have previously been found to have higher rates of STIs (O'Connor et al., 1996; Estcourt et al., 2000; Harcourt, 1994; Morton et al., 2002; Morton et al., 1999). However, STI rates in Asian sex workers in Sydney are now as low as in their local peers (Donovan et al., 2010a).

Notably, heterosexual men attending the SSHC who reported contact with a sex worker were five times less likely to be infected with chlamydia than other heterosexual men attending the same clinic (Chen et al., 2007).

## Drug injecting

Only 7% to 17% of brothel and escort sex workers in Australia report ever injecting drugs (Harcourt et al., 2001; Perkins & Lovejoy, 2007; Pyett et al., 1996). The proportion is much higher among more marginalised groups such as street-based workers (typically >85%), young sex workers, and occasional sex workers (Morton et al., 1999; Harcourt et al., 2001; Lee et al., 2005; Roxburgh et al., 2008; Roxburgh et al., 2006; Sharp, 1995). Sex workers who inject drugs have the added risk factors of being more likely to have intercourse without a condom and to have partners who are also drug users (Sharp, 1995).

NSW sexual health services provide clean injecting equipment and free hepatitis B vaccination. The Kirketon Road Centre in Sydney – which has a large clientele of injecting drug user (IDU) street workers – also provides opiate substitution therapy and counselling for IDUs.

## Mental health

Sex workers face a number of other health and safety concerns in their work. Stress, depression and a sense of isolation have all been reported by sex workers (Perkins, 1994). However, the psychological distress experienced by brothel-based sex workers may not be substantially different than that of women in the general population. In a sample of 171 female sex workers in Queensland, it was found that 28% were above the threshold for mild psychiatric morbidity, a rate similar to that of women from the general population (Boyle et al., 1997).

However, sex workers engaging in street-based work and who inject drugs were much more likely to report poor mental health (Boyle et al., 1997; Perkins, 1994; Roxburgh et al., 2006; Seib et al., 2009). Roxburgh et al (2006) found that just under half of Sydney street workers met the criteria for post-traumatic stress disorder.

## Violence at work

Client violence is another issue that sex workers face. While 5% to 10% of brothel and private workers have reported some form of violence in their work (e.g., robbery with violence, rape, bashing, stabbing) (Perkins & Lovejoy,

2007) for street workers violence is a more pervasive issue. Upwards of 50% of Sydney street workers report violence at work (Boyle et al., 1997; Harcourt et al., 2001; Roxburgh et al., 2006; Seib et al., 2009).

The illegal, visible, and stigmatised status of street sex work attracts extreme violence. Between 1990 and 2003, 87 street workers in the UK were murdered (Kinnell, 2004), heralding the five Ipswich murders in 2006 (Goodyear & Cusick, 2007). In 2002, one man was charged with the murder of 26 of the 63 'missing' sex workers in Vancouver (Jeffrey & Sullivan, 2009). No comparable statistics are available for Australia. It has been argued that the state contributes to these murders by promoting stigmatisation and exploitation of sex workers while alienating them from the security that should be provided by the police (Kinnell, 2004; Goodyear & Cusick, 2007).

## Other issues

Among sex workers high levels of tobacco consumption is a consistent finding, with up to 82% reporting currently smoking cigarettes (Perkins, 1994). Unless provisions are made for this high rate of smoking, brothels can be very smoky environments that raise occupational health and safety concerns. Other issues faced by more vulnerable sex workers include child care, lack of social support, and unstable accommodation (Harcourt et al., 2001; Pyett et al., 1996).

## The Law and Sexworker Health (LASH) Study

Between 2007 and 2008 we conducted a comparative study of the health and welfare of sex workers in three Australian cities with different legal climates – the LASH study. The chosen cities were: Perth, with extensive criminal sanctions against most prostitution-related activities; Melbourne, where licensed brothel prostitution was permitted, but most other prostitution-related activities remain criminalised; and Sydney, where adult prostitution is largely decriminalised. While Sydney brothels do not require a license, they are subject to local planning laws.

Australia was arguably the only country where such a study could be conducted because of its diversity of legal approaches to prostitution (Jeffrey & Sullivan, 2009), while other societal and institutional factors are common to all jurisdictions. Specifically, the LASH Study explored the following questions:

- What are the laws relating to prostitution in NSW, Victoria and WA? How are they policed?
- What broadly, are the demographics and the work locations of sex workers in these three states?
- How accessible and targeted are health services for sex workers in each state?
- What are the health and welfare outcomes for sex workers in each state?
- To what extent do sex worker health and welfare outcomes vary with the severity of prostitution laws and policing practices, and with access to health services, in each state?

We employed a number of methods to answer the research questions, including standard legal research techniques, key informant phone interviews, and a self-administered questionnaire and STI testing via a self-collected tampon specimen, of approximately 200 brothel-based sex workers in each city.

### The law and policing

We analysed the law and court statistics in each state, the policing and prosecution experiences of sex workers responding to the questionnaire, and local government and police policies, plans and instructions.

### Key informant survey

During the first year of the LASH project, we conducted semi-structured phone interviews with key informants. In NSW we interviewed eight key informants, including community and outreach workers, former brothel managers and sex workers, and a public health professional. Information was sought regarding the numbers and locations of sex workers, local policies and policing practices and the informants' understanding of the major issues faced by sex workers.

We analysed information from the key informant questionnaires through cross comparison and thematic grouping of responses to the open-ended questions. The results of this analysis were used to supplement information about the size and location of the sex industry in Sydney to determine local policing practices, to provide a broad picture of health and welfare services targeting sex workers, and to refine the sex worker questionnaire.

### Measuring health promotion services

For each state we quantified health promotion programs targeted at the sex industry. We defined health promotion broadly and included issues such as policy framework, work environment, community action, health education, outreach, condom supply, and health service delivery.

We used information from the key informants to determine resource levels, including budgets and staff numbers, and their accessibility and outreach to target populations. The survey of sex workers provided supplementary information and specifically sought the sex workers' personal experiences of delivery of educational services to their work-sites, availability of condoms and other safety equipment, and their access to public sexual health services.

### Brothel ratings

While administering the questionnaire, field staff also recorded brothel features such as security measures (external lights, front of house security, and internal alarms), general layout and presentation of premises (cleanliness, lighting, staff rest areas, staff-friendly environment, etc.). Based on their observations, data collectors assessed brothels on their merits as worker-friendly workplaces, awarding them a star rating from 1 star (lowest) to 5 stars (highest) developed for the purposes of the LASH study. The sex worker questionnaire also included questions about work-site security.

### Sex worker survey

To achieve a sample of sufficient statistical power we planned to survey and test 200 female sex workers for STIs at their work place in each city. We limited the sample to women in urban brothels as this is the most common type of sex work in Australia (Rissel et al., 2003) and to allow comparison between the three cities. Health issues vary according to the type of sex work (Harcourt & Donovan, 2005; Rowe 2011).

To construct the sampling frame of brothels in Sydney, we cross-referenced advertisements in the telephone book with lists compiled from consultations with SWOP. We ruled out duplicate listings, by cross-referencing brothel addresses and telephone numbers which revealed that some premises had more than one phone line and others advertised under a variety of names. We identified

up to 400 premises that were probably brothels in the greater metropolitan area, but we restricted our final list to approximately 200 premises located within 20 kilometres of the central Sydney GPO. We randomly selected 120 premises from the list and were able to confirm by phone call or visit that 101 of these were currently operating brothels. We were able to access 74 brothels to collect data.

Field staff made a total of 86 visits – some brothels were visited twice. Seventy-two of the visits were made during the daytime and 14 occurred at night. There was a median of 3 (inter quartile range 2–4) workers observed at the brothels at each visit.

We employed outreach workers from the SWOP and SSHC Multicultural Project (Pell et al., 2006) to assist in collecting data from sex workers. As far as possible we included similar numbers of women who worked day and night shifts, a similar spread of both 'high' and 'low class' brothels (as determined by charges for sexual services), and smaller and larger brothels. We translated the questionnaire into Thai, Chinese, and Korean for use with non-English speaking sex workers.

All sex workers present at the time of visit were invited to participate in the study. Those who agreed gave informed verbal consent to complete a 20-minute questionnaire and to provide a self-collected tampon for STI testing. The questionnaire gathered information on demographics, working conditions, sexual behaviour at work, private sexual and drug use behaviours, and contact with a variety of authorities as well as health promotion programs while at work. The women were compensated for their time with a \$25 cash payment. Refusals to participate by work-sites or by individual women were recorded.

A total of 264 sex workers were approached and 201 agreed to participate in the survey, resulting in a questionnaire response rate of 76%. A copy of the questionnaire appears as Appendix 1.

### Statistical analysis

Frequency tables were used for the descriptive analysis of data. The chi-square test was used to compare categorical data. Statistical analysis was performed using STATA Release 8.2 (Stata Statistical Software: Release 8.0, Stat Corporation, College Station, USA). Statistical significance was set a two-sided 5% level.

### Ethical considerations

Approval was obtained from Human Ethics Committees at the University of New South Wales, the AIDS Council of New South Wales, the University of Melbourne and the Alfred Hospital, Melbourne. Confidentiality was maintained throughout. We identified sex workers and key informants by a code only, and no names or addresses were entered on data collection forms. Codes were used for laboratory

testing and conveying results to participants. To obtain test results, field staff provided participants with a contact name and number to ring.

Brothel owners/managers provided consent to gain entry to their premises, and sex workers provided verbal consent prior to participating in the survey.

## Sydney Sexual Health Centre Longitudinal Study: 1992–2009

We analysed data from the SSHC database to examine the demographics, behaviours and sexual health of sex workers through a period that spanned the decriminalisation of brothels in 1995. To determine STI prevalence we included all female sex workers who attended SSHC for the first time from 1992 through 2009. To determine STI incidence we included all women who attended for further STI testing from 2004 through 2009. This study received approval from the South Eastern Sydney Illawarra Area Health Service Research Ethics Committee.

### Sex worker enumeration study

We applied a mathematical modelling technique that exploited the overlap between the LASH community-based sample and the SSHC sample to determine how many female urban brothel-based sex workers worked each week, each month, and each year in Sydney (Read et al., 2012a). This study received approval from the South Eastern Sydney Illawarra Area Health Service Research Ethics Committee.

### Survey of local government brothel approvals

We also surveyed by email 27 inner Sydney councils covering those areas where we had collected LASH data, to ascertain how many brothels had received council or Court approval and whether there were provisions for sex workers to work from private premises. Up to three emails were sent if there was no initial response.

# The size and structure of the sex industry in NSW

It has been argued that legislation and law enforcement policy does not directly determine the size of the sex industry but rather shapes its form (Neave, 1988).

The following description of the industry draws on published reports plus data from the LASH and SSHC Longitudinal studies.

## Demand for sexual services in NSW

Australian men are infrequent consumers of commercial sexual services by world standards. In a representative sample of Australian men aged 15 to 59 years in 2001–2002, 2.3% of NSW men reported paying for sex in the last year (16% had ever paid) which was similar to Australia overall and lower than most countries (Rissel et al., 2003). Australian men who had recently paid for sex had met the women in a brothel (64.6%), via an escort service (32.6%), massage parlour (26.8%), private premises with a single sex worker (25.5%) or private premises with two or more sex workers (11.5%), or on the street (5.9%) (Rissel et al., 2003).

Though its sources are obscure, an industry reporting organisation feels that all of the Australian sex industries are gradually declining in both scale and revenue (IBISWorld, 2010).

## Typology and numbers

It is extremely difficult to estimate numbers of sex workers because of the covert and transient nature of employment in the industry. Estimates range from 1,500 female sex workers working at any one time to 10,000 in the whole of NSW (Lovejoy et al., 1991: 5; SWOP estimate, verbal communication 2009). LASH key informants suggested there were about 8,000 sex workers (male, female and gender diverse) in NSW. Our research however suggests that the number is probably lower than this.

LASH data collectors confirmed that there were at least 101 brothels (possibly as many as 200) operating within 20 kilometres of Sydney CBD, and they visited 74 of these. Email enquiries to 23 Local Government Councils in the area (see Perceptions of sex industry conditions, page 28) established that 113 premises had received planning permission since 1996.

Most of the brothels that we visited were relatively small establishments. This was particularly true of those that appeared to be operating without current planning permission. Key informants stated there was an average of seven sex workers per brothel in Sydney. Sex workers reported to LASH that a median of four sex workers worked day shifts and 5.5 worked at night in the 74 brothels surveyed (Table 2).

We also surveyed 34 owners/managers/ receptionists via a small self-administered questionnaire distributed while the LASH questionnaires were being completed. They reported a median number of six sex workers and administration

**Table 2** Number of sex workers working in individual Sydney brothels accessed by LASH

	Mean number (%)
<b>Sex worker responses (n=201)</b>	
During the day (median)	4.0
No response/don't know	33 (16.4)
During the night	5.5
No response/don't know	75 (37.3)
<b>Owner/Manager responses (n=34)</b>	
Median	6.0
No response/don't know	5 (14.7)

staff per brothel (Table 2). Two claimed they had 40 or more women 'on their books' and eight reported only two or three.

The remaining premises in this group of 34 brothels employed between 5 and 20 sex workers. Overall these numbers suggest there were approximately 1,000 female sex workers working in brothels within 20 kilometres of Sydney CBD in any one week. Given the short time many women spend in the industry there may be two or three times as many who engage in sex work during a 12-month period.

The most systematic estimate of numbers of female sex workers employed in brothels in Sydney used mathematical modelling based on the overlap between the LASH and SSHC samples, and their reported time in the industry, to arrive at figures of:

- 1,578 sex workers each day
- 2,391 sex workers each week, and
- 3,174 (95% confidence interval 2,590–4,762) in a 12 month period (Read et al., 2012a).

In addition to brothel-based sex workers (who are almost all female) SWOP estimates that up to 40% of all sex workers (including most male sex workers) in NSW work privately, approximately 5% are street-based and an unknown number (<10%) work exclusively as escorts. These estimates are broadly consistent with a population-based survey where 32.6% of sex workers clients reported recently using an escort service (Rissel et al., 2003). A realistic estimate of numbers of sex workers working within 20 kilometres of Sydney CBD within any one year might therefore be between 3,000 and 4,500. It is also known that there are a number of brothels operating in Western and South-Western Sydney and some NSW regional centres (Esler et al., 2008; Berg et al, 2011). Street-based sex workers work in some of Sydney's outer suburban areas and in Wollongong and Newcastle (Harcourt et al., 2001). However it is unlikely that numbers in these locations add more than one or two thousand to the annual total.



**Table 3** Age and country of birth of sex workers, LASH and SSHC data from 2006

Characteristics	LASH (n=201)		SSHC (n=628)	
	No.	%	No.	%
<b>Age (years)</b>				
<b>Median</b>	31	—	29	—
<b>Country of birth</b>				
<b>Australia</b>	55	27.4	116	18.5
<b>New Zealand</b>	10	5.0	24	3.8
<b>Other English speaking</b>	2	1.0	14 <sup>a</sup>	2.2 <sup>a</sup>
<b>China</b>	42	20.9	141	22.5
<b>Thailand</b>	35	17.4	153	24.4
<b>Other Asian</b>	30	14.9	135	21.5
<b>Western Europe</b>	18	9.0	21 <sup>b</sup>	3.3 <sup>b</sup>
<b>Other non-English speaking</b>	9	4.5	19 <sup>c</sup>	3.0 <sup>c</sup>
<b>Aboriginal/Torres Strait Islander</b>				
<b>Yes</b>	3	1.5	—	—
<b>No</b>	187	93.0	—	—
<b>Unknown/No response</b>	11	5.5	—	—

a UK and Ireland

b Includes western and eastern Europe

c Includes Central/South America

Notably, these estimates of the current size of the NSW sex industry are similar to estimates prior to decriminalisation (Parliament of NSW, 1986). New Zealand has also found no increase in sex worker numbers with decriminalisation (Abel et al., 2009).

## Demographics of female sex workers in NSW

### Age

The Sydney LASH respondents were aged between 18 and 60 years, median 31 years (Table 3). The average age of brothel-based sex workers has increased since the mid 1990s in part due to the increased number of Asian sex workers who are generally older than the other women (Pell et al., 2006). Between 1992 and 2009 there was an increase in median age of sex workers at first visit to SSHC from 25 to 29 years (p-trend <0.001). Most of this age increase was among the Asian women.

### Country of birth and language skills

Two thirds (66.7%) of the sex workers in the LASH sample were from Asian (53.2%) or other non-English speaking countries (13.5%) (Table 3), and nearly half (46%) rated their English skills as 'Fair' or 'Poor' (Table 4) There has been an increase in the proportions of Asian immigrant sex workers in brothels in NSW since the early 1990s when it was estimated that Asian sex workers represented

about 20% of the female sex industry (Donovan et al., 1991; O'Connor et al., 1996; Figure 2, overleaf).

The SSHC database study reflects this trend with the proportion of Australian-born sex workers steadily declining over the past two decades, largely replaced by women from Thailand, Korea, and China (Figure 2). However the clinic sample may be biased toward Asian women because SSHC runs Asian language clinics and many of these women do not have Medicare cards so they have less access to GPs: the LASH sample was not prone to those biases.

Notably, while Thai women comprised the bulk of migrant sex workers in the 1990s (Brockett & Murray, 1993; O'Connor et al., 1996) many more women now come from China, Korea and elsewhere in Asia (Table 3; Figure 2, overleaf; Pell et al., 2006). This is an important change, as the Thai women in the 1990s were typically poorly educated, had false passports and visas, and were usually in debt to the agents that had organised their travel to Australia (Brockett & Murray, 1993; O'Connor et al., 1996). By contrast, educational levels among Asian sex workers in Sydney are now much higher, and most have permanent residency or legitimate student visas. Debt bondage among Asian sex workers in Sydney is now rare (Pell et al., 2006).

Only three women (1.5%) in the LASH sample identified as Aboriginal, consistent with previous studies that found few Aboriginal women work in brothels. However Aboriginal women are disproportionately represented in street-based samples (Roxburgh et al., 2006; Harcourt et al., 2001).

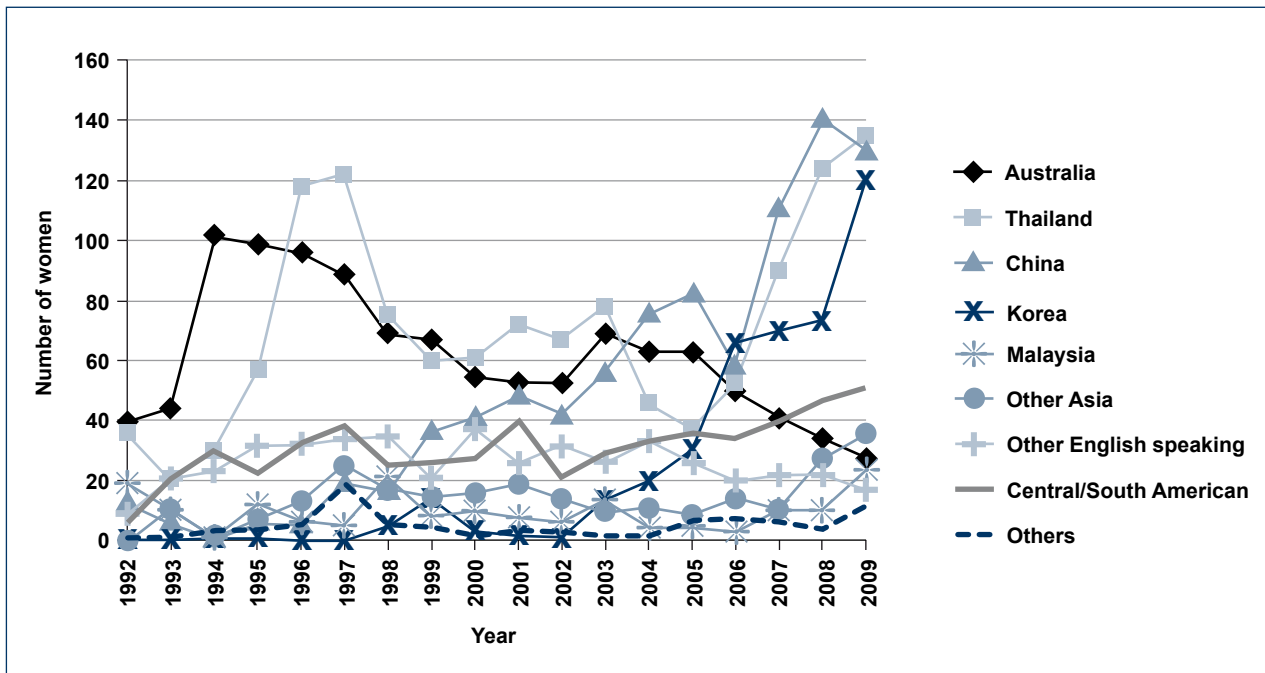


Figure 2 Country of birth of new female sex workers, SSHC 1992–2009

### Time in sex work

In the Sydney LASH sample the median total length of time in the sex industry overall was only 2.0 years (interquartile range [IQR] 0.25–4.00) and 1.6 years (IQR 0.25–3.50) in the industry in Australia. This is a transient group of women requiring frequent outreach services to ensure health promotion messages reach newcomers.

### Language and education

Their origins in Asian countries meant that a half of the LASH sample struggled with English, but 38% had an educational level beyond high school (Table 4).

Table 4 Language skills and educational levels of sex workers, LASH sample (n=201)

Characteristics	No.	%
<b>English skills (self-rated)</b>		
Good	99	49.3
Fair	49	24.4
Poor	44	21.9
Unknown/No response	9	4.5
<b>Education</b>		
12 years or less	88	43.8
13 years or more	76	37.8
Unknown/No response	37	18.4

### Brothel locations and types

Brothels are located throughout Sydney, Wollongong, Newcastle, regional cities, and in many rural towns. Within Sydney there is a heavy concentration of brothels in the inner suburbs. Other clusters of brothels occur around the major commercial nodes such as Parramatta, Liverpool, Bankstown, Kogarah, Bondi Junction and Chatswood. A few brothels are well known to the general public and are easily identifiable, but most brothels operate unobtrusively in suburban houses or above small retail outlets.

Estimates of brothel numbers have varied considerably over the years. In September 1997 SWOP outreach workers (the Female Information and Support Team) estimated there were a minimum of 418 brothels employing female sex workers in the Sydney metropolitan area alone. Of these, 301 were 'Australian' and 118 employed predominantly Asian sex workers. There may have been up to 200 other premises in the rest of NSW. In 2007 the

LASH team counted up to 200 brothels within 20kms of the CBD. Disparities in these estimates arise from variations in the way researchers distinguish between brothels, parlours and private workers; and further confusion arises from the common practice of advertising premises under several different names and phone numbers.

Brothels may employ female, male or gender diverse sex workers. However there are currently very few (perhaps two or three) male brothels in Sydney. A few gender diverse sex workers work in female brothels.

Larger brothels employ additional staff, such as receptionists, cleaners and bouncers. Smaller brothels sometimes operate as cooperatives, or are sub-leased from an off-site business owner. The advantages of this type of operation are that the sex workers retain the security of shared premises but they have more autonomy in their work conditions and a greater share of their income than in a managed brothel.

Massage parlours operate in a similar fashion to brothels except that the primary service offered is 'relaxation massage'. For legal reasons they usually present some of the trappings of legitimate massage rooms but sexual services may be available to clients on request. Generally it is left to the sex worker to negotiate with the client in order to distance the management from the activity. Many clients prefer to visit a 'parlour' rather than a 'brothel' and many sex workers state that they prefer to work in premises where they can often avoid vaginal/anal penetrative sex.

Arrangements in massage parlours vary in the mix of massage and sexual services that they provide. This mix can be for both planning permission reasons and for marketing reasons. The ambiguous nature of the presentation of the business can give sex workers more control when negotiating services with the client.

Over 50% of LASH respondents said they worked in a 'massage parlour' (Table 5), though the data collectors only identified one brothel as mainly providing massage services (Table 6). Several respondents gave more than one answer to this question reflecting the fact that some brothels also offer massage and escort services and that some sex workers work in more than one sector of the industry on a regular basis. Many have previously engaged in escort or private sex work (Table 5).

While accessing the 74 participating brothels, the LASH field staff recorded the brothels' physical features and assessed their merits as worker-friendly workplaces, awarding them a semi-objective star rating from 1 star (poor) to 5 stars (good). Their observations are presented in Table 6.

Comparisons between Sydney, Melbourne and Perth found few differences in the 'health and safety' and 'general ambience' categories. However, there was a difference in the scores for availability of health promotion resources aimed at sex workers and clients. Forty percent of Sydney brothels had health promotion resources for sex workers and 5% had them for clients (Table 6). This compares respectively with 61% and 43% of licensed brothels in Melbourne and 25% and 4% in Perth.

Sex workers in the LASH Study were also asked to report on the health promotion and other resources that were made available at their work place (Table 7, overleaf). Thirty six per cent of sex workers in Sydney had condoms supplied free at work, compared with 87% in Melbourne and 11% in Perth ( $p < 0.001$ ). The higher proportion in Melbourne was attributable to free condoms being required by the licensing scheme, but what occurs in the unlicensed brothels is unknown (Chen et al., 2010).

## Private sex work

Many sex workers prefer to work independently, from home or from privately leased premises. Almost 20% of LASH respondents had worked privately (Table 5), and over a

**Table 5** Reported current and previous (Australian) work venues of sex workers in Sydney, LASH sample (n=201)

	Current work		Previous work <sup>a</sup>	
	No.	%	No.	%
Massage	101	50.2	99	49.3
Brothel	92	45.8	82	40.8
Escort	13	6.5	45	22.4
Private	6	3.0	38	18.9
BDSM	4	2.0	10	5.0
Street	0	0.0	3	1.5
Other	3	1.5	6	3.0

**Table 6** Sydney brothel characteristics assessed by LASH field staff, LASH sample (n=74)

Brothel characteristics	No.	%
<b>Services provided<sup>a</sup></b>		
Brothel	47	59
Massage	1	1
Escort	33	45
Bondage and discipline	2	3
<b>Brothel location</b>		
Commercial	38	51
Industrial	10	13
Residential	14	19
Mixed zone areas	12	16
<b>Health and safety<sup>a</sup></b>		
Security cameras	44	59
Exterior well lit	43	57
Regular sex worker outreach	47	63
Regulatory signs	18	24
Close to public transport/taxis	31	41
Security guard	12	16
Other (intercoms, first aid, etc)	10	13
<b>Health promotion<sup>a</sup></b>		
Sex worker resources	30	40
Occupational health and safety information	12	16
Client resources	4	5
<b>General ambience<sup>a</sup></b>		
Staff friendly	69	92
Tidy/clean	56	75
Staff room	65	87
Rules/regulations (punitive) i.e., fines, bonds	16	21
Smokers room/area	20	27
<b>Rating by field staff</b>		
5 star	2	3
3-4 star	45	60
1-2 star	25	33

<sup>a</sup> May add to more than 100% because responses are not mutually exclusive

**Table 7** Workplace resources reported by Sydney brothel-based workers, LASH sample (n=201)

Resource	No.	%
<b>Condoms provided at work</b>		
Yes, they are free	72	35.8
Yes, I pay for them	53	26.4
No	61	30.3
No response	15	7.5
<b>Other resources<sup>a</sup></b>		
Receptionist	137	68.2
Security cameras	123	61.2
Lubricant	88	43.8
Smokers' room	82	40.8
Room alarm	73	36.3
Dental dams	47	23.4
Security guard	45	22.4
Needles disposal bin	30	14.9
None of these	15	7.5
<b>Frequency of educator/outreach visits</b>		
Never	35	17.4
Less than once a year	16	8.0
1 to 4 times a year	74	36.8
5 or more times a year	22	10.9
Other	36	17.9
No response	18	9.0

a May add to more than 100% because respondents could report more than one

third of Australian men who had recently paid for sex said that this was with a private worker (Rissel et al., 2003). Most male sex workers also work from private premises (Minichiello et al., 1999).

Private sex workers work alone or with one or two others and/or a receptionist. Clients usually attend only by (phone) appointment, so they are sometimes referred to as 'call-girls' (Perkins & Lovejoy, 2007). The decision to work with one or more other people and to restrict clients to appointments is made as much for personal safety considerations as for general business reasons. Private sex workers have been found to be older and more experienced than brothel workers. A survey of 95 private sex workers in NSW found that 20% of them held tertiary qualifications (Lovejoy et al., 1994). Often they have worked in other sectors of the sex industry before setting up business with a core group of regular clients.

However a few LASH key informants expressed concern that younger, less experienced women were now moving into private sex work 'to stay under the radar', thus becoming less accessible to health promotion services. In NSW planning law does not distinguish between a small group of private sex workers and larger 'commercial' brothels.

## Escort work

It is very difficult to estimate how many women or men work in this sector because of the casual and discreet nature of the work and because it has never been targeted as an illegal activity. One study found that a majority of male sex workers in Sydney recruit their clients through escort agencies (Minichiello et al., 1999). Some brothels offer an escort service in addition to in-house services. Over 20% of LASH respondents had worked as escorts in Australia and over 6% currently provided escort services (presumably going out from brothels) (Table 5). A third of Australian men who had recently purchased sex had used an escort service (Rissel et al., 2003).

Previously, most escorts worked through an agency that contacted them by phone. Typically, escort agencies advertise under several names with numerous phone lines to maximise their market share (Parliament of NSW 1986: 66). Globally, the internet is increasingly used to advertise escort services. Escorts may be requested to visit clients in a variety of venues including their homes, offices, and hotel rooms. The style and income associated with escort work varies greatly depending on the requirements and status of the clients and the presentation of the sex worker.

Escort work is potentially more hazardous for the sex worker than other forms of indoor prostitution because (s)he works alone in a space that is controlled by the client. The dangers can be minimised by regular phone contact with an agency or minder. In some cases this may include a car escort to and from the client's premises (Parliament of NSW 1986: 18–19). Escorts who work through agencies pay up to 60% of their fee to the agent, plus incur large expenses such as clothes and taxi fares.

## Street-based sex work

NSW is unique in Australia in having decriminalised street prostitution. The *Summary Offences Act 1988* permits street soliciting in non-residential areas, not near or within view of churches, schools, dwellings and hospitals. In practice however there are only a very limited number of locales where street soliciting occurs. Traditionally most street soliciting occurred in the inner Sydney suburbs of Darlinghurst and Woolloomooloo, but in recent years numbers have declined in these areas and many sex workers now solicit close to major roads in the western suburbs. There may be up to 120 street-based sex workers on any one night around NSW, and over 300 in the course of the year (Harcourt et al., 2001). Interestingly in Melbourne, where all street-based sex work is illegal, there are many more street workers than in Sydney (Morton et al., 1999).

Male street-based sex workers tend to be younger and to have a more casual and opportunistic involvement in prostitution than do female and transgender sex workers. One study of 96 male sex workers in Sydney showed that 11.3% of soliciting occurred on the street and that 7.6% of sexual encounters took place in a car, or a public place (toilets, park street etc) (Minichiello et al., 2000).

Male street-based sex workers mostly work in East Sydney/Kings Cross but have become less conspicuous in Darlinghurst after the 'Wall' on Darlinghurst Road was made out of bounds.

In 1994 a NSW study of 146 transgender people revealed that 21% were currently working in the sex industry and that 45% had worked in the industry at some time. Of these, 32 individuals had been sex workers for more than five years (Perkins 1994: 31–36). Transgender sex workers work mainly in Darlinghurst on or adjacent to William Street. In addition a small number of transgender sex workers solicit in Newcastle. Nearly 70% of the transgender sex workers surveyed had worked on the street (Perkins 1994: 34).

Street-based sex services are provided in cars, alleyways or lanes, or in nearby safe houses where rooms may be let for short time hire. There are two council approved safe houses in Woolloomooloo, but in other places rooms may be found in hotels or motels, empty properties, private houses or industrial units operated under brothel style management.

One of the most dangerous features of working in the more isolated areas is that the client's vehicle is frequently the only off-street venue available. Sixty-seven percent of the 72 street sex workers interviewed in 2005 reported providing sexual services in cars and 85% reported experiencing violence while working (Roxburgh et al 2006).

Street sex workers are much more likely than other sex workers to have traumatic backgrounds, experience violence at work, be involved in heavy drug use and to have experienced homelessness and incarceration (Roxburgh et al 2006). Notably street-based sex workers may stay in the industry for much longer (mean–12 years compared with the two years of LASH participants) even though 66% reported they found sex work very stressful (Roxburgh et al 2006).

LASH key informants believed street-based sex workers were more affected by the 'move on' powers exercised by police under s 197 of the *Law Enforcement (Powers and Responsibilities) Act 2002* than by the prosecution of offences under the *Summary Offences Act 1988*. 'Move on' orders may prohibit the worker from returning to a 'safe' street and thus put them more at risk. Police could be coercive at times and at other times showed favouritism to individual street workers.

## Other venues

A small number of sex workers work in bars, clubs and hotels in NSW. Their work conditions vary with the location but their situation is similar to that of some escorts. Because this kind of prostitution is illegal (breaching the *Liquor Act 1912*) it is very covert. The Royal Commission into the NSW Police Service (*Final Report, Vol.1 1997:121*) partially exposed the most exploitative side of this aspect

of the sex industry. Licensed clubs in Kings Cross were found to employ drug dependent and possibly under age sex workers to service their customers under covert 'backstage' conditions.

There is also a number of fantasy, and bondage and discipline/sadomasochism (BDSM) specialists. These workers are less likely to engage in penetrative sexual intercourse with their clients and consequently STIs are not necessarily a major concern, but their work is sometimes described as psychologically demanding. Because of the nature of the work, requiring privacy for clients and safe storage for equipment, these women usually operate from secure premises, which may stand-alone or be linked with a conventional brothel. Only 2% of LASH respondents worked in this sector, with approximately 5% reporting they had ever worked in BDSM (Table 5).

## More marginalised sex workers

All sex workers are marginalised from mainstream society, because their work continues to be heavily stigmatised. However some are more marginalised than others.

Street workers fall into this category because of the high level of public antipathy towards them. Aboriginal women are disproportionately represented among street-based sex workers: 21%–23% (Harcourt et al 2001; Roxburgh et al 2006) versus 1.5% in the LASH study of brothel-based sex workers (Table 3). The marginalisation of these women is compounded by the socio-economic disadvantage and cultural norms of their communities. Some rural sex workers are also affected by limited access to health care and community support, and by the difficulties of maintaining confidentiality and privacy within smaller communities (Scott et al., 2006).

Transport services may provide alternative venues for the commercial sex industry. Ports and truck stops are bases from which contact for sexual services are made. These women are hard to reach and rarely studied. Little is known about their sexual health, working conditions or access to services. This is a borderline area where the identity 'sex worker' is less clearly differentiated from other mobile, economically deprived individuals who occasionally exchange sex for travel, hospitality or other gifts in kind.

In the early 1990s many Asian women in Sydney brothels were heavily indebted to migration agents and employed under harsh contracts. While sometimes described as being 'trafficked', these women had voluntarily come to Australia (often repeatedly) seeking economic gain (Brockett & Murray 1994). In addition their employers and clients often resisted the use of condoms in brothels. International sex workers were identified as having poorer sexual health outcomes than resident workers (Donovan 1991b; O'Connor 1996). Fortunately this situation appears to have resolved. More recent studies show Asian migrant sex workers now have far more autonomy, including student visas and residency status, and much better

health outcomes (Pell et al., 2006; Donovan et al., 2010a). That said, 11% of the Asian women in the LASH sample reported that they were unhappy about being involved in sex work (figure that would not be unusual in any industry).

Not all sex workers receive cash payments for their services. Some are drug dependent, under-age youth of both sexes, and young men, who sometimes receive payment in kind. Other people providing sexual services in rural areas, Aboriginal and itinerant communities (such as those formed around shearing, harvesting, major construction projects and truck stops) may not work for cash or identify as sex workers (Harcourt and Donovan 2007).

## Pimps

It has been claimed that globally 80–90% of all sex workers are controlled by pimps (Faugier & Sargeant 1997: 121). However, in NSW, and in Australia as a whole, pimping has not been a significant feature of the sex industry for decades. Even in the early part of the 20th century these arrangements appear to have been much looser and more fluid than the tight individual control exerted by pimps in the USA and to some extent in the UK (McLeod 1982; Parliament of NSW 1986:119). Since the legal reforms in 1979 sex workers in NSW have had no use for pimps. Notably, the LASH study found no evidence that any of the women had been coerced into working in a brothel (Table 8).

## Clients of sex workers

A representative national study (n=9,337) found that 2.3% of men in NSW had paid for sex in the past year (Rissel et al., 2003). Men were significantly more likely than women to have ever paid for sex (15.6% vs 0.1%). There was no correlation between age, language background, income, education or occupation and having paid for sex. However there were a number of behavioural differences between those who had and had not paid for sex. Men who had paid for sex reported more drug and alcohol use, psycho-social stress, numbers of sexual partners and earlier sexual debut.

Information from female sex workers indicates that clients are very diverse, drawn from all age groups, socio-economic and cultural backgrounds. Reasons for visiting sex workers range from the lack, or temporary absence of, other sexual partners, loneliness and boredom, to curiosity, the quest for variety and the desire for sexual activities unobtainable from regular partners (Parliament of NSW 1986: 74–91; Lovejoy 1991). Male sex workers report the same heterogeneity among their (male) clients, including a significant number who identify as bisexual or straight (Minichiello et al., 1999). In a few instances male sex workers also see female clients.

**Table 8** Sex workers' reasons for choosing current workplace, LASH sample (n=201)

Reasons <sup>a</sup>	No.	%
Hours are flexible	88	43.8
I like management	74	36.8
It pays better	70	34.8
I like my workmates	67	33.3
Clients are better	62	30.8
Safer (better security)	47	23.4
More discreet	45	22.4
I live near here	41	20.4
Not as many rules	28	13.9
Sex worker support comes here	16	8.0
Better services	13	6.5
It was all that was available	8	4.0
Avoid hassles with the police	5	2.5
I go where I'm told	—	—
I can get drugs here	—	—
Other	17	8.5

a May add to more than 100% because respondents could report more than one

A few sex workers – often with the support of therapists and carers – provide sexual services to socially isolated people with disability. Possibly unique in the world, NSW has policy and procedure guidelines for accessing such services (Chivers et al. 2010).

# The health of sex workers

## Use of clinical and health promotion services

The Sex Workers Outreach Project (SWOP) is funded to provide sexual health education and support to sex workers throughout NSW, including outreach to brothels and street-based sex workers. SWOP has facilities in Sydney and a number of regional centres. SSHC provides several clinics each week targeting non-English speaking sex workers.

SSHC and SWOP jointly employ a number of health promotion/outreach staff with multiple language skills to assist sex workers from Asian countries. Limited services exist in other sexual health centres in Sydney and in NSW regional centres (Berg et al., 2011).

Most LASH respondents (83%) reported they underwent regular sexual health checks: of these, 65.6% reported having sexual health checks at least every six months (Table 9). Fifty-three percent of sex workers in Sydney (compared with 29% in Melbourne and 22% in Perth) reported that they usually attended a public sexual health clinic for checkups.

Of the LASH sample 61% had been vaccinated against hepatitis B, and 65% had ever been tested for HIV. When asked where safer sex and sex work skills were learned, the most common responses were “from other workers while on the job” (52%) and “Sydney Sexual Health Centre” (52%). Other responses included: educational booklets (37%); local GP (22%); educators through face-to-face sessions (21%); friends outside work (18%); via the Internet (12%); and nowhere (6%).

## STIs and HIV

Among the 140 LASH participants in Sydney who were tested for four common STIs – chlamydia, gonorrhoea, trichomoniasis, and *Mycoplasma genitalium* infection – the prevalence of these conditions was at least as low as would be found in women in the general population (Table 10, overleaf). Despite their high numbers of sexual partners at work, prevalences are kept low by the consistent use of condoms and regular STI screening.

Importantly these STI prevalences reflect what is observed in the clinic. While the STI prevalences in non-Asian sex workers in Sydney have been very low for decades (Figure 3, overleaf), they are dramatically lower among Asian sex workers than the experience of the early 1990s (Figure 4, overleaf; O'Connor et al., 1996).

These low and declining STI prevalences are particularly remarkable in the context of rising chlamydia notifications in non-sex workers at SSHC and nationally (Guy et al., 2010; Donovan, 2002; Kirby Institute, 2011). The relatively higher reports of past STIs (Table 10, overleaf) reflects high screening rates. The three cases of self-reported HIV infection in the LASH study were in Thai women who were engaged in massage only, while the syphilis cases were

**Table 9** Sydney sex workers use of health services, LASH sample (n=201)

Health Services	No.	%
<b>Have regular sexual health checks</b>	167	83.1
<b>Do not have regular health checks</b>	23	11.4
<b>No response</b>	11	5.5
<b>If yes, frequency of sexual health checks</b>		
<b>Weekly</b>	2	1.0
<b>Monthly</b>	25	12.4
<b>Every 2–6 months</b>	105	52.2
<b>Every 7–12 months</b>	25	12.4
<b>Less than once a year/other</b>	12	6.0
<b>No response</b>	32	15.9
<b>Provider of sexual health checks<sup>a</sup></b>		
<b>Public (free) sexual health clinic</b>	107	53.2
<b>Local GP/doctor</b>	58	28.9
<b>Women’s health clinic/family planning</b>	21	10.4
<b>Private sexual health clinic</b>	17	8.5
<b>GP/doctor in another town</b>	10	5.0
<b>Other</b>	11	5.5
<b>Reasons for seeing this provider<sup>a</sup></b>		
<b>Confidentiality</b>	99	49.3
<b>Expertise</b>	61	30.3
<b>Easy to get there</b>	55	27.4
<b>Recommended</b>	44	21.9
<b>Cost</b>	25	12.4
<b>Only place I know</b>	17	8.5
<b>Required by employer</b>	11	5.5
<b>Other</b>	14	7.0

a Adds to more than 100% because respondents could report more than one

imported latent or previously treated infections that were diagnosed at initial screening in Australia.

However some male and female sex workers still report relatively high levels of STIs. These are the people who work on the streets and those who are most marginalised from mainstream health and welfare services (Minichiello et al., 2000; Harcourt et al 2001; Morton et al. 1999).

## Condom use with clients

Substantial minorities of the LASH respondents reported no vaginal sex, no oral sex or no anal sex with clients, or they did not answer these questions (Table 11). This may relate to the complexity of the questions (particularly after translation) or it may be because some may only provide massage with hand relief. Nevertheless, when reported, condom use was high.

SSHC data showed that between 1995 (the first full year of collecting this data) and 2009 the proportion of non-Asian sex workers reporting consistent condom use with clients remained at 95% or higher. Over the same period, consistent use of condoms at work by Asian sex workers rose from 77% to 95% (p-trend <0.001). Of the few women that report <100% condom use for vaginal sex at work, all reported 90% or higher. Thus, over 99% of all commercial vaginal sex encounters in Sydney involve the use of a condom.

Of note, consistent condom use was lower for oral sex – a finding among sex workers at SSHC that has been associated with occasional cases of pharyngeal gonorrhoea. A number of these cases have been in women who report no vaginal intercourse at work; that is, they are predominantly working as masseuses (Read et al., 2012b).

### Condom use with non-paying partners

Of the women with male partners outside of work in the previous three months, 50% used condoms inconsistently or never used condoms with their partners (Table 12). In the SSHC study there was a decrease from 1995 to 2006 in the use of condoms with partners outside of work. The decrease was from 50% to 24% (p-trend <0.001) in Asian sex workers and from 43% to 25% (p-trend <0.001) for non-Asian sex workers.

**Table 10** STIs and HIV in Sydney sex workers, LASH sample (n=201)

Sexually transmitted infections	No.	%
<b>Diagnosis in previous 12 months (self-reported)<sup>a</sup> (n=201)</b>		
Chlamydia	21	10.4
Pelvic infection (PID)	5	2.5
Hepatitis C	4	2
Genital warts	5	2.5
Genital herpes	5	2.5
Gonorrhoea	5	2.5
Hepatitis B	9	4.5
Syphilis	3	1.5
HIV	3	1.5
One or more of the above	40	19.9
<b>Current infection<sup>a</sup> (tampon PCR test) (n=140)</b>		
<i>Mycoplasma genitalium</i>	5	3.6
Chlamydia	4	2.8
Trichomoniasis	1	0.7
Gonorrhoea	—	—

a Respondents may have more than one infection

**Table 11** Condom use with clients, LASH sample (n=201)

	No.	%
<b>Median number of clients in a week</b>	15	—
<b>100% condom use with clients</b>		
<b>Vaginal sex (n=143)</b>	135	94
No vaginal sex with clients	26	—
No response	34	—
<b>Oral sex (n=115)</b>	96	84
No oral sex with clients	33	—
No response	54	—
<b>Anal sex (n=33)</b>	28	90
No anal sex with clients	99	—
No response	74	—

**Table 12** Non-paying sexual partners and condom use in previous three months, LASH sample (n=201)

Sexual partners and condom use	No.	%
<b>Number of male sexual partners outside of work</b>		
None	25	12.4
One	90	44.8
Two	14	7.0
Three+	29	14.4
No response	43	21.4
<b>Number of female sexual partners outside of work</b>		
None	65	32.3
One	6	3.0
Two	1	0.5
Three or more	3	1.5
No response	126	62.7
<b>Condom use with male partners</b>		
Never	39	19.4
Sometimes (less than half the time)	16	8.0
Usually (more than half the time)	23	11.4
Always	77	38.3
No partners	35	17.4
No response	11	5.5



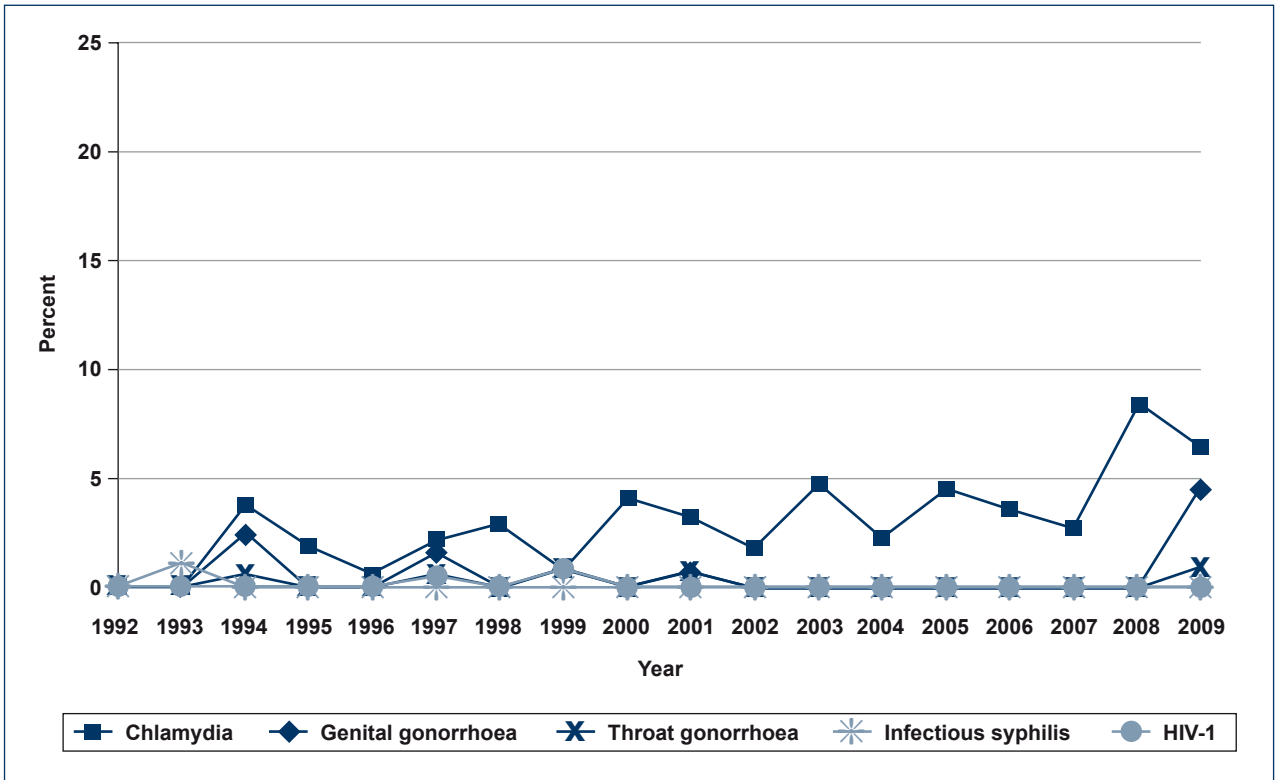


Figure 3 Prevalent STIs at first visit in non-Asian sex workers, SSHC 1992–2009

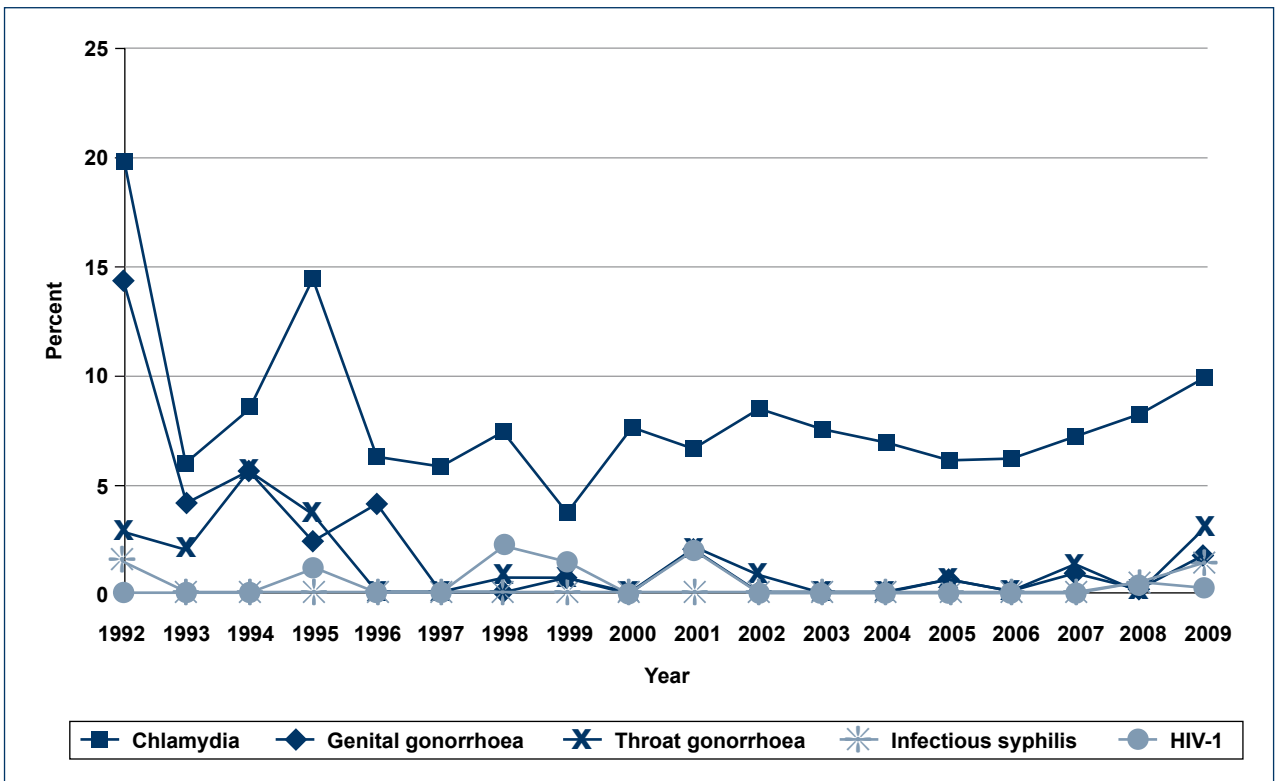


Figure 4 Prevalent STIs at first visit in Asian sex workers, SSHC 1992–2009

## Tobacco, alcohol and other substance use

The smoking rate among the LASH sample was high (46%; Table 13), similar to Melbourne (51%) but significantly lower than in Perth (68%;  $p < 0.001$ ). These rates are three times the general population rates. SSHC data showed the overall proportion of women who reported smoking to have fallen from 53% in 1992 to 40% in 2006. Non-Asian women were more likely to smoke cigarettes than were the Asian women (53% vs 37%,  $p < 0.001$ ).

Sydney sex workers were significantly less likely to drink alcohol to excess than were sex workers in Melbourne or Perth: 44% of Sydney workers had never drunk more than four alcoholic drinks in a day, compared with 27% in Melbourne and 23% in Perth;  $p < 0.001$ . This may reflect the higher proportion of Asian sex workers in Sydney brothels. The SSHC data showed 6% of sex workers reported drinking >140 gms of alcohol per week (non-Asian 10% vs Asian 2%,  $p < 0.001$ ).

Also of note, is that only 2% of Sydney LASH participants had injected a drug in the previous 12 months, significantly lower than in Melbourne (10%) and Perth (14%;  $p < 0.001$ ). Again this finding was supported by the SSHC data where 8% of the women reported ever having injected drugs, with <1% of the Asian women doing so (Table 13).

## Social support and wellbeing

Less than two thirds (63%) of LASH respondents reported having a supportive relationship with another person; that is, having someone who would look after them if they were sick at home (Table 14).

On the whole LASH respondents appear to be well adjusted and comfortable with their occupation, however 10% had high scores on the Kessler-6 psychological distress scale that indicates that they were likely to have a serious mental illness (Table 14). This was consistent across all states, and is about twice the rate for similar-aged women in the general population. These women are likely to have other stressors in their lives such as stigma, drug use, homelessness, social and financial constraints. Health and outreach service providers need to be mindful of this minority and be able to make appropriate referrals when they suspect a sex worker is seriously at risk.

In the previous year, 8% of LASH participants reported being assaulted by clients, 10% threatened by clients, and a third (33%) reported being pressured by a client to do something they didn't want to do. These results did not vary significantly across the three cities.

There are clearly still a number of inherent threats to the physical and mental wellbeing of brothel-based sex workers. Social isolation (often associated with the stigma attached to sex work – see Perceptions of sex industry conditions, page 28) is a major factor that is difficult to address. The potential for threats and assaults by clients should be addressed in the management plans of brothels

**Table 13** Substance use in previous 12 months, LASH sample (n=201)

	No.	%
<b>Substance use in previous 12 months<sup>a</sup></b>		
Cigarettes	92	45.8
Marijuana	33	16.4
Cocaine	33	16.4
Ecstasy	31	15.4
Speed	18	9.0
Heroin	2	1.0
Bupenorphine	2	1.0
Methadone	1	0.5
<b>Last time consumed more than four alcoholic drinks in a day</b>		
Never	88	43.8
Today	—	—
Yesterday	11	5.5
Last 7 days	32	15.9
2–4 weeks	28	13.9
2–3 months	8	4.0
More than 3 months	21	10.4
No response	13	6.5
<b>Injected a drug in previous 12 months</b>		
Yes	4	2.0
No	187	93.0
No response	10	5.0

a Adds to more than 100% because respondents could report more than one drug

and in the provision of Occupation Health and Safety education and information to owners, managers and workers in the sex industry.

Nevertheless brothel workers appear to be much better off in this respect than street-based sex workers where the majority report serious lifetime traumas, and a large number also report adult sexual assault and work-related violence, as well as drug dependence and depression (Harcourt et al., 2001; Roxburgh et al., 2006). In one recent study nearly half had symptoms that met DSM-IV criteria for post-traumatic stress disorder (PTSD) and one third reported current PTSD (Roxburgh et al., 2006).

## Encounters with the police at work

Less than 10% of LASH respondents reported any work related experiences with the police in the past year. Of these, 68% said the police had been supportive and friendly. Two women reported threats of arrest, one reported being threatened with violence, two reported physical assault by police, one reported police had demanded money, and three reported pressure to provide sexual services to police (Table 15).

**Table 14** Social support and psychological distress, LASH sample (n=201)

	No.	%
<b>Supportive relationship (n=201)</b>		
Yes	126	62.7
No	52	25.9
No response	23	11.4
<b>If yes, with whom? (n=126)</b>		
Friend	49	38.9
Partner	52	41.3
Parent	33	26.2
Several people	14	11.1
Pet	6	4.8
Flatmate	12	9.5
Another sex worker	7	5.6
Group (religious/community/self-help)	—	—
<b>Psychological distress (Kessler-6) scale (n=201)</b>		
Likely to have a serious mental illness	20	10.0
Unlikely to have a serious mental illness	142	70.6
No response	39	19.4

Twenty-four women (12%) reported that police visited their current workplace one or more times each year. When asked how comfortable they felt about going to police with complaints such as sexual assault, 46% said they would feel 'not comfortable' or 'very uncomfortable', whereas less than 24% said they would feel 'comfortable' or 'very comfortable'.

### Knowledge of prostitution laws

When asked about the impact of sex work laws, 2% of sex workers indicated that they had moved state (or country) because of sex work laws, and 3% reported changing workplaces within state because of the laws. Thirteen percent were unsure if it was legal to do sex work in NSW and 4% believed it was illegal. Overall sex workers were much clearer about their status under the law in Sydney and Melbourne than they were in Perth where all sex work is illegal ( $p < 0.001$ ) (Donovan et al., 2010b).

**Table 15** Encounters with the police in brothels, LASH sample

Experiences (n=201)	No.	%
Experiences with police while working	19	9.5
No experiences with police while working	170	84.6
No response	12	6.0
<b>Further detail of encounters (n=19)</b>		
Police were supportive/friendly	13	68.4
Police were not supportive/friendly	2	10.5
No response	4	21.1
Threatened with arrest	2	10.5
Not threatened with arrest	5	26.3
No response	12	62.3
Threatened with violence	1	5.3
Not threatened with violence	5	26.3
No response	13	68.4
Physically assaulted	2	10.5
Not physically assaulted	5	26.3
No response	12	63.2
Had money demanded from	1	5.3
No money was demanded of me	5	26.3
No response	13	68.4
Pressured to provide sexual services	3	15.8
Not pressured to provide sexual services	4	21.1
No response	12	63.2
<b>Frequency of police visits to current workplace in the past year (n=201)</b>		
Never	90	44.8
Less than once a year	6	3.0
1 to 4 times a year	20	10.0
5 or more times a year	4	2.0
Other	3	1.5
Unsure	67	33.3
No response	11	5.5
<b>In the past year, (n=201)</b>		
Police arrested/detained someone in the workplace	5	2.5
No one was arrested or detained	127	63.2
Unsure	54	26.9
No response	15	7.5
Police charged someone in the workplace	2	1.0
No one was charged	123	61.2
Unsure	55	27.4
No response	21	10.4
<b>Comfort level in going to police with complaints of sexual assault, assault, etc.(n=201)</b>		
Very comfortable	29	14.4
Comfortable	19	9.5
Somewhat comfortable	18	9.0
Not comfortable	49	24.4
Very uncomfortable	43	21.4
No response	43	21.4

## Perceptions of sex industry conditions

At the end of the LASH questionnaire, participants were given the opportunity to provide additional comments about the impact of the law on their work conditions, health and wellbeing. Forty-six (23%) participants provided comments.

Of these, seven (15%) indicated they were happy with their work and had no complaints about the law or work conditions. One of these women commented:

*'[It's a] good job, if you are making money'. Another wrote: '... we are normal, happy, educated women ... doing and treating this as a professional business'.*

Five women (11%) were very unhappy about being involved in sex work. Two expressed this as experiencing discrimination against non-Australians in the search for other kinds of work:

*'It is difficult to find a job here in Australia and the wage is really low. If there is a better job here then I wouldn't do this job';*

*Felt unsafe, not freedom. Australia make difficult [for] ... overseas people'.*

A third woman found large brothels 'terrifying and distressing' and another had just started sex work but intended to leave at the end of the week and resume studies. The fifth found [work] conditions sometimes 'very severe'.

Six women (13%) did not express any wish to change jobs but complained about discrimination and the lack of respect shown to sex workers. These included the woman (quoted above) who said she was 'normal, happy and educated'. Two of the six commented that they kept their work secret from friends and family. One explained that '... lying all the time is exhausting'; and the other said she would:

*'... not give my ABN number for work in the sex industry. It is a very secretive venture for me ...'*

Other issues raised were possible adverse impacts on sexual assault complaints and children's court matters; prohibition from being a blood donor; lack of respect in spite of sex work being 'a job that helps the community'; and the assumption that '... all working ladies are doing this to support a drug or other habit.'

A further 29 (63%) women made comments that suggested they were comfortable about being sex workers, although they had a variety of complaints and suggestions about how their working lives could be improved. These comments can be broken down under the following themes.

One sex worker said she admired the Australian (sic) Government's attitude to prostitution law and two commented that the law had no impact on their health or work conditions.

Other comments on the law ranged from saying sex work should be legal everywhere to requests for more regulation to 'keep people honest', and to crack down on 'illegal establishments' and 'illegal workers working on contracts'. One person claimed that 'Immigration accepts

bribes'. Another complained of inadequate policing of illegal brothels and a third of ineffective police responses to protect women.

Three respondents thought that the current situation (i.e. decriminalisation) had made some aspects of work less safe. There is more pressure from owners to provide unsafe sex to clients and one woman believed private workers had lost their safety net of being able to work in pairs. Several women commented that sex workers should be given more information about the law and their rights and that NSW laws should be strengthened to give better protection to sex workers.

Several of the respondents indicated by their comments that they were unclear about the intersection of Federal, State and Local Government laws. Others misunderstood the reach of the law. Two women complained that shift fees and room rentals were being administered at their work places contrary to the law. Another woman reported that the police wrongly referred to their 'massage parlour' as a 'brothel'.

One sex worker claimed that legal discrimination against Thais denied them the same access as other non-residents, while another wanted to 'Make sure those that are forced to be in this industry are able to press legal charges even, if they do not have immigration papers'.

Two women complained about establishments that put the need to please clients above the need to protect sex worker health.

One sex worker requested the compulsory provision of free condoms, dams, lube and information at every place of work. There was also a request for a free portable testing kit, and one for free preventive medicine, morning after pill, and better quality (Japanese) condoms.

There were two comments on STI testing – one saying testing should only be done every two to six months, and the other praising the Melbourne system of monthly checks and certificates 'as it ensures the girls are tested and clean.' One woman simply stated that she had learnt a lot about how to use condoms at the sexual health clinic.

Three women were concerned that sex workers were not fully aware of their rights and that more education and information was needed. One woman remarked that workers rights were better protected in legal brothels in Melbourne.

Two responses dealt with the need for industry superannuation, and work cover insurance for all sex workers. One person commented that Receptionists are underpaid and another called for a women's refuge, open 24 hours, for homeless sex workers.

## Brothel owners, managers, and receptionists

When LASH data collectors were invited into a brothel to survey the sex workers they also offered a short (one page) questionnaire to the person who appeared to be in charge of brothel management during that shift. These people were sometimes the brothel owners but they were more often shift managers or receptionists. Thirty four responses were collected. Of these, 20 were receptionists, eight were business owners or owner/managers (one business owner also worked as a receptionist), three were general managers and two were shift managers. One general manager and one shift manager also doubled as receptionists. One person did not identify his/her position.

Respondents had been involved with the sex industry (in a variety of capacities) for between three months to 20 years. The median time involved was five years.

## Hourly rate for services

Nineteen managers and receptionists quoted amounts for sexual services ranging from \$50 to \$270. The median hourly rate was \$150. Five establishments charged only \$50 or \$60 per hour. These were all 'Asian' businesses and this may reflect prices charged for 'relaxation massage' as opposed to full sexual services. Seven (20.6%) people did not respond to this question.

## NSW Police involvement with brothels

Seven of 34 (20.6%) brothels had been visited by NSW Police in the past three months. Two calls were in relation to property thefts (not directly involving brothel workers) and one was in response to an anonymous tip-off about an underage sex worker. Others were 'routine checks'. There were no known convictions related to these events although one receptionist claimed a young student was charged with harassing sex workers and calling them names. There was no reported evidence of corrupt conduct by police and one owner who had been visited once by the police said he was "Happy with the local police".

## Visits by other authorities

Respondents were asked about visits in the past three months by representatives from the Department of Immigration and Citizenship, the Australian Tax Office (ATO), the Local Council, and Federal Police. Five (14.7%) had been visited by the Immigration Department (three of these were 'Asian' brothels). Two (5.9%) had been visited by the ATO, five (14.7%) by Council officers and none by the Federal Police. There was a high no-response rate (29%–44%) to all these questions. Most of these visits were described as 'routine checks' with no action resulting. There was only one report of possible corrupt conduct and that was said to be by a Council officer asking for

sexual favours at 'another similar business in this state'. The 'no response' rate was well under 20% for questions about possible corruption. Two people made general unsubstantiated comments about corrupt council officers.

There were few comments about the general impact of NSW law on the brothel industry. Five people indicated they were ambivalent or still slightly confused about the law. Five others lamented that law changes had not removed the stigma from the industry or addressed sex slavery. One of these also commented on neighbourhood prejudice against brothels. One respondent said the current law had a positive impact on the industry.

## Conclusions

There is nothing in the comments by sex workers and owner managers in the brothel industry in NSW to indicate any systematic misconduct or corruption by officials, or any serious crime involvement.

Invited unstructured comments show that some people are still rather vague about some aspects of the law and Council regulation. There is still considerable concern about the stigma attached to sex work.

Overall these comments confirm the picture of an industry operating predominantly through small-scale local businesses, offering uniformly moderately priced services to their clientele. It suggests competition is fairly high and profit margins are small for most brothels in Sydney.

# Prostitution law and policing in NSW

The criminal laws in NSW contain few offences relating to prostitution. By a series of reforms enacted between 1979 and 1995, prostitution related activities were largely decriminalised. The current law in NSW is contained in the *Summary Offences Act 1988*, the *Restricted Premises Act 1943*, and to a lesser extent, the *Environmental Planning and Assessment Act 1979*. There are no offences relating to the keeping or managing of a brothel *per se*. Current offences include living on the earnings of prostitution, coercive conduct to induce a person to act as a prostitute, holding out premises used for prostitution as a massage parlour, and soliciting by workers or clients near or within view of a school, church, hospital or dwelling. Brothels in NSW do not need a licence to operate, but require planning approval from the local council. A brothel may be closed by a Court upon application under the *Restricted Premises Act*, but not solely on the grounds that it is a brothel. The relevant considerations include complaints, disturbance, operation in an area frequented by children, etc. The criminal offences applying to sex work in NSW as of June 2011 are examined in the following sections.

## Policing and prosecution

Information on all finalised court appearances in NSW for prostitution related offences between 2000 and 2006 (inclusive) was requested from the Bureau of Crime Statistics and Research, specified according to Act and section number. In the following sections, the data on all prosecutions are presented where relevant. The data presented in this report relates to all appearances in the courts over 2000–2006 (n=1,579) and includes appearances where the charge was dismissed because no evidence was offered (n=47), appearances where the charges were dismissed after hearing (n=23), and appearances where the charge was dismissed for other reasons or stood out of the list (n=21). The analysis was primarily directed at assessing policing activity, rather than prosecution outcome in the courts, and it was considered that court appearance provides a more direct reflection of policing activity than conviction.

The following sections examine the criminal offences applying to various sex worker activities in NSW in broad offence groupings: street offences, brothel offences, offences applying to using premises in specified circumstances, live on the earnings, sole operators, escort

workers, inducing/procuring, advertising and sponsorship, child prostitution and sexual servitude offences.

## Street offences

There are three soliciting offences applying to workers in s 19 of the *Summary Offences Act 1988*:

- soliciting in a road or road related area near or within view of a prescribed location,
- soliciting in a prescribed location and,
- soliciting in a manner that distresses or harasses, in, near or within view of a prescribed location.<sup>1</sup>

All three offences contained in s 19 carry a maximum penalty of imprisonment for three months.

An amendment in 1997 changed the location of the first offence from “a public place” to a “road or road-related area” and further specified that soliciting included soliciting from a motor vehicle.<sup>2</sup> A road related area is defined in s 4 to mean a road or road related area “within the meaning of the *Road Transport (General) Act 1999*”. The purpose of the amendment was stated in the second reading speech (*NSW Parliamentary Hansard*, Legislative Council, 25 November 1999, at 3710, per Ian MacDonald):

*By expressly mentioning “motor vehicles” the new offence will operate to target “kerb crawlers”. Kerb crawlers are persons who seek the services of street prostitutes by driving slowly along the street. Their behaviour causes significant community concern in certain areas. The mere act of driving slowly in a non-dangerous manner is not criminalised by this proposal.*

*The actions that constitute soliciting are well established in the law and the actions of persons in motor vehicles who are charged with soliciting will reflect the action of propositioning, pestering or similar relevant behaviour as well as being in the motor vehicle.*

The meaning of solicit in s 19(1) was considered in *Coleman v DPP [2000] NSWSC 275*. The defendant was convicted of soliciting in Forbes Street, Darlinghurst within view of SCEGGS boarding school. On appeal, the defendant contended that soliciting involves “persistence, pestering, pressure” and that her conduct was no more than a simple request. O’Keefe J upheld the conviction and concluded that there was no requirement for persistence, pressure or annoyance.<sup>3</sup>

1 19 (1) A person in a road or road related area shall not, near or within view from a dwelling, school, church or hospital, solicit another person for the purpose of prostitution ...  
(2) A person shall not, in a school, church or hospital, solicit another person for the purpose of prostitution ...  
(3) A person shall not, in or near, or within view from, a dwelling, school, church, hospital or public place, solicit another person, for the purpose of prostitution, in a manner that harasses or distresses the other person ...  
(5) In this section:  
(a) a reference to a person who solicits another person for the purpose of prostitution is a reference to a person who does so as a prostitute, and  
(b) a reference to soliciting includes a reference to soliciting from a motor vehicle, whether moving or stationary.

2 The *Crimes and Courts Legislation Amendment Act 1999*

Client specific offences were created in s 19A by the *Crimes and Courts Legislation Amendment Act 1999*.<sup>4</sup> Section 19A duplicates the three offences (and penalties) contained in s 19 and states: “a reference to a person who solicits another person for the purpose of prostitution is a reference to a person who does so as a prospective client of a prostitute ...”

An ongoing problem with the enforcement of soliciting laws has been the prosecution of sex workers but rarely clients. The purpose underlying the confining of s 19 to prostitutes and the creation of client offences in s 19A was stated in the second reading speech (NSW Parliament, *Hansard*, Legislative Council, 25 November 1999, at 3710, Ian MacDonald):

*‘Whilst it appears that the offences contained in section 19 apply equally to prostitutes and clients of prostitutes, in practice only prostitutes are charged by police with offences under section 19 ...*

*By clearly criminalising the behaviour of persons seeking the services of prostitutes in the proscribed public places, the creation of the new offences should have a deterrent effect on such persons and thus reduce the incidence of street prostitution.*

*The creation of a separate offence for clients will guide police discretion by providing police with an explicit policy statement and clear direction about the desirability of charging clients of sex workers with prostitution offences ... The offence will be non-gender specific so that it will equally apply to heterosexual, homosexual and transgender street prostitution.’*

Section 20 creates an offence of “public act of prostitution”, punishing “each of the persons taking part in an act of prostitution in, or within view from, a school, church, hospital or public place; or within view from a dwelling”.<sup>5</sup> Where the act of prostitution takes place in a vehicle which is in or within view from a school, church, hospital or public

place or within view from a dwelling, each of the persons is guilty of an offence “whether or not the act of prostitution can be seen from outside the vehicle”. The maximum penalty for an offence under s 20 is 10 penalty units or six months imprisonment. An act of prostitution is defined to include sexual intercourse or masturbation.

Street soliciting has thus been legal in NSW for over 30 years except in the few prescribed locations: near or within view of a school, church, hospital or dwelling or in a school, church or hospital. There has been a decline of approximately 95% in the number of prosecutions for street soliciting from the high point of the early 1970s under the *Summary Offences Act 1970* to the present (from 4,288 charges in 1972 to 53 charges in 2006). The most well known street-based market is a stretch of William St near King’s Cross. Other street markets are located at Canterbury Road in the suburbs of Campsie, Lakemba and Belmore; the Great Western Highway at Minchinbury and Mt Druitt; and Port Kembla in the Illawarra. From time to time, tensions erupt between local residents, sex workers and other interested parties such as local government. Often police are called upon to conduct a saturation policing exercise to contain the market to the prescribed locations and, as a result, the tensions ease, at least for a while.

As noted elsewhere in this report, street-based sex workers represent only approximately 5% of the sex industry population. Most of the remaining 95% of the sex industry comprises various kinds of ‘indoor’ work: in brothels (with or without council planning approval), private premises involving one to three women working independently (legally defined as brothels but rarely seeking council planning approval) and phone-based escorts. The charges finalised for the soliciting offences in the courts are presented in Table 16, overleaf.

3 *Coleman v DPP [2000] NSWSC 275*: “Solicit involves a personal approach, for the purpose of, or which is accompanied by, or which constitutes or conveys, an offer that some form of sexual activity will be engaged in by the person making the approach in return for monetary gain. It is unnecessary ... for there to be any element of aggressive persistence, pestering, pressure, or harassment or annoyance to the person approached. Nor is there a need for distress or embarrassment to be caused by or result from the approach or offer ... The mere approach by a prostitute to a person who is a potential customer, when she is dressed in a suggestive manner, perhaps with appropriate gestures or words, or is presented in a particular way is sufficient to constitute an offer of services as a prostitute.”

4 19 (1) A person in a road or road related area must not, near or within view from a dwelling, school, church or hospital, solicit another person for the purpose of prostitution. Maximum penalty: 6 penalty units or imprisonment for 3 months.  
 (2) A person must not, in a school, church or hospital, solicit another person for the purpose of prostitution. Maximum penalty: 6 penalty units or imprisonment for 3 months.  
 (3) A person must not, in or near, or within view from, a dwelling, school, church, hospital or public place, solicit another person, for the purpose of prostitution, in a manner that harasses or distresses the other person. Maximum penalty: 8 penalty units or imprisonment for 3 months.

5 20 (1) Each of the persons taking part in an act of prostitution:  
 (a) in, or within view from, a school, church, hospital or public place, or  
 (b) within view from a dwelling,  
 is guilty of an offence. Maximum penalty: 10 penalty units or imprisonment for 6 months.  
 (2) Each of the persons taking part in an act of prostitution in a vehicle that is:  
 (a) in, or within view from, a school, church, hospital or public place, or  
 (b) within view from a dwelling,  
 is guilty of an offence whether or not the act of prostitution can be seen from outside the vehicle.  
 Maximum penalty: 10 penalty units or imprisonment for 6 months.

**Table 16** Soliciting offences finalised in NSW courts, 2000–2006

Offence	2000	2001	2002	2003	2004	2005	2006	Total
<b>Summary Offences Act s 19 (1)</b> Soliciting near or within view of prescribed location by worker	158	274	198	148	35	32	50	<b>895</b>
<b>Summary Offences Act s 19 (2)</b> Soliciting in prescribed location by worker	1	—	1	—	—	—	—	<b>2</b>
<b>Summary Offences Act s 19 (3)</b> Soliciting in a manner that harasses by worker	2	—	—	1	—	—	—	<b>3</b>
<b>Summary Offences Act s 19A (1)</b> Soliciting near or within view of prescribed location by client	11	164	85	52	80	86	2	<b>480</b>
<b>Summary Offences Act s 19A (2)</b> Soliciting in prescribed location by client	—	—	—	—	—	—	1	<b>1</b>
<b>Summary Offences Act s 19A (3)</b> Soliciting in a manner that harasses by client	—	—	—	1	—	—	—	<b>1</b>

In common with all jurisdictions, the public soliciting offences are the most heavily prosecuted prostitution offences in NSW. Of particular interest, is the fact that a third of the charges were against clients. This represents an important change in the policing of street prostitution and a break from the past practices where almost all law enforcement was directed at workers.

The charges finalised for public act of prostitution offences in the courts are presented in Table 17. The most heavily prosecuted offence is an act of prostitution in a vehicle in, or within view from, a school, church, hospital or public place. However prosecutions were rare in the later years.

## Brothel offences

It is not a criminal offence to manage or own a brothel in NSW, or to work in a brothel. The laws underpinning the decriminalisation of brothel keeping were successively enacted over a 16 year period, as follows.

In 1979, reforms were enacted which decriminalised most of the key prostitution offences and which have continued, in substantially the same form, to the present day.<sup>6</sup> The reforms recognised “first, that the present law discriminates unfairly against the prostitute as compared to the customer, and second, that wherever possible the law should be directed at preventing and punishing exploitation” (Frank Walker, *Hansard*, Legislative Assembly, 23 April 1979 at 4923). The key offence of brothel keeping under s 32 of the *Summary Offences Act 1970* was repealed and not replaced.

Throughout the 1980s and the early 1990s, much of the brothel industry operated in a quasi-legal fashion. However, police action in two areas served to undermine the 1979 reforms. First, rarely used wartime legislation, the *Disorderly Houses Act 1943*, was revived and an increasing number of declarations were sought in the Supreme Court. A disorderly house declaration enabled prosecutions to be undertaken for the offences of owning, occupying or being

**Table 17** Public act of prostitution offences finalised in NSW courts, 2000–2006

Offence	2000	2001	2002	2003	2004	2005	2006	Total
<b>Summary Offences Act s 20 (1) (a)</b> Public act of prostitution in or within view of prescribed location	3	2	1	1	—	1	1	<b>9</b>
<b>Summary Offences Act s 20 (1) (b)</b> Public act of prostitution within view of prescribed dwelling	—	7	—	2	2	—	—	<b>11</b>
<b>Summary Offences Act s 20 (2) (a)</b> Public act of prostitution in a vehicle in or within view of prescribed location	28	73	8	9	14	2	7	<b>141</b>
<b>Summary Offences Act s 20 (2) (b)</b> Public act of prostitution in a vehicle within view of dwelling	7	1	—	2	4	1	—	<b>15</b>

<sup>6</sup> The *Summary Offences (Repeal) Act 1979*



found on such declared brothels. The decision in *Sibuse Pty Ltd v Shaw (1988) 13 NSWLR 98*, that a declaration may be made on the mere ground that the premises are a brothel, made it easier to obtain declarations and paved the way for many further applications and prosecutions.

Secondly, the police revived the common law offence of brothel keeping. In 1990, the police charged and successfully prosecuted a person for the common law misdemeanour of keeping a brothel, notwithstanding that there had been no prosecutions for this offence “in living memory” (*McHugh J in Sibuse Pty Ltd v Shaw (1988) 13 NSWLR 98* at 122). Further prosecutions ensued. In *Rahme (1993) 70 A Crim R 357*, the appellant appealed his conviction, arguing that brothel keeping was no longer an offence known to law given the “perceptible changes in the mores of society” (and reliance was placed upon Street CJ’s dissenting opinion in *Sibuse*). However, in the Court of Criminal Appeal, Grove J (with whom James and Campbell JJ agreed) noted (at 361) that:

‘... the legislature reaffirmed its recognition of the existence of the common law misdemeanour in the passage of s 17(2) of the Summary Offences Act [1988] shortly after those views [in *Sibuse*] had been published. ... it is for the legislature to regulate social conduct if this is deemed desirable. It is not the function of the court to assess the merit of competing views about changes in society. The offence of keeping a brothel has been and is part of the law of New South Wales and I reject the submission that the court should discard it.’

In 1995, the *Disorderly Houses (Amendment) Act 1995* was enacted to reinforce the policy underlying the 1979 reforms by overturning the decisions in *Sibuse* and *Rahme* and to further involve planning laws in the regulation of brothel operation. The common law offence of keeping a common bawdy house or brothel was abolished: see s 580C of the *Crimes Act*. Restrictions were placed on the classification of brothels as disorderly houses.

## Premises used for prostitution

Notwithstanding the decriminalisation of brothel keeping, there remain some offences which may apply to brothel-related activities in specified circumstances. Firstly, there are two provisions in the *Summary Offences Act 1988*, which prohibit brothel keeping and use where the premises are held out as a massage parlour. Secondly, if a brothel has been declared by a court to be a disorderly house under the *Restricted Premises Act 1943*, an offence is committed by the owner or occupier if any of the conditions referred to in section 3 (1) apply to the premises while the declaration is in force.

## The Summary Offences Act 1988 provisions

Section 16 creates the following offence (punishable by up to five penalty units or imprisonment for three months):

- 16 A person shall not use, for the purpose of prostitution or of soliciting for prostitution, any premises held out as being available:
- for the provision of massage, sauna baths, steam baths or facilities for physical exercise, or
  - for the taking of photographs, or
  - as a photographic studio, or for services of a like nature.

In *Franklin v Durkin* (unreported, NSWSC, 21 October 1994), Levine J ruled that the section created two offences: using premises for the purpose of prostitution, and using premises for the purpose of soliciting for prostitution. In respect of the first, an act of prostitution is a necessary ingredient. An offer to perform in future a sexual service for payment falls within the second offence. The meaning of prostitution was also considered in *Franklin v Durkin*. Section 3(1) of the *Summary Offences Act* provides:

- prostitution** includes acts of prostitution between persons of different sexes or of the same sex, and includes:
- sexual intercourse as defined in section 61H of the *Crimes Act 1900*, and
  - masturbation committed by one person on another, for payment.

Levine J held that the definition, although only inclusive, contemplates the performance of a sexual act and that, as a matter of statutory construction, the wider meaning of prostitution at common law referred to in *Samuels v Bosch (1972) 127 CLR 517* does not apply. In *Samuels v Bosch*, Gibbs J stated (at 524) that “The ordinary meaning of ‘prostitution’ is the offering of the body to indiscriminate lewdness for hire”.

Section 17 creates a corresponding offence for owners, occupiers and managers, punishable by a maximum of 50 penalty units or imprisonment for 12 months.<sup>7</sup> Both offences appear to be directed at the deception involved in the labelling of the premises, rather than the prostitution. The justification for including such offences in the criminal law may be questioned, given that their primary purpose appears to be consumer protection. There were only two court appearances for the s 16 offence between 2000 and 2006 (inclusive). There were no appearances for the s 17 offence.

7 17 (1) A person, being the owner, occupier or manager, or a person assisting in the management, of any premises held out as being available:

- for the provision of massage, sauna baths, steam baths or facilities for physical exercise, or
- for the taking of photographs, or
- as a photographic studio, or for services of a like nature, shall not knowingly suffer or permit the premises to be used for the purpose of prostitution or of soliciting for prostitution. Maximum penalty: 50 penalty units or imprisonment for 12 months.

## Disorderly Houses/Restricted Premises

The *Disorderly Houses Act 1943* was enacted to deal with the “wartime growth of gambling, sly grog and prostitution” (Parliament of NSW 1986, p244). Under s 3, premises could be declared a ‘disorderly house’ or deemed ‘declared premises’ on a variety of grounds including that “drunkenness or disorderly or indecent conduct or any entertainment of a demoralising character takes place on the premises”. Once declared, the premises could be searched at any time by police, without warrant and offences were created of being the owner (s 8) or occupier (s 9) of declared premises.

In 1968, the Act was amended as part of the Askin Government’s attempt to eradicate prostitution, and s 3(1)(e) was added to the grounds: premises that are “habitually used for the purposes of prostitution, or ... have been so used for that purpose and are likely again to be so used for that purpose”.<sup>8</sup> As noted above, the Act was increasingly used by police in the 1980s and 1990s to close brothels and prosecute persons found on the premises (Perkins 1991; Egger & Harcourt 1991). The police applications under the Act increased after the decision in *Sibuse* and there were 50 applications in 1990 (Perkins 1991).

The *Disorderly Houses Amendment Act 1995* repealed s 3(1)(e) and provided in s 16 that a s 3 declaration “may not be made in respect of premises solely because ... the premises are a brothel”. A new Pt 3 relating to brothels was introduced. Section 17 authorised the NSW Land and Environment Court, on the application of a local council, to make an order that premises not be used for the

purpose of a brothel. A local council may not approach the Land and Environment Court to make such an application “unless it is satisfied that it has received sufficient complaints about the brothel [from residents who live in the vicinity of the brothel or whose children use facilities in the vicinity of the brothel] to warrant the making of the application”. In making an order, the Land and Environment Court is to consider whether:

- the brothel is operating “near or within view from a church, hospital, school or any place regularly frequented by children for recreational or cultural activities” (s 17(5)(a));
- the brothel “causes a disturbance in the neighbourhood” (including by reason of noise, or vehicular and pedestrian traffic) (s 17(5)(b));
- “sufficient off-street parking” and “suitable access” have been provided (s 17(5)(c), (d)); and
- the operation of the brothel “interferes with the amenity of the neighbourhood” (s 17(5)(f)).

The *Disorderly Houses Act 1943* has been subject to three important subsequent amendments effecting brothels.

1. It was amended by the *Disorderly Houses Amendment (Brothels) Act 2001* in response to a recommendation of the Brothel Task Force (established by the Government in 2000). The objective was to clarify the evidence needed to determine that a premise is operating as a brothel. A new s 17A was inserted into the Act.<sup>9</sup> Section 17A allows the Land and Environment Court to rely on circumstantial evidence in determining whether premises were used as a brothel. Safe sex equipment was said to “not of itself constitute evidence...”.

8 By the *Vagrancy, Disorderly Houses and Other Acts (Amendment) Act 1968*

9 17A **Evidence of use of premises as brothel**

- (1) This section applies to proceedings before the Land and Environment Court:
  - (a) on an application under section 17 for premises not to be used as a brothel, or
  - (b) under the Environmental Planning and Assessment Act 1979 to remedy or restrain a breach of that Act in relation to the use of premises as a brothel.
- (2) In any proceedings to which this section applies, the Court may rely on circumstantial evidence to find that particular premises are used as a brothel.
- (3) However, the presence in any premises of articles or equipment that facilitate or encourage safe sex practices does not of itself constitute evidence of any kind that the premises are used as a brothel.

Note. Examples of circumstantial evidence include (but are not limited to) the following:

- (a) evidence relating to persons entering and leaving the premises (including number, gender and frequency) that is consistent with the use of the premises for prostitution,
- (b) evidence of the premises being advertised expressly or implicitly for the purposes of prostitution (including advertisements on or in the premises, newspapers, directories or the Internet),
- (c) evidence of appointments with persons at the premises for the purposes of prostitution that are made through the use of telephone numbers or other contact details that are publicly advertised,
- (d) evidence of information in books and accounts that is consistent with the use of the premises for prostitution,...

2. The *Disorderly Houses Act 1943* was renamed the *Restricted Premises Act 1943* by the *Disorderly Houses Amendment (Commercial Supply of Prohibited Drugs) Act 2002*. The offence of being found in premises declared to be a disorderly house (s 7) was repealed and the offences relating to owners (s 8) and occupiers (s 9) were repealed and replaced by substantially different offences.<sup>10</sup> The new offences penalize the owner or occupier if, whilst the declaration is in force, any of the conditions referred to in s 3 continue to exist. Since s 3 does not refer to brothel operation<sup>11</sup>, it is arguable that the s 8 and 9 offences no longer have any application to brothel owners or managers.
3. The *Restricted Premises Act 1943* was further amended by the *Brothels Legislation Amendment Act 2007*. The ambit of s 17 of the *Restricted Premises Act* (which allows a local council to apply to the Land and Environment Court for an order that the premises are not to be used as a brothel) was substantially broadened to apply to premises offering “related sex uses”. Related sex uses are defined in s 2 to include the provision of adult entertainment involving nudity, indecent acts or sexual activity. Section 17 was also amended to provide that only one complaint may be sufficient to warrant the making of an application in the case of a brothel used or likely to be used for the purposes of prostitution by two or more prostitutes. The previous requirement was confined to “sufficient complaints”. Section 17 was also amended to allow the Courts to suspend or vary for up to six months any development consent already granted to the brothel or related sex uses premises. S17A was amended to allow the Court to find “without any direct evidence that the particular premises are used as

a brothel”. Important amendments were also made to the *Environmental Planning and Assessment Act 1979*. The amendments created specific brothel closure orders (defined in s121ZR) which may extend to related sex uses premises. Under s121ZS, if a person fails to comply with a brothel closure order, a Local Court or the Land and Environment Court may make an order directing a provider of water, electricity or gas to those premises to cease provision for up to three months. Because the definition of a brothel in s 4 (1) excludes premises used by no more than one prostitute, the closure and cessation of utilities orders do not apply to sole operators. A person who fails to comply with a brothel closure order may be guilty of an offence under s 126 and subject to a maximum fine of up to 10,000 penalty units (if sentenced by the Land and Environment Court). Section 126 does not provide for the imposition of a term of imprisonment.

The operation of brothels is now regulated by the law in three primary ways and without the direct involvement of the criminal law:

- Firstly, under the *Environmental Planning and Assessment Act 1979*, a development application to establish a brothel may be rejected by a local council or authority. The matters to be considered in determining a development application are laid down in s 79C of the *Environmental Planning and Assessment Act 1979* and include the provisions of “any environmental planning instrument”. Previously, the Department of Urban Affairs and Environment informed all local councils that Local Environment Plans would not be approved by the Minister for Urban Affairs and Planning if they contain a blanket prohibition on brothels (Department of Urban Affairs and Planning, *Council Circular – Planning Control of*

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- 10 8(1) After the service of a notice under section 6 on the owner of premises of the making of a declaration, the owner is guilty of an offence if any of the conditions referred to in section 3 (1) apply to the premises while the declaration is in force. Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.
- 9(1) After the service of a notice under section 6 on the occupier of premises of the making of a declaration, the occupier is guilty of an offence if any of the conditions referred to in section 3 (1) apply to the premises while the declaration is in force. Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.
- 11 3(1) On a senior police officer showing reasonable grounds for suspecting that all or any of the following conditions obtain with respect to any premises, that is to say:
- (a) that drunkenness or disorderly or indecent conduct or any entertainment of a demoralising character takes place on the premises, or has taken place and is likely to take place again on the premises, or
  - (b) that liquor or a drug is unlawfully sold or supplied on or from the premises or has been so sold or supplied on or from the premises and is likely to be so sold again on or from the premises, or
  - (c) that reputed criminals or associates of reputed criminals are to be found on or resort to the premises or have resorted and are likely to resort again to the premises, or
  - (d) that any of the persons having control of or managing or taking part or assisting in the control or management of the premises:
    - (i) is a reputed criminal or an associate of reputed criminals, or
    - (ii) has been concerned in the control or management of other premises which have been the subject of a declaration under this Part, or
    - (iii) is or has been concerned in the control or management of premises which are or have been frequented by persons of notoriously bad character or of premises on or from which liquor or a drug is or has been unlawfully sold or supplied, ...

the Supreme Court or the District Court may declare such premises to be premises to which this Part applies.

*Brothels*, 29, 1995), although they were permitted to restrict them to industrial zones (Department of Urban Affairs and Planning, *Council Circular – Planning Control of Brothels*, 16, 1996). This edict allowing Councils to restrict brothels to industrial zones has since been repealed. In 2009 the Planning Department revised this advice and issued new directives under the model provisions for the Standard Instrument-Principle LEP that now requires Councils to permit brothels ‘somewhere in their local government area.’

- Secondly, a local council may attempt to prevent a brothel from operating by applying under s 17 of the *Restricted Premises Act* to the Land and Environment Court for an order that the premises are not to be used as a brothel if a recent amenity-based complaint has been verified.
- Thirdly, the Land and Environment Court may issue a brothel closure order under the *Environmental Planning and Assessment Act 1979*. If a person fails to comply with a brothel closure order, a Local Court or the Land and Environment Court may issue a utilities order under which gas water and electricity supply is ceased for up to three months. If a person fails to comply with a brothel closure order they may be charged and convicted of an offence of offending against the Court’s prohibition under s 125 of the *Environmental Planning and Assessment Act 1979* and fined accordingly.

Several local councils have criticised the planning scheme for brothels, claiming that they do not have adequate resources to investigate and litigate in the Land and Environment Court, where necessary (*Sydney Morning Herald*, 30/8/1999). Some councils have been reluctant to include brothels in their Local Environment Plans and some have criticised the decisions of the court as favouring brothels over councils. Between late 1995 and June 1998, the Land and Environment Court heard 27 appeals from brothel applicants who were refused development consent; 20 were upheld (Smith 1999). Other councils have assumed the new responsibilities with minimal adverse comment. According to Smith (2003) approximately half of the local councils in NSW had prepared Local Environment Plans to identify the location of brothels by 2003. Most councils had prohibited brothels from operating in residential areas. A Sex Services Premises Planning Advisory Panel was established by the Government in 2002 to provide advice and assistance to assist councils in the development and management of brothel planning. The Advisory Panel produced the *Sex Services Premises Planning Guidelines* in 2004 to assist local government and to outline best practice standards. These are yet to be adopted by the Department of Planning.

## Live on the earnings

Section 15 of the *Summary Offences Act 1988* prohibits living on the earnings of prostitution:

15 (1) *A person shall not knowingly live wholly or in part on the earnings of prostitution of another person.*

*Maximum penalty: 10 penalty units or imprisonment for 12 months.*

(2) *For the purposes of subsection (1), a person who is of or above the age of 18 years and who:*

(a) *lives with or is habitually in the company of, a reputed prostitute, and*

(b) *has no visible lawful means of support, shall be taken knowingly to live wholly or in part on the earnings of prostitution of another person unless he or she satisfies the court before which he or she is charged with an offence under that subsection that he or she has sufficient lawful means of support.*

(3) *A person does not contravene subsection (1) by living wholly or in part on earnings derived from a brothel if the person owns, manages or is employed in the brothel.*

The s 15 offence was amended in 1995 by the *Disorderly Houses Amendment Act 1995*, belatedly implementing the recommendation of the 1986 NSW Parliament report *Report of the Select Committee of the Legislative Assembly Upon Prostitution*. Subsection (3) was added to prevent its application to persons owning, managing or employed in a brothel. Although the former version of the offence was generally understood to be aimed at pimps and others who exploit prostitutes, there was nothing in the section to restrict the application to exploitative relationships. It applied to co-workers of the prostitute, such as, for example, the cleaner or the receptionist in a brothel. However, the 1995 amendments did not address the problem of the dependent relationships of the prostitute and, as s 15 presently stands, it could be used against the adult child or other dependant of the prostitute even in the absence of any exploitative relationship. Indeed an adult dependant who lives with the “reputed” prostitute is presumed to be in breach of the section and must affirmatively establish that he or she has independent lawful means of support. Furthermore, s 15(3) only exempts those involved in brothels and thus the support workers of street workers (for example, those who record client car numbers or hold safe sex equipment) may still be prosecuted for living on the earnings.

The *Report of the Select Committee of the Legislative Assembly Upon Prostitution* (Parliament of NSW 1986) recommended that the ambit of live on the earnings be cut

down to restrict its application to circumstances of “violence or coercion or other forms of exploitation ... or to supply an illegal drug of addiction”. This recommendation was not adopted; instead, a new offence was created in 1995 by the *Disorderly Houses Amendment Act 1995*:

15A (2) *A person must not, by coercive conduct or undue influence, cause or induce another person to surrender any proceeds of an act of prostitution.*

*Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.*

The ambit of the live on the earnings offence has been considered by the courts in the past. As observed by the Law Reform Commission of Western Australia, the live on the earnings offence applies to a person who lives with a prostitute and is wholly or partly kept by her, but may also apply in other situations, such as the supply of goods and services:<sup>12</sup>

*‘Prostitutes, like everyone else, need food, clothing, accommodation and so on, and so the courts have attempted to distinguish between the supply of goods and services which in their nature can only relate to prostitution, in which circumstances the supplier would commit the offence;<sup>13</sup> and the supply of goods and services which are not exclusively referable to prostitution but which will be used to further it in some way, in which case the supplier will only commit the offence where the charge made for the goods or services is exorbitant because the woman is a prostitute<sup>14</sup>.’*

Australian case law supports this distinction and it has been held in NSW that the offence requires some continuous association and habitual receipt of money.<sup>15</sup>

Between 2000 and 2006 (inclusive), no charges were prosecuted in the courts for live on the earnings. Between 2000 and 2006 (inclusive), there were only three court appearances for the s 15A (2) offence of causing another to surrender the proceeds of prostitution: one appearance each year in 2000, 2001 and 2004.

## Sole operators

Sole operators, commonly known as private workers in the industry, are ordinarily defined as one sex worker working from a private residence which may be their home or may be a residence which is not their home, but leased or owned for the purpose of providing sexual services. Because owning or managing a brothel is not an offence in NSW, it is not a criminal offence for a sole operator to offer sexual services from home.<sup>16</sup>

## Escort workers

There are no criminal prohibitions against the conduct of an escort business or the work of escorts.

## Inducing/procuring

Sections 91A–91B of the *Crimes Act* contain serious, but rarely used (Table 18, overleaf), prostitution-related offences of procuring. Section 91A makes it a crime punishable by up to seven years imprisonment “to procure, entice or lead away any person (not being a prostitute)”, with or without that person’s consent, for purposes of prostitution. Section 91B makes it a crime punishable by up to 10 years imprisonment where procurement for the purpose of prostitution is done “by means of any fraud, violence, threat, or abuse of authority, or by the use of any drug or intoxicating liquor”. As noted by Gilmour-Walsh<sup>17</sup>, these are older style procuring offences introduced into NSW law in 1924. A new procuring offence was introduced in 1995 by the *Disorderly Houses Amendment Act 1995*:

15A (1) *A person must not, by coercive conduct or undue influence, cause or induce another person to commit an act of prostitution.*

The rationale underlying the offence is unclear given the existence of the *Crimes Act* offences and no prosecutions have been undertaken for this offence since enactment in 1995. These offences are rarely prosecuted and charges resulted in a guilty outcome in only three appearances.

12 Law Reform Commission of Western Australia, Project No 85, *Police Act Offences*, Discussion Paper, May 1989, p 89.

13 Footnote supplied by the Law Reform Commission of Western Australia, *ibid*, p89: “Eg *Calvert v Mayes [1954] 1 QB 342* (the owner-driver of a taxi allowed his taxi to be used by American servicemen and prostitutes on short journeys during which sexual intercourse took place; the defendant was paid the proper fee, but without the presence of the prostitutes and the opportunities for sexual intercourse his income would have been very much reduced).”

14 Footnote supplied by the Law Reform Commission of Western Australia, *ibid*, p89: “Eg *R v Thomas [1957] 2 All ER 181*, in which a man let a prostitute have the use of a room for prostitution between 9.00pm and 2.00am each night. The court said that the offence of living on the earnings would be committed if the rent was grossly inflated. It has however been suggested that the accommodation was provided for prostitution and nothing else, and whether the rent was inflated or not should have been irrelevant: *Shaw v DPP [1962] AC 220*, 265 per Viscount Simonds.”

15 In *Shaluga (1958) 75 WN (NSW) 120*, the appellant was described as “working and receiving substantial remuneration from honest and lucrative employment”. On one occasion, he drove a man and two women to and from Holsworthy Military Camp, where the women engaged in prostitution. Shaluga was summarily convicted of living partly on the earnings of prostitution in relation to the fee he earned for driving. The Court of Appeal unanimously quashed the verdict, noting that there was only one isolated incident. The court held that there must be some continuous association and some habitual receipt of money from the earnings of prostitution.

16 It may be an offence under s 16 or 17 of the *Summary Offences Act*, if the sole operator’s premises are held out as a massage parlour or photographic studio.

17 Gilmour-Walsh, B. N., *No Bad Sex Workers, Just Bad Laws? The Legal Regulation of Prostitution in Australia*, unpublished PhD thesis, ANU, 2003. The offences were introduced in s 8 of the *Crimes (Amendment) Act 1924*.

**Table 18** Procuring charges finalised in NSW courts, 2000–2006

Offence	2000	2001	2002	2003	2004	2005	2006	Total
<b>Crimes Act s 91A</b> Procure for prostitution	1	1	—	—	—	1	1	4
<b>Crimes Act Act s 91B</b> Procure for prostitution by fraud, violence, threat, etc.	—	1	2	1	4	1	—	9

## Advertising

Section 18 of the *Summary Offences Act 1988* prohibits advertisements for prostitution, with a maximum penalty of six penalty units or three months imprisonment:

- 15 A person shall not, in any manner:
- (a) publish or cause to be published an advertisement, or
  - (b) erect or cause to be erected any sign, indicating that any premises are used or are available for use, or that a person is available, for the purposes of prostitution.

However, this has not stopped many newspapers (especially suburban dailies) from running pages of advertisements in the “personal” columns which are obviously for the purpose of prostitution. The Select Committee of the Legislative Assembly (Parliament of NSW 1986) described a survey of the English language press in NSW in the week of 9–15 September 1984, and found 1424 listings for prostitution services. Sixty percent of the advertisements were for establishments (brothels, massage parlours and escort agencies), 31% for individuals, and the remainder for “small groups”.

It is also an offence to advertise prostitution employment<sup>18</sup>:

- 18A (1) A person shall not, in any manner, publish or cause to be published an advertisement for a prostitute ...
- (2) In this section, advertisement for a prostitute means an advertisement that indicates, or that can be reasonably taken to indicate, that:
- (a) employment for a prostitute is or may be available, or
  - (b) a person is required for employment as a prostitute or to act as a prostitute, or
  - (c) a person is required for employment in a position that involves, or may involve, acting as a prostitute.

The maximum penalty is 10 penalty units or imprisonment for three months. Thus while s 18 refers to the advertisement of prostitute services, s 18A deals with advertising for the employment of a person to act as a prostitute. No prosecutions were undertaken for either offence between 2000 and 2006 (inclusive).

## Child prostitution offences

In common with other Australian jurisdictions, a number of serious criminal offences pertaining to offering a child for prostitution are contained in the *Crimes Act 1900*. The *Crimes (Child Prostitution) Amendment Act 1988* inserted a number of new provisions into the *Crimes Act*. Section 91C defines an “act of child prostitution” very broadly, including “sexual intercourse” (as defined in s 61H), and also “any sexual service, whether or not involving an indecent act ... that can reasonably be considered to be aimed at the sexual arousal or sexual gratification of a person”.

Section 91D (1) creates offences of causing or inducing a child to participate in an act of child prostitution, or participating as a client in such an act. The penalty is a maximum of imprisonment for 10 years, or 14 years if the child is under 14 years of age.

Section 91E creates an offence, punishable by up to 10 years imprisonment, where any person “receives money or any other material benefit knowing that it is derived directly or indirectly from an act of child prostitution”. It is a defence where the accused person satisfies the court that the money or material benefit was received by the person for the lawful provision of goods or services, or was paid or provided in accordance with a judgment or court order or legislative requirement: s 91E(2). Section 91F makes it an offence to be a “person who is capable of exercising lawful control over premises at which a child participates in an act of child prostitution”. Section 91G creates offences relating to using, causing or procuring or, having care of a child, consenting to the using of a child for pornographic purposes. Use for pornographic purposes is defined as the child engaging in sexual activity or being placed in a sexual context or is subjected to torture, cruelty or physical abuse for the purpose of the production of pornography.

## Sexual servitude and trafficking

Whilst the sexual servitude laws are not part of NSW prostitution laws, they are briefly described here to complete the overview. The *Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999* inserted a number of prostitution offences into the Commonwealth *Criminal Code Act 1995*. Section 270.6(1) creates the offence

18 S 18A was inserted into the *Summary Offences Act* by the *Summary Offences (Prostitution) Amendment Act 1988*.

**Table 19** Charges for the most common brothel and soliciting offences, 1972–2006

Year	Soliciting by worker s19(1) & (2)	Soliciting by clients s19A(1) & (2)	Live on earnings	Own managed parlour	Use massage parlour	Advertise
1972	4,288	—	46	—	—	—
1974	3,301	—	17	—	—	—
1976	1,930	—	20	—	—	—
1978	1,804	—	13	—	—	—
1980	6	—	35	28	94	4
1982	—	—	39	17	66	—
1984	419	—	33	17	27	166
1986	180	—	11	7	11	—
1988	376	—	32	4	6	68
1990	654	—	1	3	12	2
1992	713	—	6	3	21	2
1994	314	—	14	11	42	2
1996	267	—	4	2	3	10
1998	259	—	—	—	1	—
2000	159	11	—	—	—	—
2002	274	85	—	—	1	—
2004	35	80	—	—	—	—
2006	50	3	—	—	—	—

of intentionally or recklessly causing another person to enter into or remain in sexual servitude, punishable by 15 years imprisonment. Section 270.6(2) creates the offence of conducting a business that involves sexual servitude, punishable by 15 years. Section 270.7 creates the offence of inducing another person into an engagement to provide sexual services by deception about the fact that sexual services are required. The penalty is increased to 19 years for these offences if the other person is under the age of 18 years. Sexual servitude is defined in s 270.4 as “the condition of a person who provides sexual services and who, because of the use of force or threats ... is not free to cease providing sexual services; or ... is not free to leave the place or area where the person provides sexual services”. Under s 270.5, either the conduct constituting the offence (or part of it) and/or the sexual services must occur outside Australia.

## Summary

Although there remains a poorly justified patchwork of criminal prohibitions against specific activities associated with the adult sex industry, most of the core activities are not prohibited by the criminal law. Street soliciting is legal except in, near or within view of the prescribed locations, brothel keeping is not a criminal offence and no offences apply to escort workers or sole operators *per se*. The court figures show a large decline in the

policing of all forms of prostitution in NSW. Table 19 presents the number of charges prosecuted in the Local Court for the most frequently prosecuted prostitution offences in the periods before and after the 1979, 1983, 1988 and 1995 amendments.

Prosecutions for all the key prostitution offences have declined. Prosecutions for soliciting declined to zero following the repeal of the soliciting offence in 1979. They increased to 419, when the offence was partially re-criminalised by introduction of defined prohibited locations in 1983. There was a slight increase around the introduction of the *Summary Offences Act 1988* (which increased the ambit from “near” to “near or within view” of the prescribed locations) followed by a steady decline throughout the 1990s. The other offences are less frequently the subject of prosecution. No data are presented for the *Restricted Premises Act 1943* because charges may arise from premises declared disorderly for reasons other than prostitution.

The NSW prostitution prosecution figures generally provide a striking illustration of the decriminalisation of prostitution in NSW and show the declining involvement of police in all aspects of the industry. Notwithstanding the decriminalisation of the industry, there remain significant legal problems associated with the planning law framework under which brothels and sole operators work.

## Local government planning responses

In 1995 the *Disorderly Houses Amendment Act 1995* introduced important changes which largely decriminalised the brothel-based sex industry. For some years prior to this reform a number of urban councils had expressed support for changes to the legislation to allow them to consider approving brothels in appropriate locations. At the Local Government Association (LGA) Annual Conference in 1994 delegates strongly supported a motion along these lines. (LGA Annual Conference Business Paper, 1994).

When the *Disorderly Houses Amendment Act 1995* was introduced in 1995 it provided councils with most of the conditions they had sought. Criminal offences applying to brothel keeping were repealed and planning control was left with councils in the first instance, with appeal to the Land and Environment Court (LEC). Councils were also provided with a specific legal procedure to apply to the Land and Environment Court for an order that a brothel be closed if there were amenity complaints under s 17 of the *Disorderly Houses Act 1943*. More than 16 years on, this legislative reform has not fully delivered the anticipated improvements in sex industry regulation.

Initially councils were slow to develop brothel policies, waiting for State Government guidelines on health, location and policing, and unwilling to face community hostility and sustained media campaigns opposed to zoning proposals ('Sex while you shop: council brothel plan', *Sydney Morning Herald*, 21/6/96). Some sought special exemptions in spite of the fact that the NSW Government had indicated that it would not support a 'blanket prohibition' of brothels in a local government area.

The slowness of councils in responding to the Act was matched by brothel owners' reluctance to submit applications. Without policies in place they could not be sure of the conditions they would have to meet. Many businesses also preferred to wait and see the outcomes of other applications and to assess the role to be played by the LEC ('Brothels ignore legitimacy Act', *Daily Telegraph* 6/5/96). People in the sex industry were aware that in the early years of legalisation in Victoria most applications for brothel development had been decided in the Court.

In 1999 newspapers reported the majority of surveyed legal brothels had received approval from the LEC after refusal by Council ('Court gives green light to red lights', *Sydney Morning Herald*, 25/6/99). In its next issue the paper criticised the Court for its approval of a brothel that backed on to a laneway adjacent to a church ('Church, school next door to sleaze', *Sydney Morning Herald*, 28/6/99).

Reflecting councils' unease about approving development applications for brothels, a 'Brothels Task Force' was convened by the President of the LGA in September 1997 and requested the Attorney-General to:

- Establish a Ministerial Advisory Council to assess council brothels policies – providing an opportunity to plead special circumstances.

- Consider the licensing of brothels at State level (a model similar to that used for hotels was suggested); and
- Allow LGA officers to investigate 'more realistic' evidentiary requirements for the closure of illegal brothels.

(Letter from Councillor Peter Woods, President of the LGA, to the Hon Jeff Shaw Attorney General and Minister for Industrial Relations, 12/11/98).

In response, the Premier's Office convened the 'Brothels Task Force' (2000), which in turn recommended the establishment of an advisory service for councils. The Sex Services Premises Planning Advisory Panel, chaired by Vic Smith, former Mayor of South Sydney Council, included representatives from the Departments of Planning, Health, State Chamber of Commerce, local government, sex worker organisations and a legal expert. The Panel produced a set of guidelines, *Sex Services Premises Planning Guidelines (SSPPG) 2004*, to assist councils in planning and policy relating to brothel developments (SSPPG 2006). These guidelines were comprehensive and well informed, but were not formally endorsed by the State Government in spite of the process being initiated by the Premier's Department. Consequently although widely distributed, and endorsed by other agencies (including through judgements in the LEC) the Guidelines' best practice models have been ignored by most councils in favour of an ad hoc approach to brothel planning which gives minimal guidance or assistance to applicants seeking a consistent and commercially equitable development application (DA) process.

Meanwhile the State Government has addressed another concern raised by councils, namely, the difficulties encountered in closing unapproved brothels. Difficulties in substantiating complaints against purported illegal brothels led some councils to employ private investigators to pose as brothel clients, for this purpose (*Sydney Morning Herald*, 24/6/99). Identified brothels usually had the option of submitting a DA, which meant they could continue trading while the DA was considered. Council decisions were frequently appealed to the LEC causing further delays and often an unsatisfactory outcome as far as council was concerned. The *Brothels Legislation Amendment Act 2007* has simplified and speeded up the process of closure of unauthorised brothels by permitting the council to apply to the Court on only one complaint and by providing for the Court to issue an order to cut off power and water to premises that have not ceased trading within one week of receiving a brothel closure order. The utilities orders do not apply to single operator 'private sex workers' although some Councils require a full DA. Anecdotally these provisions seem to have been very effective with the rapid closure – but possible re-location – of many small, unapproved brothels in recent times.

Many councils remain reluctant to draw up appropriate planning guidelines making provision for brothel applications within their area.



## Survey of Sydney Councils

The LASH team identified 205 premises within a 20 kilometre radius of Sydney GPO that appeared to be operating as brothels. We contacted – by phone or by visiting – 123 premises and confirmed that 101 were operating as brothels between June 2007 and February 2008. During this period the LASH team also contacted by email the 27 inner-Sydney councils where these brothels were located and asked:

- a) how many brothel applications have been approved by your Council or by the Court, since 1996?
- b) how many brothel applications have been approved in the past year (1 July 2006–30 June 2007)?
- c) do you permit single operator 'home occupation' brothels in your area?

The results are presented in Table 20, overleaf. Four councils did not respond after three emails. Of the 23 responses two councils (City of Sydney and Marrickville: 61 and 15 approvals respectively) accounted for two thirds (67%) of approvals since 1996. Sixteen of these (16/76 – 21%) were Court approved.

The remaining 21 councils hosted 37 approved brothels between them. Of these, two councils (one with five and one with two brothels) did not distinguish between court and council approvals. Eleven councils had not approved any brothels, but of these, six had court-approved brothels within their areas. Five councils had no approved brothels at all and one other (with three court approved brothels) stated it was opposed to any brothel DA. Apart from Marrickville and Sydney City, in 18 councils with approved brothels 50% (15/30) were only approved by the Court.

Only four councils permitted resident private sex workers to conduct 'home occupation' businesses, while Marrickville required a full DA process and Sydney and Canada Bay permitted them only in some localities.

Brothel approvals have been piecemeal and have tended to occur most readily in those suburbs with a long acknowledged history of having a significant sex industry. Through the council approval process brothel distribution has been largely contained within its historic boundaries but this has not taken account of the massive demographic shifts in Metropolitan Sydney (the demographic heartland is now west of Parramatta), and changing socio-economic profiles in the suburbs adjacent to Sydney City. It has, on the whole, been far easier for established brothels in areas adjacent to the old 'red light' suburbs to gain approval than it has for established or new premises meeting additional demand in growing outer suburbs.

Many Councils are still hesitant to deal with brothel applications because of (often justified) fear of hostile community and local media reaction. There are instances of Councillors voting down brothel DAs in spite of favourable reports from their own planning departments (for example: David Harbour, 'Brothel proposal defeated', *The Torch*, 16/4/2008). The lack of clear process through

a sound planning policy for brothel approvals makes it more difficult for elected and community members to fairly assess the likely amenity and social effects of a brothel application. Applicants equally have problems when policies are not clearly enunciated and adhered to in council decisions. Many brothel owners/managers are not highly capitalised and are discouraged from making applications if they fear a protracted battle in the LEC will be the outcome even when they have met basic planning requirements.

On the whole NSW brothels are small or very small businesses. Our survey found that on average they employ about four sex workers on day shifts and up to six during evening shifts. Brothel sex workers each work on average about 24 hours per week and see approximately 15 clients in that time. There is a fairly rapid turnover of staff as the mean time for work in the brothel-based sex industry in NSW is 1.6 years.

Interestingly, 67% of the brothels we visited were located in commercial or mixed-use zones (the zones preferred by SSPG, and decriminalisation advocates) (Harcourt 1999). Nineteen per cent were in industrial zones and 13% were in residential areas. We did not try to establish the planning status of the brothels visited for LASH, but it is probable that most of those in residential areas did not have development approval from the local council.

Approximately 83 of the advertised premises we initially tried to contact in Sydney had closed down or moved to another address. It is evident from the low number (three) of approvals in 2006/7 and the fact that the majority of approvals in the City of Sydney date from before the Council amalgamations in 2004 (Table 20), that new or relocating businesses are finding it very difficult to gain approval under existing council policies. A full audit of currently operating brothels would probably reveal that many of the early approvals are no longer active and that recent demand is not being met by the current rate of new approvals. In Newcastle, of an estimated 40 brothels, only 13 appeared to have Council approval (Esler et al., 2008). We believe that councils would find it easier to deal with brothel DAs if the State Government formally adopted the SSPG on behalf of Local Government.

These Guidelines could be incorporated through the changes envisaged in the current government review of the *Environmental Planning and Assessment Act*. Among the stated aims of this review are:

- To consider if aspects of NSW planning policies and legislation need to be adjusted to ensure the right balance in achieving sustainable social and environmental outcomes and in promoting a competitive business environment.
- Zoned land is available for development to reduce barriers to entry.

**Table 20** Brothel development approvals by local government area, 1996–2007

Council	No. approved since 1996	No. council approved <sup>a</sup>	No. court approved	Permits home occupation brothel	Comments
Ashfield	3	0	3	No	Opposed to any brothel DA
Auburn	2	1	1	Not clear	
Bankstown	1	1	0	No	
Botany Bay	0	0	0	Not clear	'Recognises' one brothel (established c.1970)
Burwood	2	0	2	No	
Canada Bay	1	1	0	Yes (Concord) No (Drummoyne)	
Canterbury	1	0	1	No	
Hunters Hill	0	0	0	No	
Hurstville					No response
Kogarah	2	0	2	No	
Ku-ring-gai	1	0	1	No	
Lane Cove	0	0	0	No	<i>Sydney Morning Herald</i> reports one closure 28/10/07
Leichhardt	3	3	0	No	Currently taking action against two illegal brothels
Manly	0	0	0	Yes, if complies with LEP 'home occupation'	
Marrickville	15	12	3	Yes + full DA	
Mosman	1	1	0	No	
North Sydney	3	1	2	No	
Parramatta					No response
Randwick	2	2	0	No	
Rockdale	5	Not stated	Not stated	No	Three zoned locations for brothels
Ryde	0	0	0	No	
Strathfield	1	0	1	No	
Sydney City	61	48	13	Yes, varies with LEP	New single LEP in process.
Warringah					No response
Waverley					No response
Willoughby	7	5	2	No	
Woollahra	2	Not sure	Not sure	No	Brothel DAs not separately recorded.
<b>TOTALS</b>	<b>113<sup>b</sup></b>	<b>75</b>	<b>31</b>		

a not requiring Land and Environment Court ruling

b only three approved between July 2006–June 2007

DA = development application, LEP = local environment plan

## **Corruption by local government officials**

Officials of two local governments in Sydney have been found guilty of corrupt behaviour when dealing with brothels, and rumours about others are common. The Independent Commission against Corruption (ICAC) has recommended better and more transparent compliance systems within councils, and for the State Government to examine the potential, and develop policies to counteract, opportunities for corruption in the Local Government regulation of brothels. ICAC also recommended that potential brothel owners be of good character, providing this is not based simplistically on a person's previous history with the law, but takes account of their demonstrated ability to provide and adhere to an appropriate brothel management plan (including health and OH&S measures) and to implement council compliance requirements.

## **Private sex workers**

The situation for private sex workers is also unsatisfactory. None of the surveyed Councils have made adequate provision for this substantial, and possibly growing sector of the industry. Private sex workers are notoriously difficult to research but there is sufficient anecdotal evidence to show that very many female, and probably most male sex workers prefer to work in a private capacity. The reasons for this are many; including having more autonomy and control over work, avoiding the fees imposed in brothels, and possibly avoiding tax. It is evident from their very low profile in the research and policing statistics that private sex workers have no amenity impact on their communities. Private sex workers remain substantially under the radar for planners and politicians alike, but this is an unsatisfactory situation as they remain in a precarious legal position.

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# Appendix 1: The LASH questionnaire

All information gathered in this questionnaire is confidential and shall be used only for the purposes of this study. No personal names or identifying information is required. Participation in the questionnaire is entirely voluntary and may be discontinued at any time.

Please mark circles and or write comments as indicated.

1. What is your country of birth? .....  
If you were born overseas, what year did you arrive in Australia?
2. How old are you?  Years
3. Are you of Aboriginal or Torres Strait Islander descent?  Yes  No
4. What language do you speak at home?  English  Other
5. How would you rate your English language skills?  Good  Fair  Poor
6. How many years of formal education have you had?  Years  Months
7. How long have you been in the sex industry (in total)?  Years  Months  
How long have you worked in the sex industry in Australia?  Years  Months
8. Do you currently work in: (mark all that apply)  
 Brothel  Private  
 Escort  Massage  
 BDSM  Other
9. How many sex workers usually work at your work place?  
 Day shift  Night shift
10. What other kinds of sex work have you ever engaged in: (mark all that apply)  
a) In Australia  
 Brothel  escort  
 Private  massage  
 Street  BDSM  
 Other  
b) Overseas?  
 Brothel  escort  
 Private  massage  
 Street  BDSM  
 Other
11. Why did you choose to work at your place of work rather than another location or kind of sex work? (mark all that apply)  
 I like my work mates  I like the management  
 It pays better  it's more discreet  
 I live near here  the hours are flexible  
 It is safer (better security)  the clients are better here  
 To avoid hassles with the police  it was all that was available/ or that I know of  
 Not as many rules (as the parlours)  better services (i.e. clothes hire, food provided)  
 I can get drugs here  I go where I am told  
 Sex worker support/ outreach/service providers come here  
 Other (specify) .....
12. How many hours in an average week do you work?

13. Do you have regular sexual health checks?  Yes  No  
 If 'yes' how often?  
 a)  Weekly  Monthly  Every 2–6 months  Every 7–12 months  Less than once per year  
 Other .....
- b) How long since your last check up?  
 Less than 30 days  1–3 months  More than 3 months
- c) Where do you usually go for sexual health checks? (mark all that apply)  
 Local GP/ doctor  GP/doctor in another town/suburb  
 Private sexual health clinic  Public (free) sexual health centre  
 Women's health/ family planning clinic  
 Other? .....
- d) Why do you go to this particular health service? (mark all that apply)  
 Expertise  Cost  
 Confidentiality  Friendly  
 Recommended  Required by my employer  
 Only place I know  Easy to get to  
 Other (details) .....
- e) In the last 12 months have you attended:  
 Sydney Sexual Health service  Melbourne Sexual Health Centre  
 Royal Perth Hospital Sexual Health Clinic  None of these

14. Have you ever been diagnosed (by a doctor or nurse) with any of the following conditions: (Mark all that apply)

	No	Yes	In last 12 months
Gonorrhoea	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Syphilis	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Chlamydia	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
pelvic infection (PID)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
genital herpes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
genital warts	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Hepatitis B	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Hepatitis C	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
HIV	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

15. Have you ever been vaccinated against Hepatitis B?  Yes  No  Unsure
16. Have you ever been tested for HIV  Yes  No  Unsure

If yes, when were you last tested for HIV? \_\_\_\_\_ / \_\_\_\_\_  
 Month Year

17. What do you currently use for contraception? (mark all that apply)  
 Condoms  Injection or implant  
 The pill  IUD/Coil  
 Another method (please specify): .....
- I don't use any contraception because: .....

18. In the last 3 months how often would you use condoms with male partners outside of work?  
 Never  Sometimes (less than half the time)  
 Always  Usually (more than half the time)  
 No male partners outside work in the last 3 months

19. In the last 3 months how many sexual partners have you had outside of work?

Men  Women  Transgender

20. How many clients do you see in an average week?  Clients



21. In an average week how many of your clients ask for services without condoms?

Men ask for vaginal sex without condoms

Men ask for anal sex without condoms

Men ask for oral sex without condoms

22. In an average week how many of your clients used condoms for:

All men	or	number of men	or	I don't have the following
Vaginal sex? <input type="radio"/>		<input type="text"/>		<input type="radio"/> No vaginal sex with clients
Anal sex? <input type="radio"/>		<input type="text"/>		<input type="radio"/> No anal sex with clients
Oral sex? <input type="radio"/>		<input type="text"/>		<input type="radio"/> No oral sex with clients

23. Do you use any of the following? (mark all that apply)

Cigarettes (everyday)	<input type="radio"/> No	<input type="radio"/> in last 12 months	<input type="radio"/> currently (most of the time)
Marijuana	<input type="radio"/> No	<input type="radio"/> in last 12 months	<input type="radio"/> currently (most of the time)
Ecstasy/designer drugs	<input type="radio"/> No	<input type="radio"/> in last 12 months	<input type="radio"/> currently (most of the time)
Speed/ ice/crystal/amphetamines	<input type="radio"/> No	<input type="radio"/> in last 12 months	<input type="radio"/> currently (most of the time)
Heroin	<input type="radio"/> No	<input type="radio"/> in last 12 months	<input type="radio"/> currently (most of the time)
Codeine	<input type="radio"/> No	<input type="radio"/> in last 12 months	<input type="radio"/> currently (most of the time)
Methadone	<input type="radio"/> No	<input type="radio"/> in last 12 months	<input type="radio"/> currently (most of the time)
Bupenorphine (bupe)	<input type="radio"/> No	<input type="radio"/> in last 12 months	<input type="radio"/> currently (most of the time)
Other (specify)			

24. When was the last time you drank more than four alcoholic drinks in a day?

Never       Today       Yesterday       Last 7 days  
 2-4 weeks       2-3 months       More than 3 months

25. Have you injected a drug in the past 12 months?  No  Yes

26. Are condoms provided at your work?  No  Yes, I pay for them  Yes, they are free

27. Which of the following are provided at your current workplace? (mark all that apply)

Needles disposal bin (sharps container)     Smokers' room     Room alarm     Security guard  
 Security camera     Receptionist     Dams     Lube     None of these

28. Where did you learn about safer sex and sex work skills? (Mark all that apply)

nowhere     I learnt on the job from other workers     I learnt from my local GP/doctor  
 I learnt for sexual health centre     I learnt from internet     I learnt from clients  
 I learnt from friends away from work     I learnt from educators that comes to my work (face-to-face)  
 I learnt from educational booklets left by visiting  
 Other:

29. How often do educators or outreach workers come to your worksite?

Never     less than once a year     1 to 4 times a year     5 or more times a year  
 Other

30. Is it legal to do sex work in this state?  Yes  No  Unsure  
Any special conditions?

31. Have you ever moved state (or country) because of laws about sex sex work?

No     Yes (what state or country did you leave?)

32. Have you ever changed your workplace within this state because of the laws?

No     Yes (please give reasons)

33. Do the police visit your current workplace? (do not include visits as paying clients)  
 Never  Unsure  Less than once per year  1 to 4 times a year  5 or more times per year  
 Other

34. In the last year have the police ever arrested/detained anyone in your workplace?  Yes  No  Unsure

35. In the last year have the police charged anyone in your workplace with an offence?  Yes  No  Unsure  
If 'yes', can you say what the charges were?

If 'yes', someone was charged:

a) Did the premises close down after the charges were laid?  Yes  No  Unsure

b) Did the premises open up elsewhere?  Yes  No  Unsure

36. In the last year have you had any experiences with police whilst working in the sex industry?

a)  Yes  No  Unsure

b) If 'yes' please mark the circles that apply.

	Yes	No
On the whole police are supportive and helpful	<input type="radio"/>	<input type="radio"/>
I have been threatened with arrest	<input type="radio"/>	<input type="radio"/>
I have been threatened with violence	<input type="radio"/>	<input type="radio"/>
I have been physically assaulted	<input type="radio"/>	<input type="radio"/>
I have had money demanded from me	<input type="radio"/>	<input type="radio"/>
I been pressured into providing sexual services	<input type="radio"/>	<input type="radio"/>

Comments:

37. In the past year while at work have any client/s ever?

Threatened you  No  Once or twice  More than twice

Assaulted you  No  Once or twice  More than twice

Pressured you to do something you didn't want to?  No  Once or twice  More than twice

Comments:

38. As a sex worker how comfortable are you about going to the police with complaints such as sexual assault, threats, theft, unpaid services etc?

Very comfortable  Comfortable  Somewhat comfortable  Not comfortable  Very uncomfortable

Comments:

39. Have any of the officials listed visited your workplace?  Yes  No  don't know

If 'yes' please mark all that apply

Immigration (DIMA)  Local council  Tax office  Workcover  Centrelink  Contact tracer/s

Any comments:

40. Do you share your income with anyone?  Yes  No

If 'yes' (please mark all that apply),

Partner  Flatmate  Dependant child[ren]  Parent[s]  Dependants

Other (please describe)

How many altogether?  Adults  Children

41. Is there someone who you have a supportive relationship with? (eg would look after you if you were sick at home)

Yes  No  Unsure

If 'yes' (please mark all that apply),

Partner  Another sex worker  Flatmate  Friend  Parent  Several people

A group (religious/ community/self help)  Pet

Other:

**SOCIAL WELLBEING TEST**

This is a standard test applied in an Australian national population study. For each question please tick the answer that best fits your circumstances.

In the past four weeks, about how often did you feel:

	All of the time	most of the time	some of the time	little of the time	none of the time
42. Nervous?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
43. So sad that nothing could cheer you up?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
44. Restless or fidgety?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
45. Hopeless?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
46. That everything was an effort?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
47. Worthless?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Is there anything you would like to add about the impact of the law on your work conditions, health and wellbeing?

No  Yes (Please specify)

**Thank you for participating in this study.**

