

Queensland Adult Business Association Inc

Submission to the Productivity Commission

Review of National Competition Policy Arrangements

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National Competition Policy Review

Introduction

The Queensland Adult Business Association Incorporated (QABA) was formed in November 2001 and has members who are licensed brothel operators, potential applicants for brothel licences and associates, such as suppliers to the industry. The objectives of the association are -

To further the interests of licensees of brothels in Queensland.

It seeks to do this through:

- a) Encouraging professionalism;*
- b) Providing education and information on issues of prostitution;*
- c) Providing mutual support; and*
- d) Encouragement in the achievement of best practices in the industry.*

It will undertake research on issues and provide a respected voice for the industry.

The association is very active in Queensland and, as our objectives indicate, provide education, information and support not only within the industry but also to Governments, media and the general public. We are proud that one of our member brothels has achieved third party certification of its management systems for not just quality assurance (ISO 9001) but workplace health and safety (AS4801). All member brothels are striving to achieve best practice and do not accept that the questionable practices, which have prevailed in the illegal industry, have any place in a legitimate industry. At time of writing, Queensland has thirteen licensed brothels.

QABA would like to thank The Productivity Commission for this opportunity to assist in identifying areas of opportunities for significant gains to the Australian economy from removing impediments to efficiency and enhancing competition.

Legislation around Australia.

There is no uniform legislation covering the prostitution Industry around Australia. (See Box 1 & 2) There are also no consistent approaches to the level of policing of illegal activities within each State and Territory. These two factors contribute to an uneven business environment across the States, which can significantly advantage illegal businesses in this industry.

Although often not explicitly stated, the growth of a regulated legal prostitution industry is important to Australia for reasons of social welfare, as well as the more readily recognised (occupational) health and safety, employment, consumer protection and economic grounds.

To many, the prostitution industry is at best seen as exploitative of women and at worst as a seedy, corrupt and violent industry. The regulated industry is very different from this paradigm promulgated from a lack of awareness and the efforts of special interest lobby groups. In the regulated industry in Australia, sexual service providers (or

prostitutes) do not have an employee or contractor relationship with the licensee (owner) of the brothel premises. The contemporary sexual service provider operates in a highly independent fashion as a sole trading entity usually with an ABN and often with a company structure. The licensee of the brothel premises typically allows the sexual service provider access to the brothel premises, under a Deed of Licence that sets out

Box 1 - Prostitution Laws Around Australia The Regulated States & Territories**Queensland**

The *Prostitution Act 1999* allows a person to apply for a brothel licence, or a certificate to manage a brothel on behalf of the licensee. The Prostitution Act introduces new laws relating to advertising, and provisions creating a process for prohibited brothels.

Individual sex workers ('sole operators', 'private workers') are not prevented from conducting their business under the Act. However, the restrictions placed on sole operators continue to apply. A single sex worker must not be found on premises with any other person unless the other person has a current crowd controller's licence under the *Security Providers Act 1993* and is only participating in the provision of prostitution as a bodyguard. The law relating to prostitution by sole operators is contained in the Criminal Code and remains unchanged. The only provisions relating to 'sole operators' under the Prostitution Act relate to advertising.

Escorts (or outcalls) are unlawful in Queensland.

Victoria

The *Prostitution Control Act 1994* creates a dual licensing system for six room brothels, although:

- ❖ small owner-operated brothels are exempt from the licensing regime under the Act and can operate legally within the planning requirements of local authorities
- ❖ private escort workers must be registered
- ❖ escorts from brothels are permitted.

Any person who operated a brothel prior to the introduction of the Act, and who made an application for a licence within three months, was deemed, at the commencement of the Act, to hold a licence until the actual licence could be processed. This has created a situation where a number of brothels, operating prior to the Act, have been allowed to continue business with more than six rooms. The largest legal brothel in Victoria has 18 rooms. Street work is illegal.

Australian Capital Territory

The *Prostitution Act 1992* requires brothels and escort agencies to register with the Registrar of Brothels and Escort Agencies. The Registrar operates from the Department of Fair Trading, and there are no inspectorial powers attached to the role. Sole operators can operate legally under the Prostitution Act, and register with the Department of Fair Trading in the same way as brothels and escort agencies.

There is no limit on the number of rooms for brothels, and no probity investigation conducted as part of the registration process. Street work is illegal.

Northern Territory

Under the *Prostitution Regulation Act* escort agency businesses must make application to the Escort Agency Licensing Board for a licence to operate the business. Assessment of applications for licences requires the Board to appraise the eligibility and suitability of the applicant. A person is ineligible to apply for a licence if they:

- ❖ are under 18 years
- ❖ are not a resident of the Northern Territory
- ❖ have been found guilty of a disqualifying offence
- ❖ have an associate (spouse, de facto partner, homosexual partner, business partner or business associate) who has been found guilty of a disqualifying offence.

The suitability of an applicant requires assessment of the personal character of the applicant. In assessing the suitability of an applicant, the Board may consider their criminal history. There are no planning requirements attached to the establishment of an escort agency.

Brothels and street work are illegal in the Northern Territory. Sole operators can operate legally but are un-regulated.

Adapted from: www.pla.qld.gov.au

conditions under which the sexual service provider can be on premises. These include compliance with workplace health and safety and other legislative requirements. The relationship between a client and the licensee/owner is one of room hire and a client pays a hire fee to the operator. A separate relationship exists between the client and the sexual service providers who they engage to provide services. The client pays the sexual

service provider directly for services, the scope of which is determined between them. Essentially, the sexual service provider becomes the guest of the client within the hired room at the brothel. This model has evolved, commencing with the first serious efforts of regulation in Victoria in the 1990's

In States where prostitution is unregulated, the industry can be exploitative whilst in Queensland, Victoria, and the ACT where a regulated legal industry has developed; there are generally a higher standard of business practices. In particular, the industry in Queensland has developed a very high standard of business systems and practices in response to the State's legislative challenge and one Brothel, which has achieved Certification of its Quality and Workplace Health, and Safety Systems to Australian Standards. This high standard of business practice is difficult to achieve in an unregulated situation.

Businesses rely on legislation & governments to regulate in a fair and equitable manner to give them a level playing field; they rely on good regulations to enable a stable and productive environment to operate in.

Box 2 - Prostitution Laws Around Australia – The unregulated States

New South Wales

New South Wales has a decriminalised framework for prostitution. Under the *Summary Offences Act 1988* the only activities that are illegal are:

- ❖ living on the earnings of a prostitute, although persons who own or manage a brothel are exempt
- ❖ causing or inducing prostitution
- ❖ using premises, or allowing premises to be used, for prostitution that are held out as being available for massage, sauna baths, steam baths, facilities for exercise or photographic studios
- ❖ advertising that a premises is used for prostitution, or advertising for prostitutes
- ❖ soliciting for prostitution near or within view of a dwelling, school, church or hospital.

Brothels are exempt for the purposes of the *Disorderly Houses Act 1943*.

Local authorities handle the siting of brothels and have developed policies for the management of brothels in their area.

South Australia

All prostitution activity in South Australia is illegal. During 2001, the South Australian Parliament debated a Bill – the Prostitution (Regulation) Bill – that proposed a legalised framework for prostitution using a 'negative licensing model'. The Bill was defeated, and there will be no further consideration of the issue under the current Government.

Western Australia

Brothels operate under the informal 'sanction' of police via the 'containment policy' (not a written, approved policy as such but an informally established arrangement between police and brothel operators).

A Bill to regulate prostitution and introduce brothels was defeated in the Parliament during 2003.

Tasmania

The offence of 'living on the earnings of prostitution' (s.8(1)A of the *Police Offences Act 1935*) prohibits all prostitution but for sole operators. There is currently a Parliamentary Committee report before Cabinet that recommends a legalised framework under a licensing regime, with local government input into siting issues. There is no indication yet that Government will endorse the recommendations made in the report.

Adapted from: <http://www.pla.qld.gov.au/statesLaw.shtml>

Policing

It has been the experience of the regulated industry that once a licensing system is in place the focus of policing tends to be on the licensees and their businesses rather than on illegal operations. Legal businesses operating at a high level help to ensure that employees, consumers and others have many avenues of redress in the event of any issue(s). This is typically not so with a business that is being run outside the legal framework.

With the strong focus on the regulated industry and not on illegal operators, it appears that illegal operators have caused vexatious complaints to be made to government authorities to the disadvantage their legal competitors. Where governments do not have a cogent process for validating complaints, they become the agent of the illegals and cause commercial damage to those in the regulated industry. In some cases State Government bodies appear to have deliberately fostered a culture of complaint, which has been used against the regulated industry.

Many illegal businesses have lower standards and poor practices and thus an unlevel playing field for businesses within the industry results. For example, many illegal businesses typically do not pay tax, whilst the licensed brothels not only pay tax but also, license fees, stamp duty on leases, insurance, business registration, and a myriad of other compliance costs.

Natural Justice

The States in which prostitution laws have been enacted legislation typically precludes access to the principals of natural justice for licensees. This is also the case in many proposed new bills in States where legislation to regulate the industry is still to be enacted. There are also few avenues for complaint or redress against regulators and in some States licensees are forced to sign away all rights as a condition of a license being granted. Such requirements are discriminatory and highlight that the business environment can be wildly different between States and between regulated and illegal operators.

Community Benefit

The establishment of a regulated sexual services industry in some areas of Australia has resulted in enhanced levels of community health with a recent study in Queensland indicated that the level of Sexually Transmitted Infections (STI's) in the population of service providers is lower than the general population.

By having a consistent regime across the States, the level of confusion, which exists amongst interstate visitors, would be reduced. Currently it is possible for a visitor from NSW to be charged in Queensland when utilising the services of an illegal escort, which is legal in Victoria.

The use of condoms in the industry in Queensland is mandated by Government and aggressively supported by the regulated portion of the industry but the situation

interstate varies and visitors to Queensland are often surprised when informed of the requirements.

The Queensland Experience

In 1999 the Queensland Government enacted the Prostitution Act. QABA Inc believes that this Act appears to contradict the National Competition Policy practically in the areas of advertising and promotion, fair trading, licensing process appeals and complaints.

Licenses restricted

Under this Act, licenses are restricted to certain persons and extensive probity checking is undertaken.

Licenses are held for one year and a re-application must be made each subsequent year. Please note that this is not a renewal. There is no guarantee of “tenure” even if the business has been successful and has met every criteria and condition placed upon it by the agency charged with regulation. This limits the ability of the business to use long term contracts or even to secure finance from banking institutions.

Licensees are also unable to have an interest in more than one licensed premise in Queensland, which severely limits competition.

Licenses expensive

The typical license fee for a 5-room brothel premises is \$16,912.50 per annum. In addition either the licensee or an approved manager must supervise the brothel at all times. Each manager’s certificate costs \$399.60 per annum. This high annual fee acts, as a barrier to entry in Queensland while a similar barrier of this order does not occur elsewhere in Australia.

Restriction of Trade

Licensees are limited to only one part of the industry – that of operating a brothel with a maximum of 5 rooms used for prostitution – leaving the rest of the industry to covertly operate without fetter.

Licensees are further restricted to trade only as allowed by the Prostitution Licensing Authority. See Box 3. – Licence Condition 38. This limits Licensees ability to not only compete but also be viable.

Box 3 - Condition 38.

Not to use the premises referred to in the licence, or make available for its use, whether for payment or otherwise, for any purpose other than a licensed brothel as defined in Schedule 4 of the Prostitution Act 1999, without the approval of the PLA.

In Queensland, Brothel Licensees are also not permitted to hold a liquor licence nor any permit under the Queensland Liquor Licensing Act. This provision precludes brothel licensees from having other business interests such as a coffee shop with a liquor license.

Advertising

The Prostitution Licensing Authority (PLA) has set it self up as a censorship office. The PLA exercise control over whether a licensee can advertise in a particular form or place which includes print media advertising and such things such as logos on branded products. Generally, this type of communication would not need to be classified under censorship laws. The Prostitution Licensing Authority also prevent licensees from engaging in sponsorship activities which has precluded licensees from contributing to charitable causes as sponsors. The Legislation in Queensland also prevents licenses form adverting on billboard, on the radio or on television. This seriously restricts the regulated industry from operating on a level playing field with substitutes within the business community such as other forms of entertainment.

The ability of a government appointed board/authority to restrict a legitimate business to advertise it's services and products and communicate with stakeholders, without authority from Parliament has to be questioned

Advertising is also restricted between States. Interstate Brothels have applied for advertising approval in Queensland and have had been denied despite the fact while the advertising was to occur in Queensland, the service was being provided interstate. Brothel licensees in Queensland are not permitted to advertise interstate unless the advertisements have been approved by the Licensing Authority despite the fact that they may fully comply with interstate legalisation.

Media Monopolies

It is important that a small business is able to cost effectively promote itself otherwise it will fail. Queensland has a relatively new licensed brothel industry. Businesses in this regime must not only advertise their business to overcome consumers concerns about going to a recently regulated market but also compete with established illegal businesses. In Queensland, there is one major newspaper and a group of free suburban newspapers most of which are owned by the same company. Both the major newspaper and the suburban newspapers charge a loading on advertising from businesses in the prostitution Industry. Licensees have little choice other than to pay the loading due to the market power of these players. This situation does not just occur in Queensland but also in the other regulated states.

This additional cost presents a barrier to entry and can result in the failure of small start-up businesses that may not have realised that this will occur when they enter the adult industry. It also inhibits the ability of a small to medium enterprise to grow.

It would appear that the Trade Practises Act is not strong enough for small businesses that are in dispute with large national companies who appears to be misusing their market power – particularly when the same multinational company can significantly influence the customers of that small business.

Discrimination

This type of discriminatory behaviour is not limited to media organisations. Many organisations, when realising that they are dealing with an adult industry business, will discriminate. There appears to be several factors in this discrimination;

1. Moral – Some people are against prostitution on religious grounds and will refuse to deal with any adult business or persons in the industry.
2. Some people mistakenly believe that the industry is exploitative or in some way illegal and will either refuse to deal with any adult business or persons in the industry or will increase the charge for the service or product.
3. Many people believe that the industry has a large cash component and is extremely profitable and will increase charges for their service or product.

Many banking institutions have been said to either refuse services or charge additional fees when dealing with adult businesses.

Health Professionals have refused to deal with sexual service providers who need sexual health assessment in order to perform their calling.

After notes:

Nearly 16 % of the Australian population have paid for sex.

0.9% Of men and 0.5% of women admit to having been paid for sex.

Adapted from: Sex in Australia:
The Australian Study of Health and Relationships
Latrobe University

Conclusion

Any industry utilised by 16 % of the population deserves to be treated in a fair and equitable way. Much evidence exists of both legislative and commercial discrimination. A level playing field both between the States and between legal and Illegal operators does not exist.

APPENDIX A – QABA Inc ETHICS STATEMENT

QABA members recognise the true value and importance of a license and having been through a rigorous process we will always work to ensure that we never jeopardise our entitlement to hold a license. For this reason we have developed the following Code of Ethics to guide our business practices.

QUEENSLAND ADULT BUSINESS ASSOCIATION INC

CODE OF ETHICS

We, the members of the Queensland Adult Business Association Inc. believe in fair and honourable practices, and that the best interests of our industry, service providers, patrons and the community are attained, only by striving at all times to maintain high ethical standards. We aim to be recognised and trusted in exercising a high level of responsible self-regulation of our industry. We are committed to working with all stakeholders in establishing best practice. We ascribe to the following statements of ethics:

The independence of operation of sexual service providers is recognised as absolute, as is their right to determine:

- ***Where they provide service***
- ***When they provide services***
- ***To whom they provide services***
- ***What services they provide***
- ***What they charge for services***

Sexual service providers, patrons and staff are entitled to be treated with respect, fairness and confidentiality at all times.

Sexual service providers will be encouraged at all times to accept their responsibilities for operating in a way which is fair to others and does not place themselves, their clients or others at risk.

Only safe sexual practices will be permitted on licensed brothel premises.

In our businesses we seek to foster a culture of respect, trust and integrity.

Suppliers will be treated fairly and honestly.

The premises we operate will be maintained in a good condition for the safety of staff, sexual service providers, visitors and patrons.

In the communities of which we are members, we will act responsibly and in compliance with the law.