PROSTITUTION IN VICTORIA: THE ROLE OF LOCAL GOVERNMENT—AN INNER CITY PERSPECTIVE

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PROSTITUTION HAS EXISTED IN MELBOURNE SINCE THE EARLIEST DAYS OF settlement. The correspondence from the officially appointed Aboriginal Protectors to the colonial governors in Sydney contain details of their struggle against the forced use of Aboriginal women as prostitutes (The Age, 15 April 1991).

The gold rushes saw the incidence of prostitution increase not only in Melbourne, but also on the goldfields. At Ballarat the only known strike by prostitutes occurred when the local workers withdrew their services in protest at the influx of foreign women into the trade. The wealth created by the gold saw luxurious brothels such as that of Melbourne Mab—or Madame Belgie as she preferred to be called—established in Lonsdale Street, near Spring Street, where it flourished for over forty years. It was to these premises that the ceremonial mace of the speaker of the Lower House of the Victorian Parliament once mysteriously found its way.

From this time, the area bounded by Lonsdale, Russell, Victoria and Spring Streets contained dozens of brothels, opium dens and notorious pubs. Petty theft and violent crime were common and street prostitutes worked on 'Little Lon'. Even as late as the mid-1950s, 'respectable' women would not go to the area, though by that time little remained of its colourful past except its reputation.

War and economic depression also played a role in the distribution and incidence of prostitution in Melbourne. World War I and World War II saw prostitution increase significantly despite the legislation of the early 20th century aimed at suppressing it. The establishment of Albert Park Barracks as a recruitment and induction centre at the outbreak of World War I saw prostitution move away from the docks and the inner city to establish itself in the then genteel seaside suburb of St Kilda. The economic depressions of 1890 and 1930 saw prostitution spread to the inner working class suburbs of Fitzroy, Collingwood and Richmond.
During the Vietnam War, Melbourne became a centre for leave for United States servicemen, and the more tolerant attitude towards sex in the late 1960s and 1970s resulted in a big increase in street prostitution and the introduction of massage parlours and escort agencies. Though reports that massage parlours and escort agencies had by 1985 come to be established throughout the metropolitan area (Victoria 1985, vol. 1), there is ample inferential material to suggest that these were concentrated in Melbourne and the adjoining municipalities stretching from Footscray in the west, through Essendon, Brunswick, Collingwood and Richmond to Port Melbourne, South Melbourne, St Kilda and Caulfield in the south and east. Street prostitution was concentrated in St Kilda, but from time to time—mainly in response to client demand or police pressure—it spread to other inner municipalities.

Semi-Legal Massage Parlours

The incidence of prostitution had become so great and the problems associated with client behaviour in relation to street prostitution and massage parlours so prevalent by the mid-1970s that the inner municipalities most affected began individually and collectively to agitate for the government to act to control all forms of prostitution.

They were rewarded for their pains by an amendment to the then metropolitan planning scheme (Melbourne Metropolitan Planning Scheme, Amendment 61, 3/9/75). This Amendment meant massage parlours could be granted town planning permits to operate in commercial and industrial zones, but were prohibited in most residential zones—except in those which just happened to coincide with some of the most densely populated parts of the inner metropolitan area where many people lived in small terrace houses and flats. Because it made no reference to sexual activity or prostitution, and because other legislation to which it was related (such as the Crimes Act 1958 (Vic), The Vagrancy Act 1966 (Vic) and the Summary Offences Act 1967 (Vic) ) remained unchanged at its introduction, this amazing Amendment meant that any sexual activity associated with prostitution which occurred in the massage parlours it legalised was illegal. Any such sexual activity was a breach of any town planning permit that might be granted. This meant that owners, managers and sex workers in legal parlours could be prosecuted for breaches of the Town and Country Planning Act 1961 for which there were a variety of penalties, including fines and ultimately the loss of a town planning permit.

Those massage parlours which existed prior to the Amendment coming into effect—whether or not they existed in a zone where they were prohibited under the Amendment—were legal and subject to the same penalties as those which subsequently were granted permits. Those which were set up in areas where parlours were prohibited or in zones where they were permitted without first obtaining a town planning permit were illegal and were also subject to fines and closure under the Town and Country Planning Act. In practice, fines were occasionally obtained in the Magistrates Courts but closures rarely, if ever, occurred. They resorted to the Supreme Court for an order to close a premises but few, if any, such orders were ever obtained as such action had to be taken under a multiplicity of legislation.

Escort agencies remained unregulated and partially legal since most claimed their function was to provide an escort. Any transaction to provide sex for gain or reward was a matter solely between the client and the escort. This fiction has been successfully maintained until recently and has generally allowed immunity from prosecution under any existing legislation. In early 1991, the police have launched several successful prosecutions against the owners and administrative staff of escort agencies for living off the earnings of prostitution.
Street prostitution remained illegal and, following agitation by municipal councils in 1979, the penalties for soliciting and other prostitution related offences were increased and provisions were introduced which made it an offence for the client to solicit a prostitute. Despite continued protests at deficiencies in the Amendment—which most municipalities found had given them increased responsibility without any effective means of control—the politicians of the day gave the impression of extraordinary naivety. Requests for changes to the definition of massage parlours which would remove any ambiguity were met with comments to the effect that it would be wrong to impose a stringent definition which could adversely affect many genuine health and recreational establishments.

If the politicians believed that most massage parlours or health spas as they were sometimes called were not in fact brothels, the general public was not so easily hoodwinked. Urged on by a mixture of genuine grievance and moral zeal among their constituents, those inner-metropolitan municipalities most directly involved with the situation vigorously pursued both legal and illegal massage parlours for breaches of the Melbourne Metropolitan Planning Scheme (MMPS). The exercise proved both costly and ineffective.

The main problems of the municipalities could be summarised as follows:

- because of the density of residential, commercial and industrial uses in inner suburban areas and the relatively small size of the areas zoned for those uses, it was impossible to effectively reduce the impact on amenity caused by parlours;
- when a breach of the MMPS was admitted (and it was surprising how often it was), it was virtually impossible to prove that the premises were being used as brothels. Consequently, despite admissions, there were few convictions;
- the terms brothel and prostitution were absent from the Planning Scheme;
- the difficulties of the local authorities under the Planning Scheme were compounded by the Town and Country Planning Act, which required two days notice for an inspection of any premises where it was believed a breach of the Act or the Planning Scheme was occurring;
- there were difficulties for police in arranging visits to premises suspected of being a brothel and sometimes in follow-up;
- street prostitution, though confined to a few places, remained totally outside the control of the local authorities.

Changing Attitudes

Though flawed and therefore unworkable, Amendment 61 of the MMPS 1975 in introducing massage parlours as a legal use was a tentative step in the right direction. Three years later, in a reversal of this direction, the policy of the Victorian government became one of suppression of all forms of prostitution by the introduction of harsher penalties for offences related to prostitution and more stringent policing. The ambiguity of Amendment 61, however, meant that this was virtually impossible in a major sector of the industry. The genie was out of the bottle and probably could not be put back.

By 1980 a significant change of attitude had begun to occur in both state and local governments. Position papers began to circulate which called for legal brothels in non-residential zones, decriminalisation of prostitution in legal brothels and escort agencies, and town planning permits for brothels which complied with the MMPS. Street prostitution was
considered possible in some specified areas. Over the next two years, however, nothing happened.

In the meantime, local councils in those areas most affected began to lobby for change. What inner city councils argued was that the existing legislation largely confined prostitution to their areas. What they wanted was:

- removal of the term 'massage parlour' and all its ambiguity from the MMPS;
- designation of brothels as a legal land use in industrial and commercial zones, subject to planning controls;
- decriminalisation of prostitution in legal brothels;
- the removal of the two-day notice provision for inspections where a breach of the Planning Scheme was suspected;
- some better form of regulation of street prostitution.

What they came correctly to perceive was that if the ambiguities were removed and brothels were recognised as a legal land use they would then respond to market forces and come to be distributed throughout the metropolitan area like any other form of land use for which there is more or less universal demand.

The Planning (Brothels) Act 1984 and Guidelines for the Location of Brothels

The findings of the Working Party on Prostitution of 1983 led to the Planning (Brothels) Act 1984. This Act:

- decriminalised prostitution in brothels which held or came to hold valid town planning permits;
- increased penalties for illegal brothels;
- gave council officers and police immediate right of entry into premises reasonably suspected of being a brothel;
- gave power to the Supreme Court to proscribe a brothel.

Guidelines were introduced which set out clearly where brothels could be legally located. These addressed many of the problems of inner municipalities with high population densities and a mosaic of small sized residential, commercial and industrial zones. The MMPS was amended to permit brothels in certain commercial, and industrial zones in accordance with the Guidelines (Victoria 1985, vol 2, p. 23).

These actions, as much as anything else which followed, caused tremendous changes in the distribution and number of brothels in the metropolitan area. At the beginning of 1984 there were 150 brothels in metropolitan Melbourne, mostly in the inner municipalities. Of these, fifteen held valid town planning permits. Following a twelve-month moratorium, during which the existing brothels were given the opportunity to obtain planning permits, the numbers declined to around 120. It is not widely realised that, when the moratorium ended and prior to the Prostitution Regulation Bill being enacted, police appear to have been given the power to close illegal brothels immediately. At the instigation of some inner metropolitan
councils, many were closed in this way—particularly after the Inquiry Into Prostitution (Victoria 1985) delivered its report in October, 1985.

**The Inquiry Into Prostitution**

The Inquiry was set up in September 1984. Its task was 'to inquire into a report upon the social, economic, legal and health aspects of prostitution in all its forms . . . ' (Victoria 1985, vol. 2, p. 5). The main recommendations of the Inquiry as far as local government was concerned were:

- street prostitution should not be a criminal offence in certain designated areas;
- prostitution in brothels with a town planning permit should not be a criminal offence;
- planning authorities should have the right of immediate entry into premises reasonably suspected of being brothels;
- planning authorities should have the right to request the police to visit premises reasonably suspected of being a brothel;
- the powers of the police to enter premises reasonably suspected of being a brothel at any time should be removed;
- a brothels licensing board should be established to control licensed brothel operators (Victoria 1985, Summary, pp. 11-19).

The Inquiry made no recommendations regarding escort agencies. This was not of great concern to local government as agencies per se were not seen as a form of prostitution which created amenity problems.

The inner metropolitan councils generally welcomed the recommendations of the Inquiry as these were in line with the submissions which they had made. They had reservations, however, about the recommendation that single person brothels be allowed without licensing or a planning permit. The reason for this was the belief that this could lead to situations where one person could set up a number of brothels in an area under this guise.

**The Brothels Regulation Act 1986**

The *Brothels Regulation Act 1986* adopted many of the recommendations of the Inquiry but significantly, it did not legalise street prostitution in any form. Like the Inquiry, it had nothing to say on escort agencies which, until recently, remained unregulated.

Generally, councils treat escort agencies as offices when town planning permits were issued. One interesting legal opinion is that this is correct but that, reading down the definitions of 'brothel' and 'prostitution', it is possible to conclude that if the client and the escort transact sex for payment then the premises on which this occurs is an illegal brothel and that an offence has occurred. This could include hotels, motels and possibly private dwellings. This opinion has been followed up in one or two instances where the accommodation in a hotel or motel was perceived to be used principally for escorts and their clients who were staying only long enough to complete their transaction. The possibility of prosecution has in these instances been used as a lever to get owners and managers to stop these activities.
Brothels remain a matter for planning control and local councils can enter premises without notice for the purposes of inspection. Police can be requested to enter premises reasonably suspected of being a brothel at the request of a municipal council.

Though police have lost the right of immediate entry into a premises reasonably suspected of being a brothel, if an offence under the Act is suspected, a warrant to enter may be obtained in the usual way. The section granting them immediate entry, though reinstated by the opposition, was not proclaimed.

Because of changes which the government found unacceptable, the section relating to the establishment of a brothels licensing board was never proclaimed.

The Results of the Prostitution Regulation Act 1986

The *Prostitution Regulation Act 1986* as proclaimed has served local government in the inner metropolitan area very well. In 1984 there were 150 massage parlours which were in effect brothels operating in Melbourne, mostly in the inner municipalities. Today there are approximately sixty legal brothels operating throughout the metropolitan area. In terms of time and resources previously diverted to enforcing the MMPS provisions, this represents an enormous saving.

Most town planning permits for brothels have been granted only after appeal either by the applicant against the decision of the local council to refuse a permit, or by the residents against the decision of the council to approve an application for a permit. In inner and outer metropolitan municipalities the councils appear more ready to approve brothel applications. It is only in the middle class, middle ring, eastern suburbs that there is strong opposition by both the residents and councils to applications for brothels.

Criticism of the Prostitution Regulation Act 1986

From time to time criticism of the Act appears in Melbourne's main newspapers. This criticism may be stated briefly as follows:

- organised crime controls most of Melbourne's legal brothels;

- the limited number of brothels means limited employment opportunities which in turn allows for exploitation of employees;

- the lack of police powers to enter a brothel without notice means that non-related criminal activities and breaches of the current prostitution laws go undetected;

- the legislation is failing because illegal brothels still exist and may be increasing in number;

- the sex workers in legal brothels do not get a sufficient percentage of the client's fee and find this, together with the need to pay tax on income earned, a disincentive to work in them;

- working conditions, facilities and services for staff in legal brothels are inadequate.
All of these criticisms may be valid up to a point but, without proper investigation, the extent of their validity remains unknown. Following the proclamation of the Act, a Monitoring Committee was set up to monitor the impact and effectiveness of the legislative changes and to recommend amendments to the government from time to time. Unfortunately, the Committee has not met for some time and no amendments have been made as a result of any earlier recommendations. Generally, however, the Act has been successful, the notable exception being in regard to street prostitution which continues to be unsatisfactory for the sex workers, residents, police and councils. The re-convening of the Committee with some specific terms of reference is probably now overdue.

**Building and Health Regulations**

Once a valid town planning permit has been issued for a brothel, if major works or extensions are planned, most councils require a building permit to be applied for, as is usual for any other business premises. Building permits are not usually used to delay the establishment of a brothel once a town planning permit has been issued.

The uniform building regulations introduced throughout Australia on 8 April 1991 do not mention brothels, probably because they are illegal in most states. In Victoria most councils will continue to deal with building permits for brothels as they currently do under that section relating to business premises.

The Health Brothels Regulations 1990 set the health standards for brothels in Victoria. They are the responsibility of the state Health Department, not the environmental health officers employed by municipal councils.

**The Involvement of Local Government in Other States and Territories**

**New South Wales**

Some involvement in the issue of town planning permits for massage parlours. Some parlours hold town planning permits though the use of the *Disorderly Houses Act 1943* to prosecute owners means the legal status of parlours is uncertain.

**Queensland**

No involvement as brothels and massage parlours are illegal. The Criminal Justice Commission in the *Review of Prostitution Related Laws in Queensland* (Queensland 1991) canvasses the idea of planning controls and the current inquiry is also examining this idea.

**Northern Territory**

Brothels are illegal. All control rests with the police.

**Western Australia**

Control currently rests with the police, but the report of the Community Panel on Prostitution (Western Australia 1990) recommends involvement for local government through the introduction of planning controls.
South Australia

Brothels are illegal and a private members bill recommends a licensing board which would approve a licensed operator of a brothel who would then be permitted, without reference to local government, to establish a brothel in certain zones. This however is not clearly stated in the current second reading draft. There is also an inquiry into prostitution being conducted by the South Australian Attorney-General's Department.

Tasmania

Brothels are illegal if owned, operated or managed by men but not by women. Planning permits are therefore possible for brothels run by women. No applications however have been made for such permits.

Australian Capital Territory

An inquiry is being undertaken into prostitution. Brothels are currently illegal and therefore there is no local government involvement. The first draft report recommends legal brothels for which a planning permit has been obtained, in light industrial zones.

Conclusion

In Victoria the first experiment with legal brothels and partially decriminalised prostitution has taken place. The legislation has generally worked and has served local government in inner metropolitan areas well. They no longer have to carry a disproportionate responsibility for what is a demand in the entire metropolitan area. The area where the current legislation is most deficient is in relation to street prostitution which only affects one or two municipalities. The safety of sex workers, residents' right to amenity, and the responsibilities of the councils and the police remain to be addressed. The Act may be deficient but it represents a major advance in dealing with prostitution in Australia. It is now five years old and it is probably time for the Monitoring Committee to be reconvened to review the legislation.

References

Pinto, S., Scandia, A. & Wilson, P. 1990, Prostitution Laws in Australia, Trends and Issues No. 22, Australian Institute of Criminology, Canberra.


