

Sex Workers' Rights, Human Rights: The Impact of Western Australian Legislation On Street Based Sex Workers

by Elaine Dowd

Women's rights to safety and security are abused or ignored in countless ways, both within and between international borders. In some instances, most or all of the women living under a specific regime are denied basic rights whilst other harms result from a globalised economy in which women's inferior status and diminished power are synonymous with extreme poverty. Amnesty International Australia (2002) acknowledges that large numbers of women are at risk of gender-based discrimination and violence, often resulting in death. However, it is essential that efforts to reveal these abuses do not obscure those of a lesser magnitude and those that are entrenched within our own society. The rights of all women must be identified, including those women in our culture who are marginalised and ostracised. This paper is about women's rights on a local, specific and identifiable level. It is about the human rights of women who are involved in street prostitution in Perth, Western Australia and is integral to my Ph.D. research.

Women who engage in street based sex work in Western Australia (WA) do so under conditions that are even less safe than those experienced by sex workers in some other Australian states. Current legislation in WA seeks to eradicate street prostitution by the imposition of harsh penalties on both prostitutes and their clients. In doing so, this legislation affords strong powers to the police. The criminalisation of street prostitution has meant that social issues, including health and safety, have not been effectively addressed. Legal provision exists for the perpetrators of violent crimes, such as coercion, abuse, and corruption, to be brought to justice. However, the application of those laws is restricted by the current and proposed prostitution legislation in WA, which fails to protect the rights of all women equally.

This paper will demonstrate how the *Prostitution Act 2000* (WA) has been detrimental to the health and safety of street-based sex workers in Perth. Many sections of the Act infringe on the rights women who do street sex work as well as the rights of all women in the community. The proposed Prostitution Control Bill 2002 (WA) incorporates the human rights violations contained in the *Prostitution Act 2000*.

The *Prostitution Act 2000* has significantly hindered the efforts of projects and agencies which provide services which aim to ensure the health and well-being of individuals involved in sex work. These include the Street Workers Outreach Project (SWOPWA) and Phoenix, which is a peer-based support project. This paper will outline how the implementation of the *Prostitution Act 2000* has created a climate in which the function of these and similar organisations is severely curtailed.

The politics of prostitution has prompted strong debate amongst contemporary feminists. This is frequently presented as the binary oppositions of 'prostitution as sexual violence' and 'prostitution as legitimate work'. In recognition of the importance of this debate within feminism, I discuss the different perspectives but I aim to use this paper primarily to highlight how Western Australian women's rights are directly affected, on a day-to-day basis, by the legislation and by police policy and implementation of the law.

Summary of Legislation and Policy

I first briefly outline the current situation in Western Australia regarding prostitution legislation. Until the year 2000, prostitution was regulated primarily under the outdated *Police Act 1892 (WA)* and the *Criminal Code (WA)*. Together these acts criminalized most activities associated with prostitution, such as soliciting (*Police Act 1892 (WA)* ss59, 65(8)); living off the earnings of prostitution (*Police Act 1892 (WA)* s76G); and keeping a brothel (*Criminal Code (WA)* s209; *Police Act 1892 (WA)* s76F). However, police policy tolerated certain brothels provided that several conditions were adhered to, such as workers having weekly tests for sexually transmissible diseases (Edwards, 1986, p. 21). Police generally overlooked prostitution, though illegal, as long as it occurred within an informally acknowledged zone. Due to local concerns that the presence of street workers was adversely affecting house prices, this informal tolerance zone was moved several times around the inner city and Highgate areas. These developments caught the attention of the media, which focussed community attention on street prostitution in a sensationalist manner ('Whores Must Go', *Voice News* March 25 2000). The number of street prostitutes in Perth is relatively small, with estimates from those working with street workers suggesting to me that there are around 200 to 400 street workers; probably less than ten per cent of all working prostitutes.

During the early part of the year 2000, the public outcry about the presence of street prostitutes became extremely loud. The Local Government (Town of Vincent) responded by barricading certain streets each night for several months to prevent kerb-crawlers from entering the area and to facilitate the arrest of street workers (Fletcher & Loney, 2000). The then Liberal State Government expedited legislation, the *Prostitution Act 2000 (WA)*, which served to allay many of the concerns of 'ordinary decent people' (voters) but which, in practice, infringes not only the rights of prostitutes but also the rights of 'decent' women, as outlined below. The present Labor State Government intends to introduce further legislation, which will incorporate the current Act in its entirety and will make further provision for the regulation of brothels and brothel workers (Harvey, 2002).

Under the *Prostitution Act 2000 (WA)* (s24), any person suspected of engaging in, or intending to engage in street prostitution as either a prostitute or client, can be issued with a 'move-on notice' which prevents them from returning to a specified

inner-city area for up to 24 hours, even if their residence is in this area. If they are stopped within that area during that period, they may be issued with a restraining order, which prohibits them from entering a specific area for up to one year (s38). The police provide street prostitutes with a map of the area in which they are not allowed to work. Street prostitutes do not usually cease working when issued with a move-on notice or restraining order; rather they move to another location. From a prostitute's viewpoint this equates not only with loss of income but also an increased risk of violence and coercion due to isolation from other street workers. As clients tend to frequent the inner-city area, this is where street workers prefer to work. Once removed from the most favourable working area, street sex workers are likely to be widely dispersed throughout the surrounding suburbs in search of clients. For those street workers who live in the exclusion zone, a move-on notice or restraining order may mean being unable to return to their home, resulting in disturbances to the lives of their partners and children.

The Street Workers' Outreach Project WA (SWOPWA) was funded jointly by the Commonwealth Government and the Health Department of WA to provide support, education, advocacy, counselling, vocational training and referrals to street based sex workers. As well as having a drop-in centre, the project involves outreach workers engaging with street prostitutes, either on street locations or at venues such as the WA Substance Users' Association Northbridge premises, which houses a needle and syringe exchange. An obvious impact of the implementation of the *Prostitution Act 2000* has been the difficulty that SWOPWA outreach workers experience in locating street prostitutes, as they are no longer working in a predictable and confined location but are dispersed throughout many suburbs. Consequently, street prostitutes are not only working in less safe conditions than previously, but are far less likely to be accessing health services and information on drug treatment programmes or ways out of prostitution. The exclusion zone includes not only the SWOPWA premises, but also Women's Health Care House, the needle exchange, and Phoenix, the WA sex workers agency, as well as many other services commonly accessed by street prostitutes. In fact, there is some evidence that police have been targeting these organisations when issuing move-on notices to street sex workers. A recent communication from a SWOPWA staff member indicates that a street-based sex worker received a move-on notice at the front door of the SWOPWA centre where she was attempting to attend an appointment to access the SWOPWA services (personal communication, December 4, 2002).

Currently in WA the police can stop and search any person who they have reason to suspect is soliciting (*Prostitution Act 2000* (s25)). Suspicion may be based on the way a person is dressed or on the person being in a particular location. If the police find anything about the person that indicates that they have the intention of engaging in sex for money, then that person can be charged. The *Prostitution Act 2000* does not specify what items might constitute evidence of prostitution, but one specific item which has been used by the police as evidence of intention to engage in prostitution is a condom (SWOPWA, personal communication, October

3, 2002). Despite Government campaigns over the past twenty years encouraging condom use amongst all sexually active people, ALL residents of WA and specifically young attractive women are at risk of being searched and/or charged with the intention to engage in prostitution, simply on the basis of carrying a condom in their pocket or bag. SWOPWA and Phoenix have had some success in persuading police that the use of condoms as evidence of prostitution is inappropriate. Contradictorily, another part of the Act states that it is an offence to engage in an act of prostitution without using a condom (*Prostitution Act 2000* (s8)).

The *Prostitution Act 2000* (WA) provides for body searches to be carried out, but only by a person of the same sex as the person being searched (s29(1)). In practice this is not consistently adhered to (personal observation, October 2000). The legislation also states that "cavity" searches may be performed by a doctor or nurse (s29(5) and that "reasonable force" can be used by police officers to ensure that such searches are carried out (s29(6)). The Act does not specify that the doctor or nurse or any assisting police officers must be the same sex as the person being searched. In other words, any woman who is *suspected* of an intention to engage in an act of prostitution can, quite legally, be held down by one or more male police officers while her vagina and anus are searched by a male doctor. This can occur without any charges being laid and could legitimately happen to any woman who happened to be standing on a street corner waiting for a friend or a taxi.

A further section of the Act (s35) provides for police officers to engage in activities that would otherwise be illegal but for which, in the context of "detecting an offence", full immunity is afforded to the police officer. At the discretion of the Commissioner of Police, undercover officers may solicit people for the purposes of prostitution. Recent evidence from SWOPWA staff indicates that police officers pose as either clients or social workers in order to entrap sex workers (personal communication, 4 December 2002). The risk posed by this section of the Act is far greater for street workers than for clients, who risk only being charged with engaging in prostitution. For street workers there is the further risk of falling prey to corrupt police officers who could indicate that charges may be dropped in return for 'free' sexual services. Recent research by the Sexual Assault Referral Centre (SARC) into women's reporting of sexual assault indicates that half of all sex workers interviewed were sexually assaulted by police officers (personal communication, 4 December 2002). However, many sex workers are reluctant to report sexual assault and abuse for fear of prosecution. This fear could be considerably alleviated with the introduction of a police Sex Worker Liaison Officer for sex workers to contact if in need of police assistance.

The gap between SWOPWA statistics and police records indicates that SWOPWA has had contact with only about one quarter of Perth's street sex worker population known to the police (SWOPWA, 2002). Changes to legislation or policy could enable SWOPWA outreach workers to access many more street

workers and to assist them to live safely on a day-to-day basis. While sex workers must prioritise ways to avoid detection as they earn their living, they cannot take time to discuss or even consider issues of health and safety, drug rehabilitation or education. Those who may be most in need of help - very young and homeless street prostitutes - are those least accessible to outreach services.

A response to the paucity of services for sex workers who wish to leave the industry has come from a Christian church based group headed by a woman named Linda Watson (Australian Broadcasting Commission, 2001). She identifies as an ex-prostitute and has opened a refuge for women who wish to cease sex work and who require help in doing so. Many of the women who use the services of House of Hope are traumatised by their experiences as prostitutes and require health services, counselling, support and possibly education or training. The services provided by House of Hope are underpinned by a religious ethos. The desperation faced by many people who work on the streets, which leads them to seek refuge in the House of Hope, indicates the urgency with which similar, non-religious services are required. For while the Christian based service provides much-needed assistance, it is done for moral rather than human rights reasons. A moral approach to prostitution demands that women completely reject prostitution, thus invalidating their previous lifestyle and choices. Many church-based groups, such as Exodus Asia Pacific (2002), adopt a similar approach to homosexuality and operate projects which aim to support those men and women who seek a "way out of homosexuality". The Christian, moral approach to prostitution and homosexuality is based on beliefs that, because the Bible condemns them, they must be eliminated. A human rights based refuge programme for women wishing to leave prostitution would operate on a similar basis to domestic violence refuges, providing client-driven services to empower women without invalidating their experiences.

In New South Wales, street prostitution is decriminalised under certain conditions, enabling relevant local councils to develop policies which strike a balance between the needs of the sex industry workers, their clients and the local community. Street prostitution may occur at locations which are not in sight of residences or buildings such as schools, hospitals and churches (Carrick, 2002). These restrictions confine prostitutes to an area around three inner-Sydney streets. Although not perfect, this arrangement facilitates the promotion of health and safety standards and improves avenues for communication. In addition, 'safe house brothels' are now operating, which provide street prostitutes with increased security and protection from abusive or violent clients. Safe house brothels are premises that are exclusively for the use of street prostitutes and their clients. They have monitored rooms which can be hired for half hour periods at a small fee and in which access is provided to health and safety measures as well as information regarding services such as exit programmes and drug rehabilitation. Similar safe house brothels have been considered in Victoria after a lengthy consultation process between interested parties, such as local residents and business owners, sex industry representatives, welfare agencies, police and

legislators. Unlike New South Wales, it is not expected that street prostitution will be decriminalised in Victoria. However, it will be permitted within certain areas in order to provide resources and amenities for street workers and to decrease the negative impact on other sectors of the community (Szege and Millburn, 2002, p. 8).

What is needed in WA is prostitution law reform that is human rights based and which acknowledges prostitutes as members of the community who are entitled to an equal voice amongst others. A human rights approach would ensure that women who are sex workers are entitled to, and more importantly receive, the same rights as other women to protection by police from abuse, violence, corruption and coercion. Legislation that protects the human rights of sex workers would acknowledge their entitlements to privacy, dignity, and fair treatment during interactions with police. The proposed Prostitution Control Bill 2002 (WA) specifically denies sex workers the same rights as other members of the community. Section 205 of the Bill states "the rules known as the rules of natural justice (including any duty of procedural fairness) do not apply". In the preamble, it is stated that "Parliament considers it inappropriate for the control of persons involved in prostitution to be subject to the normal principles of administrative law" (p. 1).

The question of which legislative approach to adopt has been the subject of scrutiny from many perspectives, including feminism. Recent feminist debate around street sex work, and around sex work in general, informs current discussion of legislative reform issues. Some feminist arguments echo elements of the dominant discourse, including the opinion that street prostitution is an 'eyesore' (CATWA 2001). Coalitions between the campaigns of abolitionist feminists and right-wing fundamentalist groups to promote the abolition of prostitution create a powerful political force against which many other feminists as well as non-feminists feel it important to struggle. Barbara Sullivan (1995, p. 195) suggests that it is important for feminists always to question dominant discourses about sexuality. For feminism, the issue of prostitution has been a difficult one and one which is linked to some of the central issues of traditional feminist concern. Violence towards women, gendered oppression, and sexual slavery have historically been used by feminists to analyse prostitution (Jeffreys, 1997, p. 2).

The Feminist Debate

Contemporary feminist discussions of prostitution are presented in their most simple form as dichotomous. One perspective regards all sex work as a form of sexual abuse and argues in favour of abolition. The opposing side considers sex work to be a legitimate form of employment and one of the few in which women can earn more than their male peers (O'Neill, 2001, pp 15-41). However, arguments on either side seem often to overlook or give only cursory attention to any issues that are problematic within the chosen framework. Abolitionist

feminists, such as Andrea Dworkin (1987), Kathleen Barry (1988), and Sheila Jeffreys (1997), discuss prostitution extensively within the context of gendered sexual abuse. This effectively ignores the relatively small but still significant number of female clients of male or female prostitutes. It further ignores evidence that indicates that many males pay prostitutes to share intimacy or companionship that does not include sexual contact (Monto, 2000; Lever & Dolnick, 2000). If the abolitionist claim is that ALL commercial sex is inherently abusive, then how do these experiences of prostitution fit into the argument? If, by implication, some commercial sex, such as lesbian prostitution is not gendered abuse, is it acceptable? If so, where is the dividing line between acceptable and unacceptable commercial sex? The abolitionist side of the debate fails adequately to answer such questions.

Also under the banner of feminism, many activists oppose the traditional feminist approach of abolishing prostitution. Labelled "sex radical feminists" by Wendy Chapkis (1997), those supporting this perspective include many feminists who have worked within the sex industry. These feminists endorse the view that sex and sex work can be used to subvert the dominant patriarchal ideology from within by destabilising male power. Wendy Chapkis (1997), Jill Nagle (1997) and Priscilla Alexander (1997), among others, discuss issues surrounding agency and the prostitute as an active, controlling individual rather than passive, abused object. The suggestion that prostitutes can be a threat to patriarchy does, however, presume that prostitution is substantially voluntary and therefore requires comprehensive discussion of the full range of methods of entering the sex industry. These methods can range from subtle coercion, through lack of economic alternatives, to overt physical force. To complicate the debate, some current and former sex workers are extremely critical of prostitution and support the abolitionist approach (West, 2000, p. 108).

The question of choice is a major site of disagreement between the different approaches in feminist discussion on prostitution. Some feminists, including feminist sex workers, argue that some women choose to work as prostitutes or other sex workers and are empowered by what they do. Others, including those who support the abolitionist approach, argue that, in a patriarchal society with its structural oppression of women, prostitutes cannot have free choice (Jeffreys, 1997). Tong (1984, p.55) and Chapkis (1997, p200) both suggest that NO person can make a fully voluntary choice, as everybody lacks something in terms of knowledge and power. However there are different levels of voluntary and involuntary decision making. For people who do sex work, their choices are often made within a difficult framework and may be the result of limited alternatives. As women, we are all forced to negotiate oppression within our society that impacts dramatically on our decisions and choices. Whether it is a choice to marry, a choice to have or to not have children, a choice to seek a specific career, or a choice to identify with a certain group within society, most of us make choices to the best of our ability at any particular time. Yet for certain groups of

women, such as sex workers, their choices are consistently being documented as invalid in some feminist literature.

Unless we evolve a society where all women have the economic means to withstand the institutional pressures of capitalism and the emotional and psychological means to withstand the institutional pressures of patriarchy, we cannot judge whether the choice to work in prostitution is freely made or not. Some writers have suggested that prostitution would still exist in such a society but without today's gendered inequalities (Califia, 1994) or even that prostitution might entice more women once the Victorian attitudes to sexuality were broken down (Tong, 1984 p. 59). Without the means to escape patriarchal and capitalist structures, that institutional pressure limits all women's freedom and their lives are shaped by the ensuing constraints. This applies not only to prostitutes but also to women who conform to societal pressure to marry or have marriage-like relationships and to women who have children, women who do paid work, women who don't do paid work in fact all women are restricted in the choices they make.

The promotion of the abolition of the sex industry without an equal struggle to end intimate heterosexual relationships, suggests a moral position rather than a feminist one. It could also be construed as dishonest to imply that abolition of the entire sex industry would undermine patriarchy whilst potentially abusive heterosexual relationships dominate society. The criteria which is applied by some feminists in the struggle to improve the lives of prostitute women compared with non-prostitute women is often not consistent. Those women who 'choose' to marry rarely have to undergo the same level of scrutiny that women who work as prostitutes must endure, despite the often financially motivated decision in either case. My point is that sex work and marriage are intimately related and that discussion of prostitution as sexual abuse must always recognise the similarities with the institution of marriage.

Whilst we are waiting for a non-patriarchal society, it is essential for feminists to respond to abuses within prostitution, just as they respond to abuse within intimate relationships or as they respond to other abuses such as sexual harassment in the workplace. Feminists should seek to bring perpetrators of specific incidents of abuse to justice. Men who rape or assault sex workers should be charged with rape or assault, whether they are clients or pimps or indeed corrupt police. To achieve this, legislation and policy must not only recognise prostitutes' rights to report assault but must offer encouragement and protection to those who wish to do so. Current legislation and policy in WA, and in many other jurisdictions, supports potential police corruption and creates an environment in which the safety and security of sex workers is compromised. Abolitionist support of legislation that criminalises clients of sex workers places the most vulnerable sex workers those who work on the streets at greater risk. In order to lessen their visibility and therefore potential arrest, clients insist on a more limited negotiation time. This prevents sex workers from assessing whether clients are heavily

intoxicated or have concealed weapons or other people in their car. In effect, criminalising clients results in street sex workers having decreased power and being increasingly vulnerable (CATWA, 2001).

As a feminist, I question any standpoint that supports legislators in introducing laws and policies which are directly harmful to women on a day-to-day basis. The rejection by abolitionists of safety measures for women currently engaging in street-based-sex-work implies an approach that considers the safety of individuals to be less important than the overall goal of abolition. Despite indications of an immediate reduction in violence against women using safe house brothels in New South Wales (Carrick, 2002), many abolitionists have expressed opposition to such strategies (Jeffreys, 2002), whilst claiming to support individual sex workers. Nikki Roberts has suggested that "the feminist movement has failed the prostitute, and failed her badly" (Roberts, 1992, p. xi), but I would argue that this only applies to a particular part of the feminist movement. Many feminists are striving to protect and support prostitutes through a hands-on approach whilst also working towards broader social change.

Maggie O'Neill is an English feminist academic who works directly with prostitutes and particularly with young, homeless women. O'Neill suggests that "theoretical work should develop from the reality of everyday life" (2001, p. 185). Her research is complex and involves a participatory approach in which she develops new theoretical concepts through an ethnographic research process. She seeks to undermine stereotypes about prostitutes and explores both narrative and visual personal accounts that highlight socio-economic processes and structures. Maggie O'Neill (2001) devised the term 'politics of feeling' to describe her process of exploring the politics of everyday life through prostitute women's stories. This involves an analysis of the interrelationship between the day-to-day aspects of women's lives and broader social processes, such as legislative change, the provision of health services, and the social organisation of desire including masculinities. The concept requires a self-reflexive approach in which the researcher is immersed, in both physical and emotional senses, in the lived cultures of the individuals and groups involved. This methodological approach has been developed through a desire to understand and change sexual and social inequalities through critical feminist theory and feminist practice. Maggie O'Neill (2001, p. 13) argues that the collaboration between grass roots advocates and academics has "potentially transformative consequences" for prostitution. It is possible to facilitate the development of collaborative policy oriented practice by women who identify as feminists and work in the sex industry, and academic and activist feminists (O'Neill, 2001, p. 187).

The voices of women who are, or who have been, involved in the commercial sex industry should not be silenced when they do not reinforce a particular version of feminism. Focusing on the relative merits of abolition draws attention away from women's rights. ALL feminist work on prostitution must be centred around the voices of women engaged in the sex industry and must include a deconstruction

of the relationship between the researcher and the researched. Conceptual frameworks must be developed from the experiences of direct ENGAGEMENT with people involved in the sex industry, especially prostitutes. It seems unlikely that any white Australian feminists would seek to develop theories about Indigenous Australian women without some level of active engagement with the indigenous community. Similarly, a heterosexual feminist who develops theories about lesbians without actively engaging with the subject group is likely to be treated with a certain degree of cynicism. Yet some feminist theorists write extensively on the subject of prostitution despite little or no personal interaction with prostitutes.

A theoretical approach alone is not adequate for understanding the impact of legislation and policy decisions on sex workers; such an approach could lead to them versus us distinctions. Sex workers exist within a system of labour and female roles that includes all people and in which women experience unequal power. I suggest that the role of feminism is to work towards increasing the ability of prostitutes to make free choices, or at least as free as those made by other women in the community. This can only be achieved within a framework in which all women have equal access to health programmes, educational and training opportunities, and are free from violence and coercion. Feminist approaches which incorporate a willingness to identify DIRECTLY with the women we are talking about might recommend the incorporation of harm minimisation measures into current prostitution practices such as street sex work. This acknowledges the transient and often opportunistic nature of street prostitution, and which could prove to be a barrier to participating in alternatives such as brothel or private sex work from home. Simultaneously, feminists can continue to strive towards a society which is non-patriarchal and in which all women have the prospect of making real choices about their lives. O'Neill (2001, p. 189) suggests that participatory research with, rather than on, marginalised people and groups is the starting point to finding the balance between an individualist approach and one of collective responsibility.

One of the central tenets of all varieties of feminism is empowerment, especially of those women who are most marginalised in our society. Empowering prostitutes to make real choices about their lives involves an acknowledgement that the choices made will be accepted. It is feasible that women will still choose to be prostitutes in a society where they have real choices. Until such a society exists, empowerment for all women necessitates action to change the legislation and policy that form obstacles to women identifying and implementing appropriate solutions. Legislation and policy must remove barriers for people wishing to exit the sex industry and allow easier access to outreach and support services than is currently the situation in WA. However, it is also necessary for both policy makers and feminists to acknowledge that intervention will only be successful where it is participated in voluntarily rather than as a punitive measure. Disciplinary action will not result in women leaving the sex industry, nor will fundamentalist literature that characterises prostitutes as passive victims. In order

to gain control of their lives, prostitutes, like all women, must be encouraged to recognise their own agency and they must have the capacity to act on it. All women should have equal rights to protection from abuse, violence, assault and coercion but present legislation in WA denies some women those rights.

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