

(DE)SEXING THE SUBURBS

The Politics and Planning Regulation of Brothels in Perth/WA

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ABSTRACT: *Sex work and the operation of brothels in Perth (WA) remains an 'illegal' activity. Despite this, brothels manage to continue to operate in the Perth metropolitan area, with most 'formal' brothels located within the inner city-suburban ring. In recent years, there has been a rise in the presence of 'discrete' brothels, i.e. so-called therapeutic massage parlours that are alleged to offer sexual services. The growing presence of brothels and other on-sex premises appears to have prompted a political rethink about the legal status of brothels. In the last 5 years or so the State government, initially under Labor, and more recently under the current Liberal/Nationals government, have sought to legalise and regulate brothels. However, both sides of politics have adopted relatively different political and policy stances on the most appropriate way to regulate brothels. This paper considers, first, the historical and contemporary geography of brothels in Perth and policies/legislation that sought to control such activities in the past. Next, the politics and policy solutions of the current Liberal State government and previous Labour government are examined to identify the socio-spatial and moral discourses underpinning efforts to regulate brothels in Perth/WA. In particular, the role of planning in regulating brothels is central to this analysis.*

INTRODUCTION

The extent of Perth's underground sex industry has been revealed, with a comprehensive survey uncovering scores of illegal prostitution businesses operating out of houses and apartments in more than 20 suburbs. From cut-price prostitutes working in Bayswater, Victoria Park and South Perth to high-class escorts charging more than \$2000 a romp, the WA sex industry is far bigger than the nine Perth and three Kalgoorlie brothels allowed to operate openly under the police containment policy.

(The Western Australian, 23 May, 2009)

Prostitution, both street-based and on-premise, remains a highly vexed issue for politicians, radical feminists, and large parts of society in general, not only in Australia but in most other western liberal democracies. The so-called oldest profession in the world struggles to be accepted as a 'legitimate' profession despite the efforts of advocacy groups such as Scarlett Alliance and the Australian Sex Party. This is because prostitution/sex work tends to provoke 'moral panics' on account of it being seen as an abnormal, immoral and deviant activity with corrosive effects on society (Weitzer, 2010, 2009; Hubbard, 2011).

In addition to the supposed corrosive effects of prostitution along with other forms of commercial sex (e.g. sex shops, strips clubs and escort agencies), such activities are stereotypically characterised as being under the authority of career criminals. This may range from the small-time 'pimp' who might manage a small number of street prostitutes through to organised criminal gangs who run (il)legal brothels and strip bars where female sex workers are claimed to be the victims of coercion, exploitation, sex trafficking and commodification (Farley, 2004, 2005; Farley and Kelly, 2000; Jeffreys, 2010, 2009).

These criminalistic aspects of prostitution have been portrayed, and arguably play a role in reinforcing stereotypes about prostitution, in recent US-based television dramas such as *The Sopranos* (HBO, 1999-2007) and *Boardwalk Empire* (HBO, 2010-present) and the recently aired Australian-based drama series *Underbelly: Razor* (Channel 9, 2011). Interestingly, both *Boardwalk Empire* and *Underbelly Razor* are set in the 1920s/30s within an era of conservative, prohibitionist and authoritarian rules and attitudes from government and society. The criminality and violence that tends to be associated with prostitution is sensationally captured in the promotional tag line for *Underbelly Razor* which is described by Channel 9 as a drama set in an era when 'brothels and sly grog shops flourished and gangs of thugs slashed their opposition into silence until the streets ran with blood' (<http://fixplay.ninemsn.com.au/underbellyrazor>).

In light of the aforementioned accounts, real and fictionalised, of prostitution it should come as no surprise that sex work has traditionally been subject to strict regulation by governments since the 19th century (Shaver, 1985). The motives for such regulation are ultimately interrelated and included: *moralistic* (i.e. to save women's minds, bodies and souls from a life of vice); *medical* (i.e. to prevent the spread of sexually transmitted infections); *social* (i.e. to prevent the corruption of society, especially men); and *economic* (i.e. to ensure that men remained productive units of capitalism by protecting them from the temptation of prostitution and the possible ill-health effects from being with a prostitute) (see Hubbard, 2011 for an overview). As will be seen later in the paper these same motives have been asserted by different stakeholders in recent efforts to introduce legislation in WA to 'legalise' brothel-based prostitution.

This paper then is concerned with efforts by successive state governments, Liberal and Labor, in WA since the late 1990s to introduce formal legislation to regulate prostitution. Particular emphasis is given to government efforts to regulate brothel-based prostitution since this form of prostitution lends itself to being readily and easily governed by planning controls. More specifically, the paper critically examines the discursive utterances and rhetoric in relation to the regulation of brothels as played out during parliamentary debates following the introduction of the *Prostitution Act 2000* (Liberal), the *Prostitution Amendment Act 2008* (Labor), and the recently released *Prostitution Bill 2011* (Liberal) – debate surrounding the 2008 Act forms the epicentre of the analysis in this paper. Hansard transcripts of parliamentary debates form the major evidence base in this paper but other forms of documentary evidence, including the various pieces of legislation themselves as well as official reports, public submissions on the legislation and media reports are also drawn upon to highlight the political, moral and spatial discourses surrounding prostitution in WA.

The paper is structured into two broad parts. Part one provides an overview of the academic literature on key definitions, debates (for and against) and approaches to the regulation of prostitution in order to set the scene for the second part of the paper. Part two focuses on prostitution in Perth/WA. A brief overview of the geography and scale of prostitution is presented first to highlight the socio-spatial nature of this 'controversial' land use. Next, the legislation introduced to regulate prostitution is reviewed by examining the parliamentary debates surrounding the legislation on prostitution in order to highlight the political and regulatory, especially planning, discourses surrounding brothels. Finally, some tentative conclusions about the efficacy of the latest draft legislation are considered.

PROSTITUTION: DEFINITIONS, DEBATES AND REGULATION

Defining prostitution/sex work

As Peter Hall (2005) notes 'planning is an extremely ambiguous and difficult word to define' (p.1). The same is arguably true for prostitution/sex work. Legal definitions of prostitution, such as those outlined below, convey a sense of certainty as to what defines prostitution. It can be seen from the three legal definitions below that these are broadly similar to one another in that prostitution is underpinned by some form of economic exchange (financial or otherwise) in return for some form of 'direct' sexual interaction – this normally means vaginal, anal or oral sex.

...means the provision by one person to or for another person (whether or not of a different sex) of *sexual services* in return for payment or reward.

(Prostitution Control Act, 1994, Victoria)

...payment [in] consideration for the sexual stimulation of a person ('the client') by means of physical contact between the client and another person ("the prostitute"), or between either of them and anything controlled by or emanating from the other, and it is irrelevant whether payment is in money or any other form.

(Prostitution Act, 2000; Prostitution Bill, 2011 Western Australian)

...the provision by one person to another (whether or not of a different sex) of sexual services of any description in return for payment or reward to any person.

(Prostitution Regulation Act, 2011, Northern Territory)

Ultimately, however, these definitions can and will be put to the test in case law and as such these legal definitions do not provide static, concrete definitions per se. Rather, they are potentially malleable terms. This malleability is also evident across State jurisdictions in terms of what constitutes a sexual act/service. Whilst the definitions above all speak to the notion of 'basic' prostitution (i.e. the provision of oral/vaginal/anal sex and masturbation), in NSW under the *Restricted Premises Act 1943*, the definition of prostitution is somewhat stretched to encompass 'the provision of massage services (other than genuine remedial or therapeutic massage services) in exchange for payment. [...] the use of premises for the provision of adult entertainment involving nudity, indecent acts or sexual activity if the entertainment is provided in exchange for payment or if the entertainment is ancillary to the provision of other goods or services'.

From a radical feminist perspective, prostitution is defined as more than simply a (female) prostitute offering some form of *direct* sexual service to a (male) client in exchange for some kind of recompense. Jeffreys (2009, 2007, 2003) and other feminist scholars (Farley, 2004, 2005; Raymond, 2003, 2004) essentially see *any* social or cultural transaction, whereby women are 'paid for', by cash or some other means, as constituting a form of prostitution. Hence for Jeffreys (2009) this includes practices such as (i) arranged or forced marriages, (ii) mail order brides, (iii) pornography, and (iv) stripping which are all deemed to fall under the rubric of sexual exploitation as defined in the 1991 Draft UN convention Against Sexual Exploitation.

Debating Prostitution/Sex work

Prostitution has also been subject to debate in relation to the linguistic and discursive meanings attached to this activity. That is to say, there have been attempts by both scholars and anti-prostitution and sex worker advocacy groups to redefine the terminology and by extension the embedded meanings associated with terms such as prostitution. Again, from a radical feminist perspective, the terms prostitution and prostitute are not up for re-labelling. To do so would only normalise and legitimise the patriarchal exploitative structural underpinnings of prostitution and thus reify women's secondary position within society. Jeffreys (2009) argues that it is important to use the 'right' language (or discourse) in order to signify the embodied meanings and lived experiences wrapped up in prostitution. But what exactly is the *right* language/discourse and terminology to use?

For radical feminists such as Jeffreys (2009); Raymond (2004) and Farley (2004) all forms of commercial sexual services and cultural practices involving the exchange of women constitute a form of exploitation, this means that only certain terms can and must be used. Hence, for women engaged in providing sexual services they must be referred to as 'prostituted women' in order to highlight their subservient position within society and that they are under the authority of another party. In using this term women then are discursively cast as 'victims of patriarchy', 'slaves of sexual capitalism' or 'survivors of misogyny'. Men who engage in the purchasing of commercial sexual services are labelled 'sex predators', 'sex offenders' and even 'rapists' as opposed to clients or customers (Weitzer, 2009, 2010).

Conversely, prostitution advocacy groups such as Scarlett Alliance (Australia), US PROS and the English Collective of Prostitutes have argued that prostitutes should be recognised as 'sex workers' or 'working women' to reflect the fact that all they are merely providing is a service, albeit highly personal, like any other business (also see Weitzer 2010). Put simply then, prostitute/prostitution constitutes a 'sex-negative' and pejorative term, whereas sex worker/sex work represents a 'sex-positive' and affirmative term. When the Prostitution Amendment Bill 2008 was introduced in Western Australia by the then State Labor Government it sought to replace the terms prostitution/prostitute, as per Section 4 of the Prostitution Act 2000 (introduced by the then Liberal Government) with the terms 'sex work/sex worker'. This subtle change in terminology was a recommendation in the 2007 Report of the Prostitution Law Reform Working Group (PLRWG) - set up by the then WA Labour Attorney General, the Hon. Jim McGinty and headed by Sue Ellery, MLC – who supported the use of 'neutral terminology':

The Working Group recommends that more contemporary terms such as 'sex workers' and 'provision of commercial sexual services' rather than 'prostitutes' or 'prostitution' be adopted in the proposed legislation as they simply and accurately reflect the activity and reduce the negative connotations associated with the latter terms. Such an approach was adopted in the NZ Act. Furthermore, rather than using terms such as 'brothels',

'escort agencies' and 'madams', it was recommended that more neutral terms be adopted such as 'premises', 'sexual services businesses', 'operators' and 'approved managers'. (PLRWG, 2007:11)

A creation of the then WA Labor State Government, the PLRWG did not include any members of the conservative Liberal Party, who were then in opposition and vociferously opposed to any reforms leading to the 'legalisation' of brothels. Whilst terms such as 'sex worker' and 'sexual services business' were used throughout the 2008 Act these were opposed by Liberal members who essentially considered the PLRWG and its approach to 'prostitution' as being politically correct and legitimising what conservative members saw as an immoral activity. This is reflected in the rather sarcastic comments by the Hon. Barry House (Liberal):

When this bill is passed, sex worker will have legal status as a legal occupation. It will be a legitimate activity. I am interested in how the government will deal with a situation in a school or an educational institution when career education is considered. If it is a legitimate activity, I can see it now: on careers day, there will be various placards around the gymnasium for the kids to see on engineering occupations, how to join the Navy and how to become a teacher. They will be shown what an accountant does, what a microbiologist does and what a sex worker does. There could be a stand dedicated to sex workers. An engineering stand might be sponsored by Alcoa, whereas a sex worker stand would be sponsored by Langtrees. How does the minister envisage this legislation dealing with that situation? We could take it one step further. Will there be an accreditation system? Will there be a TAFE certificate for a qualified, recognised and accredited sex worker? Are we going to adopt apprenticeships? Will we extend opportunities for people to take on work experience students? Where will this begin and end? (Hansard, 18 March, 2008, p.990c)

Ultimately, the 2008 Act was not fully proclaimed within Parliament as a result of the calling of the 2008 State Election. It is interesting to note that these more neutral terms have been completely abandoned in the current Prostitution Bill 2011. In fact, it would appear from the draft legislation, as well as public and parliamentary comments by the Attorney General, the Hon. Christian Porter, that terms such as prostitution and brothel are being deliberately used to convey the Liberal Party's distaste of this activity which it sees as harmful to women and society in general. Hence, the 2011 Bill seeks to introduce a raft of onerous licensing conditions, operating regulations, policing powers, planning conditions and legal penalties all designed to contain the spatiality and minimise the externalities transmitted by brothels:

...the public expects the state government to take responsibility for this issue, and it overwhelmingly does not want to be subject to the antisocial and nuisance behaviour that occurs alongside suburban prostitution. The public expects that no form of prostitution should be permitted in residential areas in Western Australia, and it expects that police will be empowered to act on complaints from members of the public to shut down such nuisance premises. Achieving this outcome is the government's first priority with its legislative model. [...] a responsible government should always recognise that prostitution is a generally undesirable activity, which carries with it risks to people involved, and an ever-present danger of organised criminal activity. The state government will seek to prevent the expansion of the industry, provide options for persons wishing to leave prostitution, and ensure that, where prostitution does occur, it is properly licensed, monitored and regulated. Porter (2010:3)

The Attorney General's pointed reference to the anti-social effects of prostitution within residential suburban areas harks back to major concerns amongst Liberal Party members about the anticipated proliferation of small home-based two-person operated brothels should the then 2008 Act be passed. The 2008 Act contained provisions such that 2-person home-based brothels did not require a license to operate but would need to apply for planning approval from the relevant local council.

Whilst radical feminist interpretations of the discursive and exploitative nature of prostitution (and other socio-cultural arrangements involving women) may hold elements of the truth Weitzer (2010) cautions against such interpretations being read as the definitive truth about prostitution. For Weitzer, radical feminists and anti-prostitution advocacy groups such as The Poppy Project, Coalition Against

Trafficking in Women and Prostitution Research and Education, are 'commercial sex prohibitionists' who's protestations have given birth to an 'oppression paradigm' in sex work research and policy. Weitzer (2010b:26) does not in any way deny that exploitation of women is a characteristic of the sex industry but he is ardent that a more nuanced reading of prostitution is needed:

The oppression paradigm is one-dimensional and essentialist. Although exploitation and other harms are certainly present in sex work, sufficient variation exists across time, place and sector to demonstrate the fatal flaws of this paradigm. An alternative perspective, what I call the *polymorphous paradigm*, holds that a constellation of occupational arrangements, power relations, and worker experiences exists within the arena of paid sexual services and performance.

Regulating prostitution/sex work

The polymorphous nature of prostitution is reflected in the different types and spatialities of sex work that exist within the urban landscape. Put simply, prostitution is generally understood to take six main types: (i) street prostitution; (ii) brothel/bordello; (iii) massage parlour/sauna; (iv) escorts; (v) call girls, and (vi) on-premise. In spatial terms, these various forms of sex work are performed in a mix of public (e.g. streets and parks); private (e.g. houses and apartments); and commercial (brothels/bordellos, massage parlours/saunas, hotels and bars) spaces. Whilst call girls/escorts might perform their sexual services within the relative seclusion of hotels, because such work largely involves making outcalls (i.e. visits to clients) this form of sex work may be viewed as spatially mobile or geographically fluid and thus difficult to monitor and regulate. Both street-based and on-premise sex work tend to be characterised by a relatively more static geography and can be policed more effectively than call girls/escorts. Although it is important to note that such activities are prone to dislocation as a result of police clamp-downs, planning laws, gentrification processes or other market forces.

Hubbard (2011) suggests that analysing 'the *location* of sex work [provides] perhaps the most meaningful way of approaching prostitution' (p.38) – also see Bernstein (2007). This is certainly true from both an academic planning and professional planning perspective since space and the management and regulation of land is fundamental to planning. Despite this and the contentious nature of prostitution there has been relatively little planning-specific scholarship on prostitution and other forms of sex work in Australia, or internationally. Both Australian and international research has tended to focus more on the historical (e.g. Daniels, 1984; Arnot, 1988; Frances 2007), political and legal (Crofts, 2007; Sullivan, 2010, Weitzer, 2009; Brants, 1998; Shaver, 1985; Matthews, 2005) and health (Harcourt et al, 2009; Abel et al 2007; Fox et al, 2006; Minichiello et al, 2001) aspects of prostitution.

The varying types and spatialities of sex work embody a range of socio-political perceptions, externalities and regulatory responses. In overall terms, the governmental control and regulation of prostitution often falls to the Police in the first instance since prostitution is normally defined as a criminal act. Where prostitution is decriminalised or legalised then other government agencies also play an important role in the management of this activity. Urban planning is one such arm of the government that plays a major role in the strategic and operational spatial management of prostitution, sometimes consciously but at other times unconsciously and unwittingly (Kerkin, 2003).

Prior's (2008) analysis of gay bath houses in Sydney forms part of 'a growing body of research that highlights how formal urban planning processes and regulations are increasingly used as mechanisms to govern *sexuality* within later 20th century Western cities' (p. 340). Much of this small body of work is actually more concerned with the regulation of sex shops and adult entertainment venues and precincts as opposed to prostitution per se (Papayanis 2000; Ryder 2004). Nevertheless, it offers insights into how the sex industry in general is spatially governed. Scholarly analysis of the spatiality and planning regulation of prostitution in Australia is still in its infancy. Kerkin's (2003, 2004) analysis of prostitution in St Kilda (Victoria); McKewon's (2003, 2005) work on Northbridge (Perth) and Kalgoorlie (WA) and Croft's (2003, 2007a, 2007b, 2010) legalistic analysis of the regulation of brothels in Sydney are notable exceptions. Concerns about the impacts of brothels on local amenity have recently been addressed by Searle et al (2011). This research examined, via a survey, people's awareness of the presence of brothels in their suburbs and attitudes towards this land-use. In short, this research challenges the negative discourses often asserted by local and state politicians surrounding the impacts of brothels on public amenity.

In sum, most residents do not perceive negative amenity impacts from nearby sex premises. Where negative impacts are felt, they were of a kind that was mostly also associated with other local businesses such as pubs and clubs. In addition, perceived negative impacts declined over time with greater familiarity. Only three per cent of residents perceived negative moral impacts. Searle et al (2011:18)

Elsewhere, Papadopolous and Steinmetz (2011) highlight that whilst the NSW State Government has legalised brothels there is a lack of policy consistency across Sydney metropolitan local councils in dealing with such activities. Several broad planning policy approaches reflecting varying degrees of acceptance/resistance are identified: (i) *progressive*; (ii) *pragmatic*, (iii) *technocratic* and (iv) *oppositional*. Ultimately, such attitudes should be expected given that political and ideological tensions are commonplace between different levels of government, especially around controversial policy issues. Furthermore, local governments often assert that since they are level of government closest to the people they are in a much better position to know what their constituents want and need.

For most people, prostitution is generally associated with the street prostitute. Spatially, street prostitution is synonymous with dank and dark inner city areas and isolated run-down industrial zones that become identified as 'red light' or 'vice districts' (Hubbard, 1997; Hubbard and Sanders, 2003; Hubbard and Whowell, 2008; Kerkin, 2003). This form of prostitution sits firmly on the 'lower-class' end of the sex work spectrum as the women who inhabit such spaces generally 'sell sex out of dire necessity or to support a drug habit' (Weitzer, 2010:9) and more prone to violence (Porter and Bonilla, 2010). Street-based sex work registers on the upper end of the externalities spectrum amongst politicians and local community members, often sparking moral panics about increases in criminal activity and drug use, the lowering of house prices and public amenity and the social contamination of society. Consequently, the visibility and impacts of this form of prostitution mean that it is generally the least tolerated form of sex work and reflected by the fact that it is almost exclusively deemed 'illegal', governed by criminal legislation and monitored by the police. Shaver (1985) defines this as the *criminalization* or *prohibitionist* approach to prostitution.

Historically, the regulation of brothels in Australia was subject to a fairly universal criminalisation approach. Whilst prostitution was not in of itself an illegal activity, solicitation, living of the 'immoral' earnings of prostitution and maintaining a brothel were all illegal activities. Sullivan (2010) notes that the legal landscape on brothels began to change in the late 1970s when various State governments started to introduce new regulatory regimes. These basically fall into two categories: 'decriminalisation' and 'legalisation' (Shaver, 1985; PLWRG, 2007). The ACT and Victoria were the first state to legalise brothels under the Prostitution Act 1992 and Prostitution Control Act 1994 respectively. The PLWRG (2007) notes that the Victorian legislation 'has been referred to as a classic example of a legalised model' (p.12). New South Wales 'decriminalised' brothels in 1995 following the introduction of the Disorderly Houses Amendment Act.

The geography of brothels in WA

As with the rest of Australia, prostitution/sex work in Western Australia has been in operation since the early days of colonial settlement (Daniels, 1984; Frances, 1994). Although prostitution itself has never been illegal, solicitation and maintaining a brothel were under the Police Act 1892. But as McKewon (2003) notes the police did not seem particularly interested in closing down brothels until the late 1950s - up until this period the police's unofficial approach was one of 'tolerate but contain'. Hence, brothels were almost exclusively confined to the now defunct Roe Street red light district on the southern edge of Northbridge, an area located close to the main railway station and CBD, between about 1920-1960. From the late 1950s through to the early 1980s the police effectively abandoned its toleration and containment policy which resulted, to a large extent, in the eventual diminution of the Roe Street red light district.

Prostitution however did not simply evaporate. Rather, as McKewon (2003) highlights it simply assumed a new more dispersed spatial pattern. Some brothels relocated to Kalgoorlie, others set up shop in other inner-city suburbs (chiefly Northbridge and Highgate), and some moved to the middle and outer suburbs as more people moved there and they became relatively more accessible. The suburbanisation of brothels was particularly frowned upon by the police who were quick to initiate crack downs on these activities. Ironically, however, the police's reactions only 'served to drive

prostitution deeper into the suburbs, with brothels operating under the guise of massage parlours, escort agencies and private escorts, as prostitutes tried to avoid arrest' (McKewon, 2003:304). As will be seen below, discourses about the suburbanisation of brothels/prostitutes have been a major facet of political debate and rhetoric when legislation to regulate this form of sex work has been introduced into the WA Parliament.

Given the social and political stigma, legal complexities and (in)visibility of the various forms of prostitution it is difficult to ascertain with any pinpoint accuracy just how many sex workers and brothels make up this industry in any jurisdiction. McKewon (2003) notes that in the early 1940s there were '13 brothels located on six town lots' (p.302) in the Roe Street red light district and between 55-82 private agents advertising in *The West Australian* between 1986-88 with most of these based in Central Perth, Maylands, South Perth, Subiaco and Fremantle. McKewon goes on to note that the number of brothels, private agents and escorts had increased by 1990 but does not provide any detailed figures.

In 1997 the then Minister for Police, John Day, now the Minister for Planning, Culture and Arts, outlined the scale of prostitution in WA advising that the Liberal Government were going to introduce draft legislation to regulate prostitution:

...police estimated that there were about 2,500 known prostitutes operating in WA. The police containment policy - which became public in 1975 - included eight brothels and two escort agencies in Perth and three brothels in Kalgoorlie. This accounted for about 260 prostitutes. However, it had been estimated that approximately 1,700 to 2,000 prostitutes worked outside the containment policy. This indicated that more than 80 per cent of prostitutes worked outside the containment policy.

The PLRWG (2007) also noted the difficulties in estimating the number of sex workers in WA. Nevertheless, the PLRWG reported that there was an estimated 1200-1700 sex workers in the state with a large number (1280) of these believed to be independent sex workers who advertised their services via the personal columns in *The West Australian*. Furthermore, in a parliamentary exchange on 20th April 2010 the then leader of the Labor Party, the Hon. Eric Ripper, asked the Minister for Police, the Hon. Rob Johnson, a series of inter-related questions on the number and location of brothels within Perth. The Police Minister was unable to provide any statistical data on these questions stating that the 'Western Australia Police does not maintain statistical data in relation to the number of brothels or other establishments offering sexual services for money in Western Australia' (Hansard, 2010: 1675b). This claim is contradicted however in a recent report by Donovan et al (2010) who state that 'the police still maintained a database of sex workers, indicating that the 'containment policy' was still in effect despite its official abandonment in 2000' (p. vii).

This report, based on research conducted between 2007 and 2008, identified a total of 28 brothels within Perth with almost 80 percent of these located in commercial or industrial areas and only 10 percent in residential areas. More recent research by Murphy (2010) suggests that there were 36 commercial brothels across metropolitan Perth with half of these located in just three LGAs: City of Swan in outer metropolitan Perth (n=4); and the inner-city LGAs of Town of Victoria Park (n=5) and City of Vincent (n=9). In terms of the land-use zone that brothels were located Murphy found that these were almost identical to that found by Donovan et al (2010).

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In the main then brothels tend to be found in commercial and industrial zones within the inner-city and middle and outer-ring suburbs. Whilst formal and informal government policies play a role in defining the geography of commercial brothels, it is arguably the case that common-sense economics also plays a role. That is to say, many brothel owners are no doubt aware that their businesses would face significant political and community opposition and ultimately the threat of closure through a lack of business if they were to locate in established residential areas. Whilst home-based sex workers are by default already working (and living) within residential areas these types of 'brothel' tend to blend into the urban landscape and have relatively little negative impacts on amenity (Searle et al, 2011).

However, during the passage of the prostitution legislation in WA since the late 1990s moral panics and discourses about prostitution and brothels 'polluting' residential suburbs has been a common theme. This was particularly evident during parliamentary debates leading up to the passing of the Prostitution Amendment Act 2008 which sought to legalise commercial brothels and, more contentiously, allow 'micro-brothels' (i.e. small two-person home-based sex services) to operate in suburban Perth. This latter type of brothel provoked considerable disquiet mainly from Liberal Party politicians and religious groups. And whilst the current draft 2011 Prostitution Bill has just completed its public consultation phase, concerns about the suburbanisation of prostitution are again at the forefront of political and other stakeholder rhetoric.

Suburbia holds a special place in the hearts, minds and agendas of politicians. They represent a space of and for the mythical nuclear family, homeowners and ultimately, voters who place value on their homes, neighbours and streets providing a sense of defensible space, economic security, community spirit and identity, safety and public amenity. In the political imagination the suburbs are 'wholesome', 'honest', and 'clean' spaces. They are the 'heartlands' of Australia (Gleeson, 2006) and as such they warrant inoculation from 'social contagions' such as commercial sex work and workers who are seen to pose a risk to planning amenity, quality of life and overall social fabric of the suburbs.

In conventional ideological terms it might be expected that conservative leaning political parties would oppose legislation designed to either decriminalise or legalise prostitution and that (certain) left-leaning parties might lend their support to such legislation. In WA things have not been that straightforward. The socially conservative Liberal Party have both supported and opposed proposals to legalise brothels over the last 10 or so years. As already noted, in 1997 the then Minister for Police in the Liberal Government sought to introduce legislation to regulate prostitution. Their proposals entailed a mix of regulatory measures designed to enhance health standards and safe sex practices within the industry, deter criminal offences by imposing hefty penalties and excluding brothels from residential suburbs but permitting them in light industrial and industrial areas. In summary, these proposals appear to have had the overall objective of 'putting a lid' on brothels by keeping them out of sight and mind.

By 2003 and 2007 when the Prostitution Control Bill and Prostitution Amendment Act respectively were introduced into Parliament, the Liberal Party opposed the legalisation of brothels. Opposition to the Prostitution Amendment Act was particularly vehement amongst Liberal Party elected members who mounted a 'panic-inducing morality campaign' about the harmful effects of prostitution on women, children, the suburbs and society in general (Weitzer, 2009). Prostitution was invariably labelled as 'dirty', 'deviant', 'slavery' and 'crime-ridden' during parliamentary debates. These various sentiments are reflected in the following comments from one of the Liberal Party's most vocal opponents to the legalisation of brothels, Rob Johnson, who to reiterate is the current Minister for Police.

This government is quite happy to decriminalise and legalise this dreadful, horrific trade. It is not just the moral aspect, let me make that quite clear, although many of us may feel that the moral issues are valid and important. It is the criminal activity of pimping that is of concern. [...] [Pimps] will not be respectable businesspeople. [...] They will never be respectable people in my mind, and in the minds of the overwhelming majority of Western Australians. It is a dirty, filthy trade for people to live off the earnings of these unfortunate women, and the government is not only condoning but also legitimising that trade.

(Hansard, 23 Oct, 2007, p.6631a)

In relation to the 2003 Bill, another Liberal Party member, Michael Board, was of the view that the legalisation of prostitution/brothels had the potential contaminating effect of inducing some suburbanites into prostitution or acting as de facto pimps:

If people in the suburbs are allowed to prostitute themselves, their spouses, boyfriends or girlfriends could be living off the earnings of prostitution. How will the Government deal with that? I do not think the government members have thought that through. It could be that people might encourage their spouses, girlfriends or others into prostitution so that they can live off their earnings. It might seem ridiculous but it happens and it will happen.

(Hansard, 11 June, 2003, p.8610a)

Similar concerns about the supposed negative effects of the suburbanisation of brothels were raised by other Liberal members. Janet Wollard, for example, expressed concerns about the damaging impacts of prostitution on women. So too did the then leader of the Liberal Party, Paul Omodei, who also suggested that the proposed legalisation of brothels would bring about planning and governance chaos within local government who would be charged with the responsibility of granting development approval for brothels:

This bill will result in a proliferation of brothels and, with that, the trafficking of women, the degradation of women and the exploitation of women. Therefore, this is not the Prostitution Amendment Bill; this is a commercial drug and sexual abuse bill. We will see it happening in all our suburbs. (Janet Wollard, Hansard, 26 September, p. 5808)

...those sections that refer to local government and the Planning and Development Act 2005, which are proposed sections 21Y and 21W, are areas of grave concern. They cover the location of brothels and so-called working people, in other words single prostitutes or two prostitutes working in residential areas. The legislation will cause a nightmare for local government councillors and the administration of local governments, particularly the location of brothels and the impact of having new, legitimate businessmen coming into town, such as bikies and those in organised crime. If this government spent a little less time on legislation such as this and a little more time on attacking organised crime in Western Australia, maybe we would have a better society.

(Paul Omodei, Hansard, 25 September, 2007, p.5683)

In an effort to influence parliament via an expression of 'participatory democracy' a number of parliamentarians, all but one from the Liberal Party, tabled a series of signed petitions between 2001-2010 from local communities and stakeholder groups opposing the legalisation of prostitution. A total of 19 petitions were presented in Parliament with most (n=14) of these presented during 2007 as the Prostitution Amendment Act was being debated. The number of signatures on these various petitions ranged from 6 to 5,000 and totalled almost 14,000. Two of the largest petitions were presented in Parliament by Paul Omodei and were collected by the Christian Democratic Party (5,000 signatures) and Life Ministries (WA) (2,000 signatures), organisations with strong conservative religious beliefs.

Ultimately, despite the moral and other protestations of Liberal Party members during debates on the Prostitution Amendment Act they were unable to prevent it from being passed. However, as the debate had been so vociferous and major concerns had been expressed about the anticipated proliferation of brothels in residential suburbs this provoked the WA Planning Commission (2008) to issue special planning guidance, Planning Bulletin No. 90, to assist local councils prepare and deal with prospective development applications for brothels. In short, this bulletin sought to provide some planning certainty for local councils, their ratepayers and, of course, brothel operators. The bulletin essentially advised local councils that they needed to recognise brothels as any other 'normal' business and process any development applications accordingly and within the planning framework outlined in the 2008 Amendment Act which emphasised the use of a nuisance and incompatibility test. To assist local councils further the WAPC suggested that a range of technical planning considerations needed to be factored into assessments of planning applications for brothels. These included: (i) proximity to 'sensitive uses such as residential buildings, places of worship, schools, childcare centres etc; (ii) parking provisions for staff and clients; (iii) access and egress from premises; (iv) appropriate and inoffensive signage; and (v) privacy from other buildings

Despite this Planning Bulletin and the looming fact that brothels were to be legalised and thus constitute a permitted land use, albeit subject to certain provisions, a number of local councils remained steadfastly opposed to allowing brothels to set up in their jurisdictions. A small number of councils (e.g. Wanneroo, Subiaco, and Nedlands) moved to change their local town planning schemes so that brothels were deemed a prohibited land use. As far as can be ascertained, these moves would be deemed 'illegal'. Hence, a brothel owner automatically denied permission to set up a business in an area with a blanket ban on brothels would have had an automatic right to apply to the State Administrative Tribunal for a reversal of any such decision with prospects for winning virtually guaranteed if all relevant planning considerations had been met.

In the end, the 2008 Act failed to be given full royal assent as Parliament was prorogued due to the 2008 State elections which were won by the Liberal/National coalition. The new government entered

parliament on a promise that it would repeal the 2008 Act and introduce its own package of reforms on prostitution. The Attorney General Christian Porter, announced in late November 2010 some of the details of the Liberal/National Government proposals to regulate prostitution. In summary, the current government's approach whilst legalising brothels it seeks to simultaneously 'criminalise' aspects of the wider prostitution industry and limit the reach of brothels in the name of protecting children and women and the general amenity of residential suburbs.

All these objectives are to be achieved by introducing a tough licensing system whereby owners, managers and prostitutes are all to be licensed and placing limits on the number of licences that can be issued. Strict operating conditions are also to be introduced with breaches of these conditions and licensing requirements etc all carrying substantial fines and/or imprisonment depending on the nature of the offence as prescribed in the 2011 Bill. An unlicensed prostitute, for example, faces a fine of up to \$6,000 and brothels that employ unlicensed sex workers face the prospect of being issued with a closure notice and fines.

The 2011 Bill effectively sees a return to the old containment policy with proposals to limit brothels to designated areas via the use of the planning system at the local government level. The Attorney General has been very explicit that brothels, especially so-called micro-brothels, will not be permitted to operate within residential suburbs. Local councils have raised concerns about the definition of residential areas as outlined in 2011 Draft Bill. In short, councils are concerned that only those areas exclusively defined as residential areas within their planning schemes will be able to prevent brothels from being set up. Some councils have indicated that since varying degrees of mixed-use development tends to characterise most local suburbs this would provide a window of development opportunity for brothels to be set up. Hence, some councils have called for areas with a 'significant' or 'predominant' amount of residential land-use to be exempt from brothels being established:

That Council: Recommends that the definition of residential area be amended to ensure that a prostitution business is not permitted in a zone of precinct where the predominant use is Residential, notwithstanding that residential uses may require planning approval under the applicable Local Planning Scheme.

(City of Stirling, Ordinary Meeting of Council, 2 August, 2011)

The City of Perth (CoP) has raised identical concerns about definitions of what constitutes a residential area. As far as the CoP is concerned all land under its authority with the exception of the inner zone should effectively be seen as residential. Brothels then can only potentially be established in the inner zone. Given this fact, the role of the Perth inner zone as an entertainment precinct and the 2011 Bill's efforts to concentrate brothels in certain locations, the inner zone could theoretically end up as a state sanctioned 'red-light district'. This possibility has been canvassed by the CoP:

[Council] expressed concern regarding the absence within the proposed legislation of any controls to prevent the establishment of a cluster of prostitution businesses which collectively could cause amenity issues to the surrounding areas.

(City of Perth, Council Minutes, 19 July, 2011, p.16)

Whilst the 2011 Bill does not specifically address the issue of clustering of brothels or limits on the number of brothels in anyone location there are provisions -s.45 (1) - that allow the CEO of the Department of Gaming Racing and Licensing, the body that will regulate the licensing of brothels and sex workers, to limit the number licences for both sex premises and sex workers. At present the Bill suggests that any decision to limit the number of brothels via the proposed licensing system is at the discretion of the CEO. Again, there are some concerns amongst local councils that centralising certain powers within state government agencies in respect to brothels runs the risk of local community and planning concerns being overlooked. Hence, there have been calls from within local government that in order to ensure proper and orderly planning as well as upholding good democratic practices they should be actively involved in decisions being undertaken by the DLGR that affect their jurisdictions.

CONCLUSIONS

This paper has sought to highlight the broad contours of the preciousness of the suburbs and the perniciousness of prostitution as played out in parliamentary debates on the legalisation of brothels in

WA. Despite repeated and various attempts to regulate (and even eradicate) prostitution around the world the so called oldest profession in the world manages to survive, thrive even for a variety of reasons. In WA governments of different persuasions have sought to regulate and control brothel-based prostitution via the use of a combination of policy instruments. With increased suburbanisation and the special place that the suburbs hold in our social and political imaginations, Liberal politicians in WA have sought to protect the suburbs and suburbanites from the supposed contagious effects of prostitution.

The 2008 Prostitution Act was perceived as allowing the proliferation of home-based 2-person operated brothels in the suburbs. Invariably, this perception caused something of a moral and political panic at the State and local government level. A number of local councils moved to change their town planning schemes so as to exclude this land-use from their jurisdictions. The 2008 Act was never fully proclaimed and it has recently been usurped by new draft legislation that was initially introduced in July 2011 and has only just commenced its second reading in Parliament on 3 November, 2011 (Porter, 2011). The draft bill when put out for public comment received a significant number of submissions from a wide range of stakeholders:

‘...as at the formal end of the consultation period there were 357 submissions, either from local governments, various organisations, people associated with the sex industry, and members of the public. Generally, submissions appeared to be either motivated on religious/moral grounds, health grounds, or from people who indicated they were involved in the sex industry. The local government submissions were largely focused on planning issues’

(Personal communication, Attorney General's Office, 3 November, 2011)

It is clear from the revised 2011 Bill and the Attorney General's speech commending the second reading of the Bill that local government planning concerns outlined above have been taken on board. Whilst the new revised Bill will legalise brothel-based sex work it is filled with a series of rules and regulations all designed to tightly control sex work/sex workers. In essence, all brothels – commercial and/or home-based - will be regulated on three fronts: A strict licensing regime affecting brothels, brothels owners/managers and sex workers is proposed and is to be overseen by the state's Department of Racing, Gaming and Liquor. The Police are to be given additional powers to ensure that brothel owners/managers and sex workers adhere to the licensing regime and any other pertinent legal requirements, particularly in relation to the protection of children and the exclusion of brothels in any residential area. Local government planning departments will have responsibility for issuing development approval for commercial and home-based brothels. Development approval must be obtained first before a brothel owner can apply for a licence from the DRGL.

The Attorney General is vociferous in his position that no brothels will be permitted in suburban or residential areas. This standpoint is premised on the claim ‘that prostitution is an activity which carries with it significant risks to the health and safety of participants, the potential for the involvement of organised crime, and the capacity to cause harassment and nuisance to ordinary Western Australians’ (Porter, 2011). Although the revised Bill does not stipulate any limits on the actual number of brothels that can exist in any local government area, limits or caps are being put in place by stealth via planning regulations that will restrict brothels within a certain distance of residential dwellings (100 metres) and ‘protected places’ such as schools, churches and community and welfare organisations (200 metres). In addition, the DRGL has discretion in determining the number of licences it wishes to issue. The DRGL is known as being somewhat of a conservative organisation and as such it will most likely seek to minimise the number of brothel licences it issues.

Finally, despite the onerous fines proposed under the revised Bill for those that flout the law, as McKewon (2004) has shown, previous attempts to heavily regulate sex work/sex workers in WA has merely driven parts of the sex industry deeper underground. Given this history in WA and efforts to control prostitution elsewhere in the world, it is difficult to imagine that brothels and/or sex workers will be completely eradicated from the suburbs and confined to designated spaces.

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