

Legalising Sex Work: The Regulation of ‘Risk’ in Australian Prostitution Law Reform

Victoria Nagy* and Anastasia Powell†

Abstract

Debates about the legalisation of sex work in Australia have tended to focus on the ‘risks’ of sex work that need managing and regulating. However, in some states, the framing of these risks has been dominated by socio-cultural and political concerns, such as morality and suburban serenity, rather than the concerns of workers in the industry. In this article we discuss how the risks of sex work have been envisaged and debated in two case study states (South Australia and Western Australia) since 2000, and consider why Bills have been repeatedly unsuccessful in reforming sex work law. In so doing, we apply a conceptual framework to tease apart the socio-cultural and political framings of ‘risk’ in crime policy generally.

Keywords: sex work – law reform – risk – legalisation – South Australia – Western Australia

Introduction

The legal reform and regulation of sex work serves as an exemplar of a ‘wicked’ crime policy problem. In public policy, wicked problems are ‘complex, open-ended and intractable’ and occur where ‘both the nature of the “problem” and the preferred “solution” are strongly contested’ (Head 2008:101). Often these contestations manifest in divisive disagreements surrounding not only the instrumental goals of a given reform, but also the implicit symbolic goals or value statements contained therein. In recent years, many Australian jurisdictions have moved toward decriminalisation, legalisation and/or regulatory models of sex work reform. While there is a well-established political division between feminist positions on sex work, foremost between whether to recognise it as legitimate legal work or to eradicate it as a form of exploitation of women (see, for example, Dempsey 2010), these are not typically the debates that feature in the framings of the problem by Australian legal reformers. Instead,

* Honorary Associate, La Trobe University, School of Humanities and Social Sciences, Bundoora Vic 3086 Australia. Email: v.nagy@latrobe.edu.au.

† Senior Lecturer, RMIT University, GPO Box 2476, Melbourne Vic 3001 Australia. Email: anastasia.powell@rmit.edu.au.

what emerges in many Australian debates on sex work reform is a clear concern with particular ‘problems’ or ‘risks’, and with criminalisation, decriminalisation or legalisation and regulation all variously cast as the necessary ‘solution’ to manage these risks.

This article proposes a framework for analysing ‘risk’ in sex work reform debates, which may also be useful for conceptualising the complex and often polemical debates surrounding other ‘wicked’ crime policy problems. Here, we focus on two case study states: South Australia (‘SA’) and Western Australia (‘WA’). We undertook an analysis of recent parliamentary debates since 2000 in both states about proposed legislation to legalise sex work. As part of this study, we focused on Hansard records from both Upper and Lower Houses of Parliament in SA and WA. The study investigated how sex work was presented in debates by Members of Parliament, what issues with sex work the proposed Bills planned to address, and what risks with sex work were identified in these debates. The article first summarises the legislative and regulatory context in Australia. Second, we present our findings and analysis of recent parliamentary debates in the two case study states, and finally we discuss the utility of a risk-based analytical approach. In so doing, we seek to open up debates on the future direction of research and the range of legislative and policy responses affecting workers in Australian sex industries.

Throughout this article we choose the term ‘sex work’ over ‘prostitution’ as this is a preferred term used by women in the industry (Bruckert et al 2013). However, we acknowledge that feminist activists, criminologists and gender theorists have debated the appropriateness of both terms and that both carry significant social and political meaning (Thompson 2012; Jenness 1990). It has been argued, for example, that the term ‘sex work’ acknowledges the agency of women and their capacity to make choices within a broader labour context, and that the occupation itself should not be stigmatised as ‘deviant’ nor taken to stand in for a woman’s sense of self or identity (Jenness 1990; Sandy 2014). Meanwhile, ‘prostitution’ and ‘prostitute’ have been employed throughout history as shaming terms, and have also come to signify the industry’s exploitative nature (Thompson 2012). While we agree that the sex industry can be coercive, exploitative and an unsafe environment for women (as well as men and gender-diverse persons) workers, our intention is to proffer an analysis that acknowledges the complexities and contradictions of reform debates on this issue. Therefore, and in the absence of an alternative term, we continue to use the terms ‘sex work’, ‘sex worker’, and ‘women working in the sex industry’. We do, however, use the term ‘prostitution’ when referring to specific legislation or reform titled as such. It should be noted that this article focuses on female sex workers throughout. In undertaking this analysis, we acknowledge that there are many men and transgender workers in the sex industry and that their experiences are a relevant and valuable contribution to legislative debates about sex work. However, as Havelková notes, ‘the distribution of men and women in the positions of buyers and sellers makes prostitution an extremely sex-segregated field where the demand is overwhelmingly created by men and the supply by women’ (2011:56). We therefore focus our attention in this particular article on women in the sex industry.

Background

Reforms to sex work law and regulation are inevitably prompted by a concern to remedy a perceived social ‘problem’ to which reforms are an intended ‘solution’. Like other scholars in legal and policy fields who examine such ‘problem-solving’ policy (for example, Bacchi 1999; Haines et al 2007; Haines 2011; Murray and Powell 2011; Powell and Murray 2008), we find it useful to distinguish between ‘social’ and ‘sociological’ problems. While policy

(including law and regulation) may be directed at the instrumental or tangible goals of solving a social problem, the very conception of what constitutes the 'problem' and what is to be done about it is both political and contested. Indeed, 'every policy proposal contains within it an explicit or implicit diagnosis of the "problem"' (Bacchi 1999:1). Law and regulation therefore play important roles in the 'meaning-making' of social problems, functioning as sites where meanings can be 'defined, contested and challenged' and where socio-cultural norms and values can be confronted or reconfirmed (Smart 2003:3).

If law operates as a site for the making and expression of socio-cultural meanings, such as norms and values, it follows that law reform can produce both instrumental (tangible) and expressive (symbolic) effects (see Stolz 2007). Indeed, Stolz (2007) and others (Edelman 1965; Gusfield 1986) have pointed out that, for some interest groups, the symbolic effect of recognition of the groups' norms and values may itself be one of the intended goals of a particular reform. Thus struggles over the definition of social problems and their solutions in law reform may represent a simultaneous symbolic struggle between conflicting social groups (Gusfield 1986). As such, an analysis of policy responses to social problems must arguably also encompass a sociological analysis of the constitution or making of that 'problem' and its 'solution' (Bacchi 1999; see also Murray and Powell 2011).

Analyses acknowledging both the expressive and symbolic goals of law reform, and the constitution of policy problems themselves, are of particular relevance to feminist struggles for sex work law and policy reform. It is well established that there are significant divisions, both within and external to feminism, as to where the 'problems' of sex work lie (see Havelková 2011; Coy 2012) and therefore what the 'solution' should be. For many feminists who identify sex work foremost as an outcome of gender-based inequality and/or exploitation of women, criminalisation remains the preferred approach (see, for example, Farley et al 2003; Farley 2004; Groves et al 2008; Sullivan 2007). Criminalisation of clients, rather than workers themselves (as per the Swedish model), is significant both for its instrumental goal of reducing the risk of harm to women and its symbolic goal of expressing societal agreement that prostitution is linked to gender inequality. Meanwhile, for feminists advocating for sex workers' rights, decriminalisation of prostitution is preferred to address problems of workplace health and safety (instrumental goal), with sex work itself seen as legitimate work that would not be harmful if allowed to operate legally (symbolic goal).

Analytical framework: 'It's all about risk'

Recognising the need for an analytical framework that can more fully account for the complexity of prostitution regulatory and legal reform, the socio-cultural and political context of such reforms, and the need to move beyond a polemical debate, we employ an approach to regulatory analysis developed by Haines et al (2007; further developed in Haines 2011). This approach recognises that while regulation may have as its instrumental goal the avoidance of harm or a reduction in the 'risk' of harm, it must often do so in a broader context of conflicting demands (such as, for example, demands for greater regulation simultaneous with claims of over-regulation, or addressing the values or concerns of widely divergent interest groups).

Haines and colleagues (2007) usefully explicate three dimensions or 'ideal types' of risk to which regulation and legislation inevitably attempt to respond, but do not always explicitly identify and address, thus potentially undermining reform. These are: actuarial, socio-cultural and political risks, each of which can influence the purposes, processes and ultimate success or failure of regulatory reforms. Actuarial risk:

refers to risk understood purely in terms of the impact and probability of a certain category of 'harm' ... [it] involves quantifying both the impact and likelihood of an adverse event ... so that

measures can be put in place to reduce its likelihood and/or associated harms (Haines et al 2007:439).

Socio-cultural risk, meanwhile, refers to the value-based assessment of risks according to the norms, meaning and significance attributed by the society itself. Drawing on Durkheim (1964) and Douglas (1992), socio-cultural risk identifies that what is conceptualised as 'risky' is often a perceived threat to social order or to our 'way of life'. Haines et al (2007:440) further note that 'in contemporary societies we often fail to distinguish socio-cultural from actuarial risk assessment and/or try to treat socio-cultural risk as if it were actuarial' (that is, calculable and amenable to specific interventions).

Political risk refers to the complex challenges, and often contradictory demands, facing representatives of the state in democratic, late-capitalist societies (Habermas 1975). Politicians are expected to successfully manage the economy and public sector — and social infrastructure — to ensure citizens' wellbeing and safety. To do so can involve contradictory demands: ensuring a healthy, competitive economy requires restricting taxes and burdensome regulation of business. At the same time, reducing tax levels affects governments' capacity to fulfill promises and expectations to maintain hospitals, schools, universities, social welfare and so on. Haines et al further argue (2007:441):

This means that, as Habermas (1979) points out, governments in late capitalist democracies constantly risk loss of credibility and legitimacy: they face 'legitimation crises' ... In the socio-cultural sphere, however, politicians often focus on reducing perceived risks ... by 'playing up' their role as guardians of social order (e.g. through 'law and order' campaigns).

As such, socio-cultural risks are always potentially ripe for political manipulation.

The relevance of these three dimensions or 'ideal types' of risk to sex work further uncovers the complexity of the task of reform. In the context of sex work, for example, actuarial risk might refer to the statistical likelihood of harms such as of violence, trafficking, health and safety, and/or corruption concerns. Socio-cultural risk might refer to the differential significance attributed to concerns over 'morality' or 'social order', or 'disease' over other health and safety concerns, and to sex work as inherently 'exploitative' or as legitimate 'work'. These may be in conflict with and highly contested by different interest groups within a society. Political risks might refer to the concern of governments in maintaining legitimacy in the face of these conflicting socio-cultural concerns, as well as other competing commitments such as fiscal concerns (particularly in the wake of recurring financial crises), which might undermine social spending on substantive social and welfare-oriented reforms.

Next this article turns to the basis of our study and summarises the Australian legislative context, before applying the three-tiered risk framework to analyse recent sex work reform debates in the two case study states.

The current study

The data forming the basis for our analysis here are Hansard records of parliamentary debates in the Upper and Lower House chambers of the SA and WA Parliaments. There are distinct benefits of using these records as the primary sources for locating the political debates around 'risk' and sex work, although accessing only Hansard records for this form of analysis does have limitations. One drawback is that such political debates can be along partisan lines, rather than representative of the electorate or of broader society. However, Hansard records allow for the accessing of views of MPs who do not regularly appear in the media or on social media,

where their views on sex work may be discussed or challenged. Accessing the Hansard records for analysis also allows for the political and strategic debates around sex work that may not be covered by the media as sex work legislation may not be considered 'newsworthy'. The debates also offer insight into which risks are considered more important to state representatives at a given period.

We focus on these two case study jurisdictions as each has embarked on legislative reform in the last few years, sparking renewed parliamentary and public debates. We have chosen to also analyse data from the previous time both states sought to introduce legislation: SA in 2000 and WA in 2007 and 2008. In early 2012, SA again began to debate legalising prostitution. In November 2012, the relevant Bill was not passed, but a new Bill was introduced in 2013 which lapsed and failed to be debated. Currently, SA does not have a sex work legalising Bill in Parliament. The debate has been slowly rebuilding in WA since 2010. The 2012 Bill regarding the legalisation of sex work in WA failed to pass and, as of the end of 2015, there has been no new debate. In analysing the legislation and policy debates of these Australian states we concentrate on the contested 'problems', 'risks' and 'harms' of sex work, as well as the suggested solutions and benefits of particular proposed regulatory approaches.

It is not our intention to advocate for a particular model of prostitution reform, whether decriminalisation, legalisation/regulation or criminalisation. Research evidence regarding the effectiveness of any of these approaches is often contradictory (Matthews 2008; Rekart 2005; Sanders 2007a, 2007b; Sanders and Campbell 2007; Cusack and Prior 2010; Baker et al 2010; Farley 2004), which reflects the complexity of the issues and is a point we will return to in our analysis.

Australian legislation and regulation of sex work

The history of prostitution in the various Australian states and territories has been well documented (Frances 2007; McKewon 2005; Sullivan 1997). The legislation across the Australian states and territories agrees, broadly, on one thing: it is not *always* illegal to sell sex (Pinto et al 1990; Quadara 2008). The differences between the jurisdictions' policies and legislation begin with where or how the sex work is performed, whether or not it is licensed, and who else is involved in the business side of the work (Sullivan 2008). While sex work is not decriminalised in any other state other than New South Wales ('NSW'), Australia as a whole has opted for a more relaxed regulation of sex work than other English-speaking countries like the United Kingdom and the United States (Sullivan 2008). Underlying this relaxed regulation of prostitution has been the idea that sex work can be a legitimate form of employment so long as strict conditions are met by individuals and businesses within the industry (Sullivan 2008).

In states and territories other than NSW, aspects of sex work are criminalised. The differences in the regulation of sex work can provide insight into the political cultures of each jurisdiction and what each state or territory has chosen to focus on when creating legislation around sex work. As Hancock argues, 'criminalising certain forms of prostitution work has the direct consequence of lack of protection for sex industry workers from violence, robbery, and intimidation for those working illegally' (1992:167). Criminalisation of certain parts of the sex industry also results in law enforcement agencies selectively choosing to apply criminal law against women and not men, in particular to female sex workers and not male clients (Hancock 1992). Sullivan (2007) has argued that where the states have focused on the occupational health and safety of sex workers, this is often couched in terms where the (female) sex workers are ultimately responsible for the health and safety of the (male) clients

as well as themselves. Legislation in Queensland and NSW, where mandatory sexually transmissible infection ('STI') testing of sex workers is enshrined in law, locates the site for potential STI infection as the sex worker's body, not the client's. In Queensland, it is an offence for a prostitute to work if he or she is infected with an STI, but there is no corresponding offence for a client engaging the services of a sex worker if the client is infected (Sullivan 2008). Therefore, although prostitution may be decriminalised or legalised across Australia, this does not mean that the laws are necessarily in place to protect sex workers or are effective in destigmatising the occupation and legitimising it as a form of employment.

Similar to Queensland, until 2000 WA police worked under a containment policy (Donovan et al 2010) in which certain brothels were allowed to continue to operate if workers were willing to supply information to the police (for example, name, address, fingerprints and so on) to be kept in an unofficial database. However, as Donovan et al note, the abandonment of this containment policy has not resulted in police following the formal provisions of WA law. Instead, abandonment:

[a]ppears to refer to a *laissez-faire* policy approach to brothels in which there was a low level of law enforcement and some tolerance of both containment brothels (i.e. those approved under the former policy) and non-containment brothels. For both 'types' of brothels, however, it appears that the database of workers continued to be maintained as an informal register of sex workers in WA (Donovan et al 2010:34).

The abandonment of the WA containment policy in 2000 was decided after prolonged review and the resulting 'adverse comment and criticism due to its lack of clarity, the absence of legislative foundation and potential to afford opportunities for corruption' (Report of the Prostitution Law Reform Working Group 2007:14). By and large this left prostitution in WA unregulated by police. In the place of the containment policy was the *Prostitution Act 2000* (WA); however, the Act predominantly deals with street sex work, advertising, and offences involving children and sex work (Donovan et al 2010). As Donovan et al conclude, 'prostitution laws in WA are a patchwork of prohibitions, some overlapping, some without a clear rationale and others drafted in terms which have no application to the contemporary circumstances in which the sex industry operates' (2010:34). It is this patchwork of laws, plus the perceived problems with sex work, that the WA Parliament was attempting to redesign into one comprehensive Act.

Most of SA's laws regulating sex work have not been updated for over 50 years. The *Summary Offences Act 1953* (SA) and the *Criminal Law Consolidation Act 1935–1976* (SA) are still used in SA to police sex work. There have been laws enacted to protect children from sexual exploitation and to prevent individuals from being deceived into working in the sex industry, but there has not been a comprehensive redrawing of the legal boundaries. Numerous attempts to change the law have failed; prior to 2010, there had been six attempts to overhaul sex work legislation in the previous 30 years, beginning in 1980, followed by attempts in 1986, 1991, 1993, 1998, and 1999. As with the other states and territories, selling sex is not illegal, but because being on the premises of a brothel, managing a brothel, soliciting or 'loitering for the purposes of prostitution in a public place' are all illegal in SA, prostitution is effectively illegal (Pinto et al 1990). There are no laws punishing clients in SA, but given the majority of sex workers are women, the prostitution laws are gendered and skewed towards criminalising women, not men (Pinto et al 1990).

Legislation in Australia around the legality of sex work varies greatly and often criminalises the sex worker not the clients, even in states where facets of prostitution are illegal. South Australia and WA have debated whether sex work should be legalised and, if so, in what manner it should be regulated. It is to these debates that we now turn.

The 'risks' of prostitution in parliamentary debates

Discussions regarding prostitution and whether or not it should be legalised have been relatively frequent in WA in the past decade, perhaps indicating that a resolution is both sought and highly contested by policymakers. A number of common themes emerged from both the 2007–08 and 2011–12 debates about amending prostitution legislation. Haines' identified actuarial, socio-cultural and political risks are all evident in the WA parliamentary debates. However, the lines between actuarial and socio-cultural risks are blurred (as indeed suggested by Haines et al 2007), while political risks in these debates were not clearly articulated.

In a bid to overhaul the current system of 'containment', the Prostitution Amendment Bill 2007 (WA) was introduced. According to the synopsis of the Bill, 'the purpose of the Bill is to provide a framework for addressing the regulation of prostitution in a manner that is conducive to public health, protects sex workers from exploitation and protects children from being involved in or exposed to prostitution'. Later, when the Prostitution Bill 2011 (WA) was introduced, there was a notable shift in focus from sex worker health and child protection to morality concerns, organised crime and law and order. The 2011 Bill was introduced with the aim to provide 'police, government and the community with the necessary tools to finally crack down on unlawful prostitution' (Hansard, 14 June 2011, 4171 (Charles Porter (Lib))). This shift may have been due to a change of government elected on a strong law and order platform.

South Australia has been debating legislation surrounding sex work and its legalisation for a considerable time. Prior to the in-depth debates about the Statutes Amendment (Sex Work Reform) Bill 2012 (SA), the focus was on the Prostitution (Regulation) Bill 2000–01 (SA). The two Bills, and the ensuing debates, were, as in WA, at odds about what the 'risks' of prostitution were. However, as we will demonstrate, what the 'risk' is perceived to be in SA is distinctly different to how the risks and harms were discussed in WA, with the majority of the debates, especially the most recent ones, concerned with political risk management.

Actuarial risks

The Prostitution Amendment Bill 2007 (WA) was introduced because '[t]he Greens (WA) want prostitution to be managed primarily as a health issue, addressing occupational health and safety issues in particular' (Hansard, 11 March 2008, 590 (Giz Watson (Greens))). The Bill was also seen as a remedy that would allow 'access to legal recourse in the event a crime is committed against [sex workers], and to be protected from violation of their privacy and from industrial, civil and human rights violations' (Hansard, 12 March 2008, 824 (Shelley Archer (Ind))). While proponents of the Bill viewed the occupational health and safety protection of sex workers as a necessity to provide protection against the dangers of sex work to the workers' health, detractors invoked the health risk to the population of WA as a reason to *not* legalise prostitution. As Haines (2013:38) notes, within actuarial risk, a hazard 'is seen as external, apprehensible ... and manageable through a carefully targeted regulatory regime'. More narrowly, such a hazard is often considered external to the nexus of activity, and can be removed without resulting in any consequences for the majority (Haines 2013). To Members of Parliament ('MPs') against legalisation, and indeed in many discussions of acceptable womanhood within any given society, female sex workers are the 'other' from whom women, men and children need protecting (Smart 1992). In these 2007–08 debates women's bodies were described as the site of infection and disease. As one MP stated, 'no onus appears to be placed on sex workers to produce a medical certificate to say that they are infection or virus free before they commence their activities' and thus 'that places us in the dilemma that if we

promote the business of prostitution, we also promote the opportunity for a greater incidence of infection to occur between the ... prostitute — and the client' (Hansard, 13 March 2008, 848 (Samuel Cash (Lib))). This mirrors concerns in Queensland and NSW, where sex workers are considered the sites of contagion, not their clients.

Other detractors of legalisation focused on the threat of crime to the security of WA due to links between organised crime and prostitution. For example, when passing sentence and future conditions for parole of an offender, the judge's focus on community safety is an aspect of the risk that the crime and/or criminal presents to the rest of the population. Organised crime was an important part of WA's discussions about legalising prostitution. For example, during debates, Robyn McSweeney (Lib) argued that 'prostitution cannot be seen in a vacuum. Prostitution goes hand-in-hand with crime, drugs and the exploitation of women and children' (Hansard, 13 March 2008, 833). Wendy Duncan (Nat) likewise argued that 'these workers are vulnerable to violence and disease. They are usually part of the cash economy and therefore vulnerable to blackmail, exploitation and extortion' (Hansard, 13 March 2008, 837). Donna Faragher (Lib) was of the opinion that there 'is a distinct reality when it comes to prostitution, and that is its association in many cases with organised crime, money laundering, drugs and other illegal activities' (Hansard, 13 March 2008, 835). According to Barry House (Lib), it is 'pimps, petty criminals, drug affected people, society misfits, people involved in organised crime and some people prone to corruption' who would benefit from the change in legislation (Hansard, 12 March 2008, 730). Detractors did not tease out how the wider community would be affected by legal prostitution as opposed to the illegal model, or how the criminal elements would benefit from any change in legislation.

Similar concerns about disease and community health were expressed by those against legalisation in SA. The health of society was at stake, according to Mitch Williams (Lib), as prostitutes 'once they get to a certain point in their life cycle, their desire to protect the rest of society, or their clients, from cross-infection, I would suggest, is very low and very much lower than the general public's' (Hansard, 28 June 2000, 1513). According to Peter Lewis (Lib), 'still other people who do not respect and value themselves are willing to sell access to themselves, even though it puts them in great peril — because you are only as clean as your last screw. If you are promiscuous that is the risk and that is the truth' (Hansard, 28 June 2000, 1517). The risk of sex work to the health of the community, while broadly an actuarial risk, was couched as a socio-cultural risk. Not only are sex workers the vectors of disease, according to these debates, but they are actively spreading disease, and it is their promiscuity that is the issue. Thus, like WA, there is a collapse of morality concerns with health and safety concerns and arguably an over-statement of levels of STI transmission among sex worker populations. This point was not lost on one MP:

I would like to see the incidence of STDs being passed onto wives by married men who have casual sex encounters and affairs [because] prostitutes in the main do practise safe sex nowadays, and I do not want to hear the sort of rubbish suggesting that they do not (Hansard, 28 June 2000, 1514 (Lyn Breuer (ALP))).

While community health and community safety may have been the areas of risks identified to the lives of Western Australians in 2008, and risks that could be actuarial in nature were not central to discussions of the Bill in 2012, the majority of debates for both Bills ultimately centred around socio-cultural risks.

Socio-cultural risks

Debates about both WA Bills were primarily focused about the risks that sex work had to the 'moral fabric' of WA society. Partly there were fears that this legislation would legitimise sex

work as a career option, or prevent upstanding citizens from enjoying the suburbs. As one MP stated, 'this Bill is all about breaking down our community and pulling out another thread from the *moral fabric* of our society' (Hansard, 13 March 2008, 835 (Donna Faragher), emphasis added). For many Parliamentarians, the 'moral fabric' of WA society was seen to reside wholly in the suburbs. Prostitution would, according to these MPs, flourish in 'people's backyards — in their local neighbourhood' (Hansard, 12 March 2008, 730 (Barry House)) and:

advertising will appear throughout our community, and on radio and television ... Judy Longlegs of Cotteslow will come along and advertise her services probably in the local kindergarten window in case dads pick up their kids from kindergarten, in the local newspaper and on the radio. Everywhere we go, Judy Longlegs will be advertising her services (Hansard, 3 April 2008 (Colin Barnett (Lib))).

The concern about prostitution in residential areas was addressed in the 2011 Bill, which would have prohibited sex work in residential areas, thereby 'protecting' WA families. This stemmed from another fear voiced by MPs regarding enabling sex workers to work close to residential areas. In 2008, there was concern that legalised prostitution would 'encourage some unscrupulous business operators to push prostitution as a highly paid employment opportunity for young women in Western Australia ... only a person with a sick mind would set out to encourage women to engage in this particular lifestyle' (Hansard, 13 March 2008, 838 (Samuel Cash)). According to Cash, 'a greater number of women will enter the employment area of prostitution because, when the fear of prosecution is taken away from certain women, they will be encouraged to enter this lifestyle' (Hansard, 13 March 2008, 848). Accordingly, legalising prostitution would 'destro[y] part of the moral fabric of our society by agreeing to this legislation that will promote prostitution among our female population in particular' (Hansard, 13 March 2008, 848 (Samuel Cash)). Legalised prostitution would also, according to Anthony Fels (Ind), result in marriages breaking down as this Bill would:

contribute to further family breakdown through increased availability of prostitution in Western Australia, which will only lead to increased use by men' and 'many wives might not even know what their husbands get up to from time to time, but this legislation will allow more opportunity for husbands and men to participate in prostitution (Hansard, 13 March 2008, 849).

The role of the politicians in this debate was therefore to protect women from themselves, as women were seen as the guardians of morality in WA and prostitution as the risk to it. As Haines (2013:41) notes, socio-cultural risk is 'a threat to the ... collective ...; it is a threat to cohesion, to identity, and to belonging'. Women's role as the guardians of morality and the moral panics that have ensued when a threat to social and women's morality is identified has been well documented (Smart 1992). These debates were therefore retracing old ground.

When the Prostitution (Regulation) Bill 2000 (SA) was first under debate, Dorothy Kotz (Lib) expressed a fear that 'prostitution works against social justice and community morality in a number of ways' (Hansard, 12 July 2000, 1830) and, congruent with the WA debates, stressed that, 'I will continue to unashamedly promote that the protection in law of *moral values* enhances the wellbeing of society and certainly preserves the basic attributes of humanity' (Hansard, 12 July 2000, 1831, emphasis added). During the same debate, Ivan Venning (Lib) argued that 'we must make a stand somewhere and try to uphold the moral standards of society' (Hansard, 12 July 2000, 1839). Late in the debate, Paul Holloway (ALP) likewise stated that 'it is important that our society take a moral position on some issues, and this is one of them' (Hansard, 17 May 2001, 1521).

Several MPs countered the arguments about the moral risks of prostitution. As Michael Atkinson (ALP) noted, the nuisance factor of brothels in residential zones was not due to prostitutes: 'it is not the girls who create the trouble: it is the customers, queuing up, getting impatient, arriving drunk and leaving drunk. That is where the trouble arises' (Hansard, 12 July 2000, 1837). Lyn Breuer opined that 'the issue of prostitutes breaking up marriages is absolutely, totally irrelevant. Married men break up marriages because they want to break them up' (Hansard, 28 June 2000, 1514). In the Legislative Council, Bob Sneath (ALP) argued that 'all prostitution would not exist without clients — unfaithful partners, frustrated males and females, sex starved people, oversexed people, etc' (Hansard, 14 November 2000, 458). Even those not in favour of legalising prostitution in SA agreed that current legislation was 'discriminatory in that it penalises only one participant in the prostitution transaction — the prostitute, and not the client' (Hansard, 17 May 2001, 1520 (Carmel Zollo (ALP))). In this way, and quite unlike the development of debates in WA, there was some discussion of the injustice of criminalisation of those working in the industry.

The influence of MPs' political alliances was also evident in parliamentary debates with, for example, criminalisation being suggested by conservative members as an alternative approach to legalisation. Dennis Hood (Family First) suggested criminalising clients along the lines of the Swedish model of controlling prostitution, in order to maintain the status quo of heteronormative relationships, rather than to protect the sex workers. Hood appeared to sympathise with the plight of women in the industry, but noted that 'the truth is that the damage done by prostitution to relationships between married couples is undeniable' (Hansard, 18 July 2012, 1800). As Hood further noted, 'when you put all this together, prostitution hurts women, it hurts men, in fact, and it certainly hurts families, and I believe it *hurts society*' (Hansard, 18 July 2012, 1809, emphasis added). Another MP also argued that while prostitution is 'often described as the oldest profession', it 'brings with it a range of related ills in many cases which hurt society and hurt individuals considerably' (Hansard, 6 September 2012, 2825 (Martin Hamilton-Smith (Ind))).

Political risks

As Haines (2013:41) outlines, political risk 'comprises [of] a tension between economic imperatives and social reassurance' and legislation regarding sex work can be seen to encompass both of these. The 2011 Bill, when introduced by the newly elected WA government, was concerned with reassuring the public that the suggested legislation would uphold morality in WA, while also ensuring that the business of sex work would take place away from families. As Charles Porter stated:

[T]his bill will ensure that, for the first time, the laws of the state are clear and transparent and reflective of overwhelming community sentiment regarding prostitution. The Bill aims to provide police, government and the community with the necessary tools to finally crack down on unlawful prostitution (Hansard, 14 June 2011, 4171).

The focus of this Bill was on providing 'ordinary Western Australians ... the quiet enjoyment of their neighbourhood' and if this 'is disrupted by unlawful prostitution, police will have definitive laws to work with and the tools necessary to shut down those brothels' (Hansard, 14 June 2011, 4171 (Charles Porter)). According to a statement from Porter released a year before the Bill was tabled in Parliament, the Bill:

would have had the practical effect of an unpoliced growth in decriminalised, unregulated brothels in the suburbs of Western Australia ... with ... a corresponding increase in antisocial and nuisance behaviour, in physical and sexual violence against women' (Hansard, 25 November 2010, 9671).

Additional resources for policing prostitution, as well as introducing a licensing scheme limiting prostitution beyond the borders of residential areas, were seen as the solutions to the 'harm' of sex work to the broader community, keeping sex work away from the majority of the population and thereby keeping the community safe, keeping key election promises and allowing the government to be seen to be the guardian of law and order in the state. As Haines argues, political risk is comprised of two pressures that can threaten a government 'political legitimacy that arises from a government's inability either to manage the economy ... or from an incapacity to reassure the population about their own security and doubts about the capacity of the government to provide such security' (2011:4). In this case, the newly elected WA Liberal Government, a party that campaigned on its ability to provide law and order to the community, potentially sought to reassert its position as the party that brings security to neighbourhoods. A short first and second reading of the Bill ensued but left sex workers and the Labor Party unhappy with the Bill. Due to an impending election, the Bill was not passed and no new Bill was introduced.

The SA MPs who were against legalising prostitution were concerned about the 'message' that legalising sex work would send to the community. As one MP noted, 'it is not safe to be promiscuous. For parliament to be sending a message to society that encourages any form of promiscuity, to my mind, is a reflection on our inability to understand what our real responsibilities are' (Hansard, 28 June 2000, 1517 (Peter Lewis)).

Concerns that did not arise fully in WA debates did in SA, specifically about child sexual abuse and child exploitation. Accordingly, discussion centred around the state's responsibility to protect SA's children. Terry Cameron's (Ind) argued for increasing the rights of police and having state control over prostitution because 'if the police knew where the brothels were they would be in a much better position to protect underage children from exploitation by paedophiles' (Hansard, 14 November 2000, 464). Similarly, the legalisation would 'remove the criminal element from the industry, such as drugs and money laundering' (Hansard, 14 November 2000, 464 (Terry Cameron)). Thus legalisation was not to improve the lives of women working as prostitutes, but to better protect the community against criminal behaviour. As Cameron stated, 'what we are attempting to do in a pragmatic way is to exercise more control over this industry and to tidy up some of the more unsavoury aspects of it' (Hansard, 14 November 2000, 466). Not only would the state then control brothels, but 'decriminalisation makes the industry less attractive to criminals. Therefore, the risk of corruption and violence in the industry is reduced' (Hansard, 14 November 2000, 455). As Bob Sneath further argued, the Bill being debated would 'protect workers ...; ensure that the link between prostitution and crime is broken; widen the powers of the police to prosecute those who do not comply with any new act; and put fewer obstacles in the road of police while they are exercising their duties' (Hansard, 14 November 2000, 459).

On the other hand, according to Paul Holloway, even discussing the possibility of legalisation could lead to increased criminal activity, which requires vigilance and is proof of why more police are required by the state:

Perhaps even more alarming is the fact that the police that I have spoken to recently indicate that already the number of brothels in this state is mushrooming in anticipation of this bill being passed. As I understand it, there is also evidence of increasing drug use within the brothels that are operating at the moment. To add further alarm, there is evidence that motorcycle gangs ... are showing increasing activity in prostitution (Hansard, 15 March 2001, 1055).

Discussions shifted considerably throughout 2011 and 2012 towards social justice and human rights concerns as to how SA could better protect sex workers. As described by Steph Key (ALP) (who introduced the private member's Sex Work Industries Bill 2011 (SA)),

the main features of the Bill were to: decriminalise sex work in SA for adult workers; extend current occupational health and safety standards and requirements to the sex industry and workers; place restrictions on where sex work could take place; assist workers to exit the industry; ensure that children remain protected and outside of the sex industry; and educate the workers about STIs. Key also maintained that ‘there is compelling evidence that decriminalisation has achieved the aim of addressing sex workers’ human rights and has a positive effect on their health and safety’ and ensure they ‘hav[e] the same rights and responsibilities as other workers’ (Hansard, 31 May 2012, 1906). The state’s responsibility is clearly articulated in Key’s Bill as protecting women in prostitution, as well as ensuring the business of sex work is controlled by the state to allay any concerns that the sex industry would fall into criminal hands.

Although sex workers were described as ‘severely disadvantaged’, ‘stigmatised by current attitudes’, ‘subject to the influence of unscrupulous types’ (Hansard, 6 September 2012, 2821 (Duncan McFetridge (Lib))), ‘victims because of basic sexual slavery’ (Hansard, 6 September 2012, 2828 (Don Pegler (Ind))), and being in need of protection (Hansard, 18 October 2012, 3277 (Susan Close)), according to supporters of legalisation, the damage could be stopped, and the sex workers could receive protection from the government only if they were willing to accept their responsibilities and pay taxes. Close noted that ‘it is time that the sex industry should be treated as conventional employment and subject to conventional employment and health regulations. Those involved in the industry would thereby have the same rights and responsibilities as other workers’ (Hansard, 18 October 2012, 3277). Duncan McFetridge argued:

the economic rationalists in this place ... would be quite pleased, I think, to see that this will make the profession come under a lot of legislation so that there will be the paying of taxes. People involved in the industry will actually be contributing to the state through taxes (Hansard, 6 September 2012, 2821).

The MP further argued that prostitutes, in exchange for ‘protection of the law’, have an ‘obligation to pay their taxes’ (Hansard, 6 September 2012, 2822 (Duncan McFetridge)), and later reiterated that ‘those involved in sex work have the same rights and responsibilities as other workers, for example, paying taxes’ (Hansard, 6 September 2012, 2822). The ability to change workplace legislation and bring sex workers under the protection of WorkCover or other work safety schemes would save the government money according to Frances Bedford (ALP), who argued that:

currently ... there is no WorkCover for sex workers and neither is there provision for superannuation. Therefore ... there are no nest eggs to draw on for post-work financial support. We are therefore forcing this group of workers to be welfare dependent, possibly for housing and certainly for their pension (Hansard, 6 September 2012, 2824).

Thus, the last debates about legalising prostitution in SA were primarily concerned with assessing the political risks related to a move to legalise sex work.

Discussion

The analysis of recent parliamentary debates on prostitution reform in WA and SA identifies continuing disagreement over the nature of the ‘harms’ or ‘risks’ of sex work, as well as the form of appropriate ‘solutions’. They focus on five key risks, or perceived risks, to be managed: ‘morality’ concerns, public nuisance by clients, STIs, organised crime and

trafficking. What then might a framework distinguishing actuarial, socio-cultural and political risk add to this analysis?

Our analysis reveals that actuarial risk, especially from the perspective and experience of women currently employed in either indoor (brothel or independent) or outdoor prostitution, is absent, or is not well articulated by MPs. Instead, politicians' debates 'about women' as sex workers (not *by* and *for* women) focus largely on socio-cultural risks in terms of 'morality', 'neighbourhood' and 'social order'. Where the potential for risks to women workers is raised, they are largely couched in socio-cultural terms (for example, as 'fallen women' or 'certain' women). The predominant risk of decriminalisation is that more women might enter an 'unacceptable' or 'unsavoury' occupation. Risks in terms of other value positions or interest groups (for example, equality concerns) are marginalised or absent from the debates. Indeed, experiences or concerns from the workers' perspectives are completely ignored in these debates, especially risks of sex workers' own working conditions, which appear less important than 'disease' and 'public nuisance' concerns to the broader community.

The analysed debates also indicate that political risk factors strongly in when and how the Bills are introduced and debated. For instance, in both SA and WA these Bills were debated in the lead-up to state elections and, even when the Bill was passed (as was the case in SA in 2011), if it was allowed to lapse by the incoming government, there was no resolution. In WA, although the issue was debated in the lead-up to an election on both occasions, MPs from the opposition were aware of the public sentiment against legalisation and so focus was on risk to middle-class families enjoying their suburbs. One exception to this is mention of the economic impact on women's future independence when working in an industry without regulated salary and superannuation provisions. However, there was no discussion about social and welfare forms of state support for sex workers themselves, such as: to provide skills, training and choice of work for women; or to support their health and safety in the workplace; or freedom from exploitation and violence. In fact, the lack of such discussion indicates that these concerns, as many other scholars have argued, may be dismissed as 'part of the job' for a sex worker (Sanders 2004). Similarly, political risks may factor in such reforms not only in an election year, but, for instance, in times of fiscal crisis. It is notable that the major Victorian reforms decriminalising and regulating some forms of sex work were introduced at a time of budgetary crisis when the then Kennett Government was applying economic rationalist reforms across the state in order to generate revenue and avert a fiscal crisis. Thus it was in the context of economic rationalism that the political case could be made that opening the purchase of sex to the 'free market' would produce the best policy outcomes.

Conclusion

What ultimately then is needed to progress reform in such 'wicked' crime policy areas? We suggest that one of the key factors missing in the analysed legislative reform debates discussed here is evidence-based discussion of actuarial risks from the lived experience of workers themselves. It is apparent that there is much socio-cultural concern expressed *about* women and communities in particular political debates, rather than the evidence or review into the diverse nature of sex work and experiences *of* workers in the relevant jurisdictions. Such research, we contend, is urgently required, and there has been some undertaken around NSW (Crofts and Prior 2012). While we recognise that evidence regarding actuarial risk cannot dissolve socio-cultural or political risk, it may go some way to balancing out these debates and opening up the reform conversation to consider broader possible legislative and policy options.

References

- Bacchi C (1999) *Women, Policy and Politics*, SAGE Publications
- Baker L, Dalla R and Williamson C (2010) 'Exiting Prostitution: An Integrated Model', *Violence against Women* 16(5), 579–600
- Bruckert C, Caouette A-A, Clamen J, Gillies K, Kiselbach S, Laliberté E, Santini T, Scott K and Symons E (2013), *Language Matters: Talking about Sex Work*, STELLA
- Coy M (ed) (2012) *Prostitution, Harm and Gender Inequality: Theory, Research and Policy*, Ashgate
- Crofts P and Prior J (2012) 'Intersections of Planning and Morality in the Regulation and Regard of Brothels in New South Wales', *Flinders Law Journal* 14, 329–57
- Cusack CM and Prior JH (2010) 'Religion, Sexuality and Retribution: Placing the Other in Sydney' in CM Cusack and C Hartney (eds), *Religion and Retributive Logic: Essays in Honour of Professor Garry W Trompf*, Brill, 347–68
- Dempsey MM (2010) 'Sex Trafficking and Criminalization: In Defense of Feminist Abolitionism', *University of Pennsylvania Law Review* 158(6), 1729–78
- Donovan B, Harcourt C, Egger S, Schneider K, O'Conner J, Marshall L, Chen MY and Fairley CK (2010) *The Sex Industry in Western Australia: A Report to the Western Australian Government*, University of New South Wales
- Douglas M (1992) *Risk and Blame: Essays in Cultural Theory*, Routledge
- Durkheim E (1964) *The Rules of Sociological Method*, The Free Press
- Edelman M (1965) *The Symbolic Uses of Politics*, University of Illinois Press
- Farley M (2004) "'Bad for the Body, Bad for the Heart": Prostitution Harms Women Even if Legalized or Decriminalized', *Violence against Women* 10(10), 1087–125
- Farley M, Cotton A, Lynne J, Zumbeck S, Spiwak F, Reyes ME, Alvarez D and Sezgin U (2003) 'Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder', *Journal of Trauma Practice* 2(3/4), 33–74
- Francis R (2007) *Selling Sex: A Hidden History of Prostitution*, University of New South Wales Press
- Groves J, Newton DC, Chen MY, Hocking J, Bradshaw CS and Fairley CK (2008) 'Sex Workers Working within a Legalised Industry: Their Side of the Story', *Sexually Transmitted Infections* 84(5), 393–4
- Gusfield JR (1986) *Symbolic Crusade: Status Politics and the American Temperance Movement*, University of Illinois Press
- Habermas J (1975) *Legitimation Crisis*, Beacon Press
- Haines F (2011) *The Paradox of Regulation: What Regulation Can Achieve and What it Cannot*, Edward Elgar Publishing
- Haines F (2013) 'Three Risks, One Solution? Exploring the Relationship between Risk and Regulation', *The ANNALS of the American Academy of Political and Social Science* 649(1), 35–51
- Haines F, Sutton A and Platania-Phung C (2007) 'It's All About Risk, Isn't It? Science, Politics, Public Opinion and Regulatory Reform', *Flinders Journal of Law Reform* 10, 435–53

- Hancock L (1992) 'Legal Regulation of Prostitution: What or Who is Being Controlled' in S-A Gerull, and B Halstead (eds), *Sex Industry and Policy: Proceedings of a Conference*, Australian Institute of Criminology, 165–170
- Havelková B (2011) 'Using Gender Equality Analysis to Improve the Wellbeing of Prostitutes', *Cardozo Journal of Law and Gender* 18, 53–86
- Head BW (2008) 'Wicked Problems in Public Policy', *Public Policy* 3(2), 101–18
- Jenness V (1990) 'From Sex as Sin to Sex as Work: COYOTE and the Reorganization of Prostitution as a Social Problem', *Social Problems* 37(3), 403–20
- McKeown E (2005) *The Scarlet Mile: A History of Prostitution of in Kalgoorlie*, UWA Publishing
- Matthews R (2008) *Prostitution, Politics and Policy*, Routledge-Cavendish
- Murray S and Powell A (2011) *Domestic Violence: Australian Public Policy*, Australian Scholarly Publishing
- Neave M (1988) 'The Failure of Prostitution Law Reform', *Australian and New Zealand Journal of Criminology* 21(4), 202–14
- Pinto S, Scandia A and Wilson P (1990) *Prostitution Laws in Australia*, Australian Institute of Criminology
- Powell A and Murray S (2008) 'Children and Domestic Violence: Constructing a Policy Problem in Australia and New Zealand', *Social and Legal Studies* 17(4), 453–73
- Prostitution Law Reform Working Group (2007) *Prostitution Law Reform for Western Australia: Report of the Prostitution Law Reform Working Group*, Office of the Attorney General
- Quadara A (2008) *Sex Workers and Sexual Assault in Australia: Prevalence, Risk and Safety*, Australian Institute of Family Studies
- Rekart M (2005) 'Sex-work Harm Reduction', *Lancet* 366, 2123–34
- Sanders T (2004) 'A Continuum of Risk? The Management of Health, Physical and Emotional Risks by Female Sex Workers', *Sociology of Health and Illness* 26(5), 557–74
- Sanders T (2007a) 'No Room for a Regulated Market? The Implications of the Co-ordinated Prostitution Strategy for the Indoor Sex Industries', *Community Safety Journal* 6(1), 34–44
- Sanders T (2007b) 'Becoming an Ex-Sex Worker: Making Transitions out of a Deviant Career', *Feminist Criminology* 2(1), 74–95
- Sanders T and Campbell R (2007) 'Designing out Vulnerability, Building in Respect: Violence, Safety and Sex Work Policy', *The British Journal of Sociology* 58(1), 1–19
- Sandy L (2014) *Women and Sex Work in Cambodia: Blood, Sweat and Tears*, Routledge
- Smart C (1992) *Regulating Womanhood: Historical Essays on Marriage, Motherhood, and Sexuality*, Routledge
- Smart C (2003) 'Towards an Understanding of Family Change: Gender Conflict and Children's Citizenship?', *Australian Journal of Family Law* 17(1), 1–17
- South Australia, *Parliamentary Debates*, Legislative Assembly, 13 June 2012, 1487–90 ('Hansard')

- South Australia, *Parliamentary Debates*, Legislative Assembly, 14 November 2000, 455–69 ('Hansard')
- South Australia, *Parliamentary Debates*, Legislative Assembly, 15 March 2001, 1053–63 ('Hansard')
- South Australia, *Parliamentary Debates*, Legislative Assembly, 17 May 2001, 1506–7 ('Hansard')
- South Australia, *Parliamentary Debates*, Legislative Assembly, 17 July 2012, 1800–10 ('Hansard')
- South Australia, *Parliamentary Debates*, Legislative Assembly, 18 October 2012, 2381–3 ('Hansard')
- South Australia, *Parliamentary Debates*, Legislative Assembly, 2 July 2000, 1828–35 ('Hansard')
- South Australia, *Parliamentary Debates*, Legislative Assembly, 28 June 2000, 1507–24 ('Hansard')
- South Australia, *Parliamentary Debates*, Legislative Assembly, 31 May 2012, 1903–8 ('Hansard')
- South Australia, *Parliamentary Debates*, Legislative Assembly, 6 September 2012, 2821–8 ('Hansard')
- Stolz BA (2007) 'Interpreting the US Human Trafficking Debate through the Lens of Symbolic Politics', *Law and Policy* 29(3), 311–38
- Sullivan B (1997) *The Politics of Sex: Prostitution and Pornography in Australia Since 1945*, Cambridge University Press
- Sullivan B (2008) 'Working in the Sex Industry in Australia: The Re-organization of Sex Work in Queensland in the Wake of Law Reform', *Labour and Industry* 18(3), 73–92
- Sullivan M (2007) *Making Sex Work: A Failed Experiment with Legalised Prostitution*, Spinifex Press
- Thompson LL (2012) 'A Preface to the Chart "Preferred Terminology for Sex Work and Prostitution"', *Social Work and Christianity* 39(4), 481–7
- Western Australia, *Parliamentary Debates*, Legislative Assembly, 11 March 2008, 590–8 ('Hansard')
- Western Australia, *Parliamentary Debates*, Legislative Assembly, 12 March 2008, 715–32 ('Hansard')
- Western Australia, *Parliamentary Debates*, Legislative Assembly, 13 March 2008, 824–39, 848–51 ('Hansard')
- Western Australia, *Parliamentary Debates*, Legislative Assembly, 14 June 2011, 4171–3 ('Hansard')
- Western Australia, *Parliamentary Debates*, Legislative Assembly, 25 November 2010, 9670–5 ('Hansard')
- Western Australia, *Parliamentary Debates*, Legislative Council, 3 April 2008, 1855–67 ('Hansard')