



**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL  
TERRITORY**

**STANDING COMMITTEE ON JUSTICE  
AND COMMUNITY SAFETY**

(Reference: [Prostitution Act 1992](#))

**Members:**

**MRS V DUNNE (The Chair)  
MR J HARGREAVES (The Deputy Chair)  
MS M HUNTER**

**TRANSCRIPT OF EVIDENCE**

**CANBERRA**

**WEDNESDAY, 23 MARCH 2011**

**Secretary to the committee:  
Dr B Lloyd (Ph: 6205 0137)**

**By authority of the Legislative Assembly for the Australian Capital Territory**

Submissions, answers to questions on notice and other documents, including requests for clarification of the transcript of evidence, relevant to this inquiry that have been authorised for publication by the committee may be obtained from the Legislative Assembly website.

**WITNESSES**

**CORBELL, MR SIMON**, Attorney-General..... **1**

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*Amended 21 January 2009*

**The committee met at 11.02 am.**

**CORBELL, MR SIMON**, Attorney-General

**PLAYFORD, MRS ALISON**, Deputy Chief Executive (Justice), Department of Justice and Community Safety

**FIELD, MS JULIE**, Acting Executive Director, Legislation and Policy Branch, Department of Justice and Community Safety

**PHILLIPS, MR BRETT**, Commissioner for Fair Trading, Department of Justice and Community Safety

**McCABE, MR MARK**, Work Safety Commissioner, Department of Justice and Community Safety

**THE CHAIR:** Welcome, minister and officials to the opening of the inquiry into the review of the Prostitution Act 1992. Minister and officials, are you aware of the contents of the privilege statement?

**Mr Corbell:** Yes.

**THE CHAIR:** In a moment I will ask the minister to make an opening comment. Before we commence I note that the government has provided a submission, which was published this morning. With the agreement of the committee, can I put on the record my view and the view of the committee that we are very unhappy, minister, to have received this submission at 4.32 yesterday afternoon. Given that submissions have been advertised for quite some time and this hearing has been scheduled for well over a month, the fact that members of the committee essentially received with less than 24 hours notice and that we were promised we would receive it on Monday afternoon, which was considered pretty unsatisfactory, the fact that we received it at about half-past four yesterday afternoon is very unsatisfactory. I want to put that on the record before we start. Minister, would you like to make an opening statement?

**Mr Corbell:** Thank you, Madam Chair. I thank the committee for the opportunity to make this presentation to you today and for the opportunity to appear before you with my officials.

The government is pleased that this inquiry is taking place. Obviously, this inquiry is a result of a motion I presented to the Assembly last year, in October, where I indicated that it was the government's view that we believed it was timely to look at a review of the operation of the ACT's prostitution legislation, given that it has been almost 20 years since the commencement of the act.

I would like to put on the record, first and foremost, that the government supports a regulated and legal sex industry in the ACT. We believe that it is the most progressive and socially responsible course of action to take. The government does not support calls to again make prostitution illegal or to, in some other way, attempt to force the industry underground. We believe that would be detrimental to the public interest, would create an unsafe environment for both sex workers and their clients and would potentially lead to the exploitation of the industry by criminal elements. For that very clear reason, the government will be urging you today and, in its submission has urged the committee, to reaffirm the importance of a regulated

industry that provides a safe environment for both workers and their clients.

I would like to turn to a couple of key issues in the government's submission. The first is the issue of health and safety. Sex work is a valid occupational choice. It deserves recognition of personal and occupational health and safety welfare rights in the same way as these rights are recognised in relation to other occupations. As workers in a legal occupation, sex workers are entitled to a workplace that meets appropriate occupational health and safety standards. The government believes that the inquiry into the act should, therefore, consider it in conjunction with the code of practice under the relevant work safety legislation, that is, the ACT code of practice in the sexual services industry.

One specific area that the government believes the committee should address in this context is the use of prophylactics required to be used under section 27 of the act. The code of practice currently is vague as to the implementation of section 27. The code states:

Items such as condoms, dams, latex gloves and water-based lubricants shall be provided free of charge.

But it is not clear who should bear the cost of these items. The government's view is that such items represent safety equipment and, therefore, recommends that the committee consider whether employers should be required to make these items freely available to workers. The requirement should probably be enshrined in legislation.

Another area of particular interest, I am sure, to committee members is the operation of sections 24 and 25 of the Prostitution Act. These are elements of the act that deal with reciprocal obligations placed on infected people and the clients of infected people. This emphasis on reciprocal responsibility under sections 24 and 25 is in contrast to equivalent provisions in other jurisdictions. For example, it is an offence under the Prostitution Act for a client to seek a commercial sexual service if the person knows or could reasonably be expected to know that he or she is infected with a sexually transmissible infection. The government supports this reciprocal responsibility as it promotes norms of behaviour consistent with treating the sex industry as an ordinary occupation within a regulated framework.

It would also be appropriate, I believe, for the committee to consider whether a further requirement for sections 24 and 25 should be that the infected person gives notice to the other person of their infection. The government would acknowledge that there are some members of the sex industry who wish to see sections 24 and 25 removed from the Prostitution Act. However, on balance it is the government's view that it would need to recognise the balance that must exist between granting sex workers and clients' autonomy and protecting theirs and the broader community's health and safety. The government's primary objective is to ensure that the act contains adequate harm minimisation strategies to protect all people involved in the commercial sex industry.

Another issue the government raises in its submission is the issue of the employment of minors. I note that this is also an issue raised in the submission from ACT Policing. Of course we are aware of the tragic circumstances surrounding the death of a young

woman in an ACT brothel a number of years ago. That young woman was identified as being under the age of 18 at the time of her death. The government agrees that there is a need to consider further whether or not the regulations should be improved to properly identify, wherever possible, minors operating in the commercial sex industry.

The government's submission deals with this matter in quite a level of detail. I would be happy to take further questions on it but I simply make the observation today that, whilst the onus is currently on employers to satisfy themselves as to whether or not a person is over the age of 18, there could be provision for the further strengthening of these arrangements to ensure that there is a greater onus of responsibility on employers and operators of brothels and a tightening of the provisions around the applicable defences in relation to determining what was reasonable in ascertaining somebody's proof of age. That is an issue that is dealt with in the government's submission.

Finally, I would like to turn to the issue of another matter raised in other submissions to the committee about references to the Swedish model of prostitution. Some stakeholders within the sex industry have raised concerns about the current level of regulation around commercially operated brothels. A number of submissions to the inquiry recommend the regulatory model used by the Swedish government. In 1999, paying for sexual services was prohibited in Sweden. In essence, the Swedish model states that prostitution is legal and that prostitutes themselves cannot be prosecuted, meaning that only clients of the prostitution industry are criminalised.

Some of the submissions before you argue that the Swedish model has resulted in a decrease in the number of women who are trafficked for sex. However, there is a counter argument and that is that the criminalisation of being a client of the commercial sex industry has driven the industry underground. This has meant less societal control, less access to social aid programs for sex workers seeking to leave the industry and a greater dependence on pimps. The government's position is that the commercial sex industry needs to be regulated in order to protect the health and safety of workers and clients and to ensure that minors are not employed in the industry. While the government recognises that sex workers should be employed with a level of autonomy, this should not be granted at the expense of their safety and welfare. Therefore, the government does not support those calls to consider or move to the Swedish model.

In conclusion, this review is an important opportunity to look at the operation of the Prostitution Act in the ACT. We recognise that the act is now 20 years old and is worthy of review but we would also say to you quite clearly that the overall operation of the act has proven to be effective. We do not see a significant level of criminality involved in the industry in the ACT—and that is confirmed in ACT Policing's submission—but there is a need to look at some elements of the operation of the act to further improve and enhance its operations to provide for an ongoing safe and secure environment for both sex workers and their clients.

**THE CHAIR:** If I could begin, minister. I will start at the beginning because the opening paragraph of the government's submission says that the current form of the Prostitution Act reflects the progressive and socially responsible approach to the

regulation of the commercial sex industry. In other parts of your submission you talk about the exploitation associated with trafficking, for instance. You made some comments at the end of your opening statement about one alternative approach to prostitution. In putting together your submission, did the government consider issues about whether or not prostitution is considered exploitative, given that mostly men pay mostly women to provide them with sexual gratification? Does the government think that this is a good thing and that it should continue to be normalised in the community?

**Mr Corbell:** These are essentially moral questions about how people perceive the actions of others. In the government's view, payment for sexual services has been a recurring theme in human behaviour and it is better to manage that in a regulated environment than to pretend that it is a form of human behaviour that can be ignored or eliminated. Payment for sexual services exists in all societies throughout history. It is important that we operate in a regulated environment that ensures that people who are engaged in that service and in that activity are properly protected.

**THE CHAIR:** Is it the government's view that by appropriate business regulation, the removal of aspects of the exploitative nature of prostitution—

**Mr Corbell:** The issue of concern I think you are seeking to raise is the issue of whether or not sexual slavery can occur.

**THE CHAIR:** No, I am not. I am actually asking a more general question than that—that there is a perception in the community that mainly men paying mainly women for sexual gratification is essentially exploitative. It is not necessarily a view that is held essentially by one section of the community. Does the government believe that by regulating the workplace aspects of it and the business aspects of this that you can eliminate what is perceived to be the essentially exploitative nature of prostitution?

**Mr Corbell:** I would not necessarily agree that prostitution by its very nature is exploitative insofar as people who work in the industry choose freely to enter into the industry.

**THE CHAIR:** So your contention is that the sex workers who work in the ACT all freely enter and continue in the workforce of their volition?

**Mr Corbell:** I think overwhelmingly that would be the case—not exclusively but overwhelmingly.

**THE CHAIR:** Forgive me if I have missed it, considering that we only got this late yesterday afternoon, but there is little or no reference to drug use in the sex worker population. Did the government look at this as an issue? From time to time previous submissions that the government has made to previous inquiries have indicated that this is an issue, at least anecdotally, but there does not seem to be a reference here. Has the government looked at this as an issue in preparing the submission?

**Mr Corbell:** We can deal with these issues in a bit more detail from an occupational health and safety perspective, in particular, but I would simply make the general observation that drug use in this industry is no different from drug use in other

industries. For example, there are reported problems of drug use in other industries, such as the construction industry. In that example unions and employers have made concerted attempts to improve drug education and health promotion activities in that industry. So I would simply assert that, to the extent that drug use is an issue in the sex industry, is no different from drug use in other industries.

**THE CHAIR:** Just to follow up on that before we hand over to other members, the 2003 ACT submission to the New South Wales working group on illegal non-citizens in the sex industry concludes with comments about drug use and associated issues. It says:

Canberra's brothels are located in two isolated industrial suburbs ... Anecdotal reports suggest that workers often live on premises and may not have the resources to leave the premises without the operators' assistance. This means that if the workers leave for any reason, for example health checks, they do so at the operators' convenience. There are very few shops ...

There are also beliefs that cases of restricted movement and/or coercion exist that are linked to exploitation of alcohol, drug and gambling dependencies.

Has the government changed its view about those issues since 2003?

**Mr Corbell:** These are issues that are generally recognised as potential issues when it comes to people who are detained in the sex industry as a result of sexual slavery. But the operation of the Prostitution Act has to intersect with the operation of federal law when it comes to the trafficking of sex workers and the provision of sexual services without that person's consent. What we do know is that trafficking and sexual slavery is not a widespread or significant issue in the sex industry, but it has occurred from time to time. Where it has occurred, commonwealth offences and policing activities have intersected with our own regulatory operations.

The nature of the industry does mean that we see these issues arise from time to time, but it would be wrong to characterise that they are widespread. There is no evidence to suggest that they are widespread, and that is confirmed in the ACT Policing submission to the inquiry. But it is appropriate to recognise that there are risks and there is the prospect and the possibility of trafficking of sex workers occurring, and of sexual slavery and sexual servitude occurring. The important thing is to ensure that there are appropriate arrangements for cooperation between ACT regulatory authorities and commonwealth regulatory authorities, such as the department of immigration and the Australian Federal Police, through its national operations, to deal with these matters.

**THE CHAIR:** Can I get back to the question? You keep pivoting away from the—

**MR HARGREAVES:** Can we have a question or two, please?

**THE CHAIR:** Yes. You keep pivoting away from the issue of prostitution in general to trafficking in particular. I am asking you about the use of drug and alcohol and other dependencies. In 2003 the government's submission to the New South Wales inquiry was saying this was an issue. You are saying now that it is not; it is only an issue for people who are trafficked. How do you know and what has changed?

**Mr Corbell:** Madam Chair, the point I am seeking to make is that the use of drugs and alcohol in the sex industry can be a problem in the same way that it can be a problem in other industries. If that is the question you are asking me, that is my answer. The government's position is that the use of illicit drugs and other substances in the sex industry is the same concern that we see in other industries in our economy. The issue is about dealing with those issues as and when they arise.

**THE CHAIR:** Mr Hargreaves.

**MR HARGREAVES:** I have got a series of questions, minister. Thank you very much for coming. With regard to this notion of trafficking, I noted in the AFP's submission—and we will go into some more detail about that—that it indicates numbers of offences and types and whether they have been before court and all that. There is not an indication in there that there is a serious trafficking issue. I noticed that and I make that observation.

Would I be correct in assuming the government's position with regard to people brought into this industry in the general notion of servitude, if you like, or having to provide a service for less than optimal working conditions and remuneration, is really little different than existed within the construction industry—with the construction, for example, of some religious premises some years ago where artisans were brought to town, pretty clearly in my view, in a trafficking sense? Also, there are other parts of industry, in the hospitality industry, where people may in fact be brought to the town for the same sorts of things. Am I correct, minister, in assuming that you make no differentiation between those episodes and those within the sex industry?

**Mr Corbell:** I think that is a reasonable observation, Mr Hargreaves. Obviously the Chief Police Officer, as I understand it, will be providing evidence to you separately, and I will not seek to speak to his submission. But I would simply make the point that it is quite clear that we did not see the same level of criminality in the ACT sex industry, whether it is issues around sexual servitude or sex slavery, to the same extent as industries in other parts of the country. That is because of the regulated nature of our industry. Indeed, that is the view of ACT Policing. They say that the lower level of criminality is driven, firstly, by the ACT's criminalisation of specific activities and the establishment of a regulated industry, which has lessened the involvement of criminal entities in the industry and, secondly, the comparatively small size of the ACT industry which enables more effective regulatory compliance and enforcement.

I think the real issues for the committee, if I can be so bold, are not around issues of sexual servitude, slavery or exploitation but what steps we need to take to further improve the health and safety of those who work in and pay for the services of the industry and what steps need to be taken to further ensure that we do not see minors engaged in the industry. I would argue that those are the two issues of most significant concern that the committee needs to come to grips with.

**MR HARGREAVES:** Thanks for that. I have two other subjects, then we will go through the rotation. One issue that sparked my interest was the nature of the offences contained in the act. I notice that some of the offences are strict liability, some are

absolute liability and some have no indication as to what type of liability the offences attract. When examining the section dealing with offences against children under the age of 12, I do not think our society would have any difficulty with those being absolute liability offences. But I am wondering whether this goes to the question of the general attitude to the industry such that breaches are considered as criminal matters when not all of them need to be criminal matters. Some of them may, in fact, need to be civil matters.

If we take the view that this is an industry which provides a service to a certain cohort of the community and we do not introduce our own moral attitudes about whether it is a good or a bad one, then we should treat it like any other service industry—for example, a television repairman who operates out of a single premises. Where people such as that breach their laws, their registration processes, we treat those as civil matters predominantly, except where they affect minors.

Could you perhaps give us a view on whether you think that some of those offences ought to be reclassified as civil offences rather than criminal ones? If you think they should stay, why should it be so?

**Mr Corbell:** I will ask Ms Field or Mr Snell to try and provide you with some detail on that issue, Mr Hargreaves.

**Ms Field:** Just to clarify the different approaches in relation to the offences under the act, the Prostitution Act came in before the Criminal Code, and the Criminal Code is the piece of legislation that says you have to deal with the evidentiary burden. So there is a note at 3A of the act that explains that section 20 and section 26 are the only two that have been amended since the Criminal Code came in, so they are code compliant.

The question around criminal offences and civil offences is an interesting one. If you look at the offences, they generally relate to health and child involvement in commercial sex services. That reflects a decision that was made at the time that those were the areas that were appropriate for criminal sanctions. There has been movement in other jurisdictions since then. Certainly New Zealand has moved towards a registration process rather than a prosecution process. So it has moved to the civil regime. I would be interested in people's views on that.

**MR HARGREAVES:** I am interested in that, because I do not think there is any quarrel in relation to offences against children. Some of the other health-related offences apply to the hospitality industry and the restaurant trade and things like that. In those cases where there are breaches, people are closed down or taken to court, but they are actually civil matters. There is not, I would suggest, a lot of difference between a health regime in the provision of a service in one industry compared to this one.

I might just leave it there and ask that you give some thought to how that could be. If it is, in fact, because it is stuck under the Criminal Code, that is the very reason why we are reviewing the act at this point, because we did the right thing back then and now is the time to have another look at it. So I might leave that one there.

I will come to the issue of licensing and registration of people in the industry and the requirements that we have for them. I was struck by what I felt was an inconsistency. I am happy to that have view changed. Where people operate as single business operators in the suburbs, such as the guy that fixes up the canvas on my boat, for example, they are not registered. He does a great job, but he has people coming and going all day long in his place. So, too, does an accountant that I know. The accountant, on the other hand, is registered with a professional association. Same as the guy who does the mowing—he is not.

But with the sex industry we require people to be registered and we require certain information and registration with ORS. They are already registered, in a sense, with the Taxation Office. There seems to be an inconsistency in treatment here between one industry which needs to provide information, for what purpose, I am not sure. It seems to me that even the employees within that industry are required to provide information where as that is not the case in other at-risk businesses, such as a butchery. The butcher is registered but the people underneath him are not necessarily—some of them are licensed and some of them are not. We require everybody who is engaged in the sex industry, however transitory, to be licensed or registered. Is there an inconsistency here? Do we need to look at that again?

**Mr Corbell:** The registration elements of the act are in two parts: firstly, registration of activities in relation to licensed brothels, where the brothel is licensed but not the people who provide services within the brothel. There is no individual registration of sex workers who operate from a brothel, but the brothel operator is licensed.

Then there is the operation of what are known under the act as sole operators, so people working from private premises in residential areas where they are required to be licensed as sole operators. So there are two issues here. Those are the two forms of licence or registration we are dealing with.

Now, we have to look back at the establishment of the act to understand why these provisions came about. Whilst it is not entirely clear, certainly my understanding is that, essentially speaking, the move towards a regulated industry and a decriminalisation of the activities was predicated very strongly on the agreement that these activities would only occur in certain locations and there would be a way of being able to track where those activities took place.

So brothels were restricted to a small number of locations in non-residential areas of the city, in industrial suburbs of the city, and that was basically designed to deal with the sensitivities and the concerns that many in the community would have about the prospect of these activities being more obvious, particularly in residential or general commercial areas of the city. That was the political settlement that was reached in relation to the regulation of the industry. It was to occur in particular locations.

In relation to licensing of sole operators, again, there was a political settlement—sole operators could operate in residential areas, but only if they were registered.

The question as to what industries are regulated, licensed, and what are not varies across a whole range of professions and activities, Mr Hargreaves, and it very much comes down to the views of parliaments as to what professions or industries require a

greater level of oversight. Obviously there are many sensitivities, social and moral issues, surrounding the provision of sexual services and therefore there is a degree of regulation or oversight of these activities as opposed to those businesses that do not really have any significant oversight in that way. That is perhaps the general answer to your question.

In conclusion, I think it is worth the community considering issues around the registration requirements for sole operators. We know that registration requirements for sole operators appear to be honoured more in the breach and that is obviously raising questions about the effectiveness or appropriateness of that particular requirement under the act.

I note that some people who work in the industry argue that they are not prepared to register themselves as sole operators because they are concerned about confidentiality and the protections that would be given to that information. I have to say that I do not believe that is a compelling reason not to have registration. It is perhaps a compelling reason to improve the security and the controls over that information and to give operators confidence that that information will be appropriately protected. For example, the government and policing authorities hold registers of people that are very secure and have very significant controls around them and are subject to oversight by independent bodies such as the Ombudsman to protect the privacy and security of that information, so I do not believe that it is beyond our wit to deal with that particular issue, but there is still the broader philosophical issue about whether or not there should be registration of those workers.

**MR HARGREAVES:** Finally, can I just get you to confirm with me that people who are working in a brothel, though not the principals of the brothel, whether they be employees, subcontractors or whatever nature it is, are not required to be registered and licensed?

**Mr Corbell:** That is correct.

**MR HARGREAVES:** So it would be possible then for someone who has to operate out of a single premises that has to be licensed to then go and work in a brothel and not be licensed?

**Mr Corbell:** They have to register their operations if they are a sole operator. They have to register where their business is taking place.

**THE CHAIR:** Could I just follow up on that. You did spend some time in your opening remarks talking about underage people in the industry. You are correct, minister, that that issue was one of the impetuses for this inquiry. Has the government turned its mind to how one might be better able to reinforce the issues of excluding underage people from the industry and have you considered registration of all sex workers as a means of addressing that problem?

**Mr Corbell:** I do not believe that registration of all sex workers, even those who work in brothels, would necessarily address that problem because the issue still boils down to what evidentiary proof is provided to demonstrate that a person is over the age of 18. There is already a requirement for the brothel operator to be satisfied that the

person has provided sufficient information to demonstrate that they are over the age of 18 before engaging them. There is a defence under the act. Section 22 of the act states:

It is a defence to a prosecution under section 19 (2) or 20 if it is established that the defendant—

- (a) took reasonable steps to ascertain the age of the child concerned; and
- (b) believed on reasonable grounds that the child had attained 18 years of age.

This is the question that arose in the death of Ms Cameron. As I understand it, Ms Cameron offered ID that identified her as over the age of 18 but she was not over the age of 18.

**THE CHAIR:** I am sorry but the question was: has the government considered whether Mr Phillips and Mr McCabe might be in a better position to establish that for the safety of the people involved rather than leaving it to individual brothel owners?

**Mr Corbell:** That I think is a question that it is open to the committee to draw its conclusions on. That is one of the reasons for this inquiry, to look at some of these issues.

**MS HUNTER:** I want to go to some of the submissions to this inquiry from individuals. Quite a few of them make the same statement—that since Canberra legalised prostitution there seems to be an increase in the illegal sex industry. I have taken this statement to refer to unregistered sex workers operating in the ACT. Do you have any statistics or understanding of the number of unregistered sex workers operating in the ACT? Is this a concern to government? Is there evidence to back a statement such as this?

**Mr Corbell:** The question you raise is a question around the operation of sole operators in the ACT and at the moment the act says that you can only be a sole operator if you operate from a registered premise, so you have to register that you are a sole operator and you have to advise the registrar of where you are conducting your business.

It is quite clear that what we have seen, particularly in the last number of years, is a significant number of people who work in the industry who are quite transient. They come from Sydney or Melbourne, in particular, or indeed other parts of the country, and they visit the ACT and provide their services here for a period of time and then they will return to where they base themselves, or they move to another city to provide their services there. It is quite clear that there are a number of people who work in the sex industry, who are sex workers, and their business model is that they do not just operate in one city; they operate in a number of cities and they develop a clientele around a number of cities. That is a challenge to the operation of our act.

Does it mean that there is illegal activity taking place? I do not know whether it is right to classify it as illegal in the broad sense of the word; obviously prostitution is not itself illegal in the territory as long as you abide by the provisions of the act. Failure to register is obviously not abiding by the provisions of the act, but it may

reflect the fact that the provisions of the act have not kept pace with the way these services are being provided, and there may be a need to reconsider how those registration requirements operate.

**MS HUNTER:** We also have some submissions in from sex workers who have put a case that it is safer—these are solo people working from their homes as a one-worker environment—to work from a place where there can be more than just themselves, where there could be another person working alongside them, and they do want this restriction lifted. Attorney, do you have a view on this?

**Mr Corbell:** I think this is an issue for the committee to consider. Occupational health and safety considerations should be foremost in our consideration of the operation and the regulation of the sex industry in the ACT, so safety of workers as well as the safety of clients should be a very high priority. Obviously this needs to be balanced against community concerns that the laws could result in brothels operating from residential areas.

One of the successes and I think one of the broad reasons for community acceptance of the regulation of the sex industry here in the ACT and the decriminalisation of prostitution is the fact that we have been able to draw a distinction between operations in non-residential and residential areas, because there are legitimate concerns from many people in the community on social, moral grounds about the provision of sexual services and we have to be sensitive to those. There would of course be parents or older people who would be concerned about facing the prospect of a more obvious provision of sexual services in residential areas. The government would share those concerns and would be very cautious indeed about contemplating in any way a more obvious provision of sexual services in residential areas.

We support the current model, which is that provision of these services should be restrained to non-residential areas, to industrial suburbs like Fyshwick, Mitchell and so on, and that sole workers can operate from private residences because it is discreet and low profile. But the prospect of making that more than one worker from a premise is one that I think has issues around it that have to be very carefully thought about.

**MS HUNTER:** Obviously we are looking at the whole operation in reviewing the act and the act does not contain an overarching statement of objectives or principles, so it strikes me that an important starting point is to clarify if there is common ground with you, Attorney, and your department on what the intent of the act is. Do you or your department have a position on what that overall policy objective of the act is, and do you have any thoughts on whether the act should be amended to include a clear statement of objectives?

**Mr Corbell:** Again, these are issues for the committee to consider. The act derives from a private member's bill, so it was never a piece of legislation proposed by a government. When it was presented in 1992, it was presented by a private member.

**THE CHAIR:** But your submission, minister, says that the government took ownership of it and that it was substantially amended by the government.

**Mr Corbell:** It was substantially amended by the government of the day; that is

correct.

**MS HUNTER:** It is linking back to a statement you made a few months ago that the occupational health and safety of workers was of paramount consideration. Does that mean that would be something that should be included in an overarching objective?

**Mr Corbell:** It could be included.

**MS HUNTER:** You do not have any other thoughts?

**Mr Corbell:** The government has not sought to come to this inquiry with a definitive view on all of the possible issues that would be raised by this inquiry. The purpose of this inquiry, and why the government proposed it in the Assembly, was to allow for a discussion on these issues, and to allow the committee to take a wide-ranging view of the operation of the act. So I am not seeking to be here today with a definitive view on every single possible option or issue. The purpose of this inquiry is to canvass these issues.

**MR HARGREAVES:** Can I follow up on something Ms Hunter asked a minute ago in relation to sole operators. The Tasmanian model is that two people can operate out of the one premises. In New Zealand it is four. Has the government looked at the efficacy of both of those models with the occupational health and safety angle in mind? If not, would it be prepared to do that?

**Mr Corbell:** Not at this time, Mr Hargreaves. Obviously, that is a development that has occurred in other jurisdictions. Obviously, it would be timely, when the government considers its response to whatever conclusions the committee draws in its recommendations, to look further at that issue.

**MS HUNTER:** I wanted to pick up on something in your submission. In 2009, there were a number of unannounced inspections of brothels in the ACT. In your submission you state at page 6 that these were to engage with the industry and to provide educational support. While I accept that, with a regulated industry, you should be open to unannounced inspections, checks and so forth, do you have a view on the appropriateness of a way to engage with workers and educate them? Is there a risk that raiding a venue may alienate workers away from government officials and make them less likely to seek help when they really need it? Have you, attorney, or ORS investigated better ways of looking at those unannounced raids and how that fits with the engaging and educative role that they also undertake?

**Mr Corbell:** I might ask Mr Phillips and Mr McCabe to talk about this in a bit more detail. But just to preface their comments, they were not raids; they were inspections. Inspections can be announced or unannounced, and there is a role for both in the regulatory regime. Announced inspections can assist in getting the premises that are being inspected to focus on, learn and make sure that they properly understand their responsibilities under the relevant acts of the ACT, whether it is occupational health and safety or otherwise.

It is important to stress that the inspections that take place, which are conducted by ORS and WorkSafe, are about occupational health and safety, because that is the role

given to them under the legislation. It is a common misconception that it is the role of ORS to enforce the criminal provisions of the Prostitution Act, because—

**MS HUNTER:** I understand that that clearly sits with the police.

**Mr Corbell:** I think it is worth putting on the record that it is not the role of ORS to do that; that is the role of the police. But it is important that all of our regulatory agencies and the law enforcement agencies, including the police, work together on these issues. To answer your question directly, I support unannounced inspections; that keeps everybody honest. I think that is common sense. But at the same time there should be a role for announced visits that are about education and further improvements in compliance where that is deemed necessary. I will ask Mr McCabe if he would like to elaborate on that.

**Mr McCabe:** I take your point about the efficacy of unannounced inspections as opposed to announced. We continue to do unannounced inspections. The other thing to consider is how we then conduct those inspections. You can go in and do inspections where you are taking a very tough mindset—got something wrong, here's a fine—or you can go in with an educative approach when you are there, albeit that you have come unannounced. And it is the latter that we do, where we take a more educative approach, but we will take the hard line if there are important issues. So there is a balance of those two things.

The other thing to consider is that we have been running these unannounced inspections and, as a result, we have seen a significant lift in compliance since that 2009 campaign. In 2009, we went in and had a look at 10 brothels and found a number of issues, some of them reasonably significant health and safety issues. Since then, we have done 12 inspections over the last 15 months—we are doing about one per month—and there has been a significant drop-off in the level of health and safety issues that we have found. For example, we did some recently. In one establishment, a cracked shower screen was the only thing that we found, which was a maintenance issue and not a health and safety issue. In another, there were some access and egress issues, which are a bit more important.

Where we are getting compliance and support from the owners of an organisation—this would be in any industry—we sometimes choose to issue what we call a record of inspection. A record of inspection is not a legal document like an improvement notice, but it is an agreement that we have found these issues and we expect that they will be fixed, and we may come back and check that that happens. But we reserve the right, and occasionally we will issue an improvement notice or even a prohibition notice. Overall, I would have to say that there has been a significant lift in the level of compliance in work health and safety matters since we have been doing regular unannounced visits. So we feel that they are working.

**MS HUNTER:** Mr McCabe, when you go in to do these inspections, is there a checklist of things that you look for, and what is on that checklist?

**Mr McCabe:** There is a checklist. I do not have the checklist itself with me, but I have a list of the areas that it covers. It covers things like policies and procedures. That includes drug and alcohol policies, occupational violence policies, infection

control et cetera, as well as the normal types of policies that you might expect in a workplace for health and safety. There are access and egress issues—so fire exits et cetera. Cleanliness is probably the most common issue that we come up against. There are cross-contamination procedures, disposable sharps, first aid, amenities, chemicals—whether they are using hazardous chemicals on site in any way. Also, ventilation, fire safety, electrical safety, personal protective equipment, and equipment examination names. So there are a broad range of issues.

**MS HUNTER:** When you discover some sort of non-compliant aspects when you are doing an inspection, what action do you take? You did talk about a record of inspection.

**Mr McCabe:** It really depends on the issue. The enforcement tools at our disposal range from advice right through to prosecution. In this area it has tended to be a record of inspection, which is an agreement signed by both parties that this is what we found and this is what was agreed would be done, although it has no legal standing. The next step up would be a notice of improvement, which we have issued on occasions. A notice of improvement says, “You must fix this within a certain time frame,” otherwise there are penalties that apply.

The next step up from that would be a prohibition notice. A prohibition notice means that particular activity must stop until we are satisfied. We have not had to issue one in a brothel since that 2009 campaign, when there was one issued. It was issued because of significant cleanliness and air quality issues, and that brothel had to cease operating until we were satisfied that they had fixed them. The next step up from that would be prosecution, if there was a significant enough issue for us to initiate a prosecution, or a recommendation to the DPP for prosecution.

**MS HUNTER:** How does that relationship work? Obviously, you do have that responsibility around inspections and so forth, but not enforcement. Could you run through how that works?

**Mr McCabe:** How we make the decision about—

**MS HUNTER:** And also that relationship with the police about how information is exchanged.

**Mr McCabe:** The decision about the level of enforcement under the Work Safety Act is one for our inspectors and it is a judgement call, quite frankly, by the inspector on the site. That is the same right across health and safety. They have that whole range of powers and they need to judge what the circumstances are in that workplace that would call upon them giving advice as opposed to taking a harder line.

If it is within the health and safety spectrum, we can deal with it. We can either make that decision to issue a notice or go to the higher level, up to prosecution or fines. If the inspectors are in doubt, they will talk to their manager when they come back to the office. If there is a matter that we identify that is outside the Work Safety Act, we would refer that to the relevant authorities. So if we see an issue regarding, say, underage workers or drug use or possible immigration issues, we would refer those to the relevant authorities, be it ACT Policing or the commonwealth department of

immigration. So we are alert to other issues that we may come across.

**MS HUNTER:** Are there any issues that you have come across in the last few years around, say, when we were talking about under-age workers or illegal immigrants?

**Mr McCabe:** At a recent visit there was a suspicion—it is very hard for us to get definitive evidence on issues like this, particularly as it is outside our area of expertise—about some immigration issues in relation to a couple of workers. We referred the matter to the department of immigration. They welcome that kind of referral because they will cross-reference that to other information they have. But it was only a suspicion. We cannot really ask for passports and all that kind of stuff; we do not have the power to do that. We can ask for it, but I do not think we would have any authority. So that is one recent example, but it is rare that that happens, I have to say.

**MS HUNTER:** I have one more. Obviously, with the inspectorate staff of ORS there is a very wide range of premises and places and so forth that you go and inspect. I am just wondering, when we come to inspections of brothels and so forth, whether there is a particular expertise or a team that builds expertise around these particular inspections?

**Mr McCabe:** Not really. We have been doing them for a while now, so there is a bit of expertise building up. Where possible, we tend to use a small number of inspectors rather than spreading it right across the inspectorate. There are probably a couple of people who are always involved. We usually will send two inspectors, not one. And one of those two will usually be someone who has been to one of those sites before and is familiar with the environment they are going into. It can be an intimidating thing for inspectors to go into. So no; no particular skill set. Really it is like inspecting any other workplace. That having been said, it can be an intimidating environment.

**MS HUNTER:** Why do you say that? What is intimidating?

**Mr McCabe:** I guess some people feel nervous about it. It is an environment most people would not have been into in their life and it has this aura in the public. When they go in there, there are clients there, et cetera. It can be embarrassing. It probably takes a more mature inspector to be able to handle that and just get on with the job and ignore the other issues.

**THE CHAIR:** Could I just follow up on Ms Hunter's questions. In 2008, it was reported, and the minister said that he was relaxed about it at the time, that there had not been any inspections of brothels for five years. I just want to dwell on that for a moment. Since that time there have been a number of unannounced inspections, and that has been followed up with announced inspections. In that five-year period going back to roughly 2003 and before that, what was the policy in relation to when there were unannounced inspections and when were there announced inspections? And the last lot of inspections before that five-year interregnum—were they announced inspections? My recollection is that they were announced inspections.

**Mr McCabe:** I am not sure of the answer to those questions.

**THE CHAIR:** You can take them on notice if you like.

**Mr Phillips:** My understanding is that there was a series of inspections done in 2003. There was a follow-up to inspections done in 2005 that were done in the company of the police. And then there was follow-up—another audit conducted in 2009. And in 2010 there was another series of inspections.

**THE CHAIR:** On notice, could Mr McCabe provide the committee with some back-casting about what the policy was and what the inspection regime was. What you are saying, Mr Phillips—I think I have asked questions about this in estimates before. It had been confirmed to me that there have been no inspections between 2003 and 2008. I would like that clarified.

**Mr McCabe:** Sure.

**THE CHAIR:** Any more questions?

**MS HUNTER:** I have one more, and that is around the minister. Earlier in your evidence you did speak clearly in your opening statement about rejecting the Swedish model. We have had a number of submissions that have been supporting this approach. I was wondering if your department had done any analysis of the Swedish model and, if so, if the research canvassed views of the sex workers and from the law enforcement perspective—whether you have done any of that work and what the findings were if you have.

**Mr Corbell:** We have looked in some general terms at the operation of the Swedish model. I think, as I said in my opening statement, that the government's fundamental concern with that is that it criminalises the purchase of sexual services but obviously a person working as a sex worker is not subject to any criminal sanction or penalty. The issue here, I think, comes back to these broad issues about whether societies at any time see a market for the provision of sexual services. If there is a market, there will be people who will engage in that market, to be blunt about it.

**THE CHAIR:** So you see that there is a demand-side push?

**Mr Corbell:** I think that in Sweden, as I understand it, sexual services are still provided. It is not as though prostitution does not exist. It does exist. The fact is that because the purchase of those services is illegal, you create an environment where the provision of those services goes underground because the providers of those services—the sex workers—will not want to compromise their clients. So you immediately create a different type of black market which, of course, is contrary to the overall thrust of our legislation, which is to have a market which is visible.

The very clear advice that this government and previous governments ever since the early 1990s has received from the police is that if the market is visible you can monitor it better, you can detect criminality more effectively and you can minimise criminality. Certainly, the advice from the police in their latest submission to you would suggest that that is exactly what has occurred.

It is not to say that criminality does not exist. It does but perhaps to a significantly less

degree than it would if we sought to impose a more severe regime such as that in Sweden or return to the pre-1992 reforms.

**THE CHAIR:** Could I ask you a question relating paragraph 72 of your submission, page 11? You talk about health testing. Who is responsible for health testing? Is it Mr McCabe's office or is it the Department of Health? No-one seems to know and what I would like to know is: who is responsible and if Health officials are responsible, why aren't there Health officials here to answer these questions today?

**Mr Corbell:** As I understand it, and I am happy to stand corrected by my officials, the obligations on sex workers under the act are to—let me put it this way: first of all, there are obligations under the Health Act in relation to notification of certain transmissible infections. Those are not obligations limited to sex workers. Those are obligations on any citizen. In particular, there are certain obligations on medical practitioners to advise of the detection of certain infections.

There are offences under the Prostitution Act—I beg your pardon, under the Health Act—if you act in certain ways to spread infection and also under the Prostitution Act, sections 24 and 25. So there are offence provisions but the obligation is on the worker to ensure that they are aware of their health status.

I would have to say that overwhelmingly sex workers take this issue very, very seriously. It is in their own self-interest to maintain their health. So we do not have this—if your question is suggesting is there some sort of testing regime where the government tests sex workers, no. No, there isn't.

**THE CHAIR:** So who runs the Canberra Sexual Health Centre?

**Mr Corbell:** It is a not-for-profit organisation.

**THE CHAIR:** Okay, but you also say in this paragraph that there are not enough public health resources to change the health testing regime. So what is the health testing regime at the moment? How frequently do sex workers—

**Mr Corbell:** I think what that paragraph is attempting to convey to the committee is that if the committee was to conclude that there was a need for greater intervention in relation to testing of sex workers' health status, that would have significant resource implications.

**THE CHAIR:** I understand that. I have actually read the submission.

**Mr Corbell:** That is what the submission is saying.

**THE CHAIR:** But what I am asking you is: what are the current rules about testing, who conducts the testing and in addition, who bears the cost for that?

**Mr Corbell:** We do not mandate testing of people. What we mandate is that you cannot knowingly spread infection. That is the penalty. You cannot knowingly spread infection or place people at the risk of spread of infection. There are provisions in the act to ensure that people have regard to their health status and take reasonable steps to

protect themselves against the risk of transmission of certain infections. So there are offences around spreading infection and that then logically means that workers take reasonable steps to protect themselves against infection.

**THE CHAIR:** But there is no ideal program or—

**Mr Corbell:** We do not have—well, the government—

**THE CHAIR:** Does the Chief Health Officer have a view on this?

**Mr Corbell:** The government, through its public health activities, provides funding and resources to help deal with the spread of sexually transmitted infections in the general community and there are particular programs that are provided with funding that target appropriate levels of knowledge, education and awareness for people who work in the sex industry because of the potential for greater exposure to sexually transmitted infection. So we take a preventative and educative approach in relation to these matters.

We do not have government inspectors testing people. That would be counterproductive. We know that the most effective way of dealing with the spread of these diseases in the general community, and it is no different in the sex working community, is through education and through the provision of services that facilitate people getting tests when they need them. So we use and fund organisations such as the Canberra Sexual Health Centre to provide those services.

**THE CHAIR:** So who pays for the testing services?

**Mr Corbell:** They receive grants from the ACT government and, indeed, from other governments and organisations. I am happy to provide you with more information on that.

**MR HARGREAVES:** I have a follow up question. I refer to sections 24(5) and (6) of the act. I think that section 26 makes it pretty clear about where the responsibility to have medical checks lies. My reading of it is that it is the responsibility of the operator to actually arrange for that and I would think, by extension, pay for it. A brothel owner, for example, is okay if they believe that one of the people operating in the brothel in fact has their own medical practitioner who does these tests by virtue of taking a sample of tissue, blood, urine et cetera. This is a note on section 26(5).

I think that seems to indicate where the responsibility is. I am a little confused on who checks it and how it is checked. What sort of certification is provided? Presumably OH&S people go in there and check it out and that is one of the things they look at. What sort of certification is involved? Can you deal with that one first and then I want to come to sections 24 and 25. Am I wrong or right with that stuff so far?

**Mr Corbell:** Sorry, can you clarify your question, Mr Hargreaves? Who checks what?

**MR HARGREAVES:** Sure. Section 26 of the act indicates pretty clearly how you actually go about getting a test and also what the offences are if you suggest that a person has had a test and has not had a test, for example. I think section 26(2), for

example, provides that a prostitute commits an offence if they tell someone that they have had a medical test when they have not. So that is pretty clear. It also talks about where that test would be done. So, what I am looking at is how do we know that a person has or has not committed an offence against section 26(1) thorough to (5)?

**THE CHAIR:** Is that Mr McCabe's job?

**Mr Corbell:** Mr McCabe can answer that question.

**Mr McCabe:** Our responsibility is to regulate the Work Safety Act, not the Prostitution Act. But, nonetheless, this area crosses over. There is overlap between the Work Safety Act and the Prostitution Act. The code of practice that we test against, because there could be some other way of complying, actually mentions under "infectious diseases" that a person should not, at a brothel or elsewhere, provide or receive commercial sexual services if the person knows or could reasonably be expected to know that they are infected. We would expect the employer to have a process in place to be reasonably satisfied that that was the case. So although we would not administer the Prostitution Act as such, we would administer the broader health and safety aspect of this.

**MR HARGREAVES:** You have answered the question about who actually asks the question, because clearly you do. And the employer then satisfies you that there is a regime in place and management practices.

**Mr McCabe:** The employer, for example, could say to us, "Our workers get themselves tested, and we sight that once every three months or six months," or whatever. So the employer does not necessarily have to do it, but the employer is responsible for making sure under work safety legislation that something is done about this issue.

**MR HARGREAVES:** I understand that, and I am grateful for that. Mr McCabe is responsible for the OH&S act. When it comes, however, to the administration of the Prostitution Act when somebody is committing an offence against section 26 of the act, who has the power to commence proceedings for that breach?

**Mr Corbell:** The police. This is an example of where the interaction between the occupational health and safety regulatory agencies and the policing effort has to overlap. For example, if Mr McCabe's inspectors were suspicious that an operator of a brothel was not adhering to their general OH&S duty and was basically falsifying the fact that appropriate tests were occurring for people employed in their premises, then they could refer that matter to the police, and the police could undertake their normal investigative process to determine whether or not there had been a breach of the law under the Prostitution Act. So this is how these things need to be managed.

We have to accept, I think, and be aware that these are very sensitive and difficult matters. We are talking about individuals' private health status, and there is a complex interaction between privacy considerations and protecting public health. There is also the overlap of occupational health and safety law. I think the way that these issues are managed works well in the ACT because we know that we have a highly educated work force when it comes to health matters. We have a very proactive range of

services in place to educate and assist health workers in relation to health matters, particularly around STI. We have the overwhelming emphasis on this being managed through an occupational health and safety framework. It is about keeping people safe, both people in the industry and obviously the spread of disease more generally in the community.

**MR HARGREAVES:** Yes, thanks. That is quite clear. In fact I notice from one of the submissions that there have been only two instances of this in each of 2005, 2008, 2009 and 2010, so, quite clearly, that shows the nexus.

In relation to sections 24 and 25, the obligation for people to make sure they do not pass on any kind of disease is covered by the Health Act, as I understand it. Someone indicated that a little earlier on. That would cover, I would assume, people engaged in the restaurant industry, food preparation industry, dentistry, doctors, anybody who is likely to deal with anything transmissible to the general public. It is pretty clear in the Health Act what the penalties are if you breach it.

Is this a doubling up of the requirement? Is this sort of extra mention in the Prostitution Act necessary given that the coverage is already there in the Health Act? Is this sort of treatment meted out to any other industry, like the restaurant industry?

**Mr McCabe:** Could I respond from the Work Safety Act point of view? The Work Safety Act has a similar provision in that workers are prohibited from impacting on the health and safety of others—in other words, any person they come in contact with as a result of their work, and vice versa. However, that is a very broad provision, whereas what is here in sections 24 and 25 is a very specific instance of that.

So, yes, there is a doubling up from the work safety point of view, but this is a very, very specific instance of how that could occur as opposed to the very broad provisions in the Work Safety Act.

**MR HARGREAVES:** In the example that I have quoted, the Liquor Act, for example, governs people in the hospitality industry, and there is, I presume, legislation governing the way in which people deal with the preparation of food. Once upon time, you just got into it. Nowadays you have to have gloves and masks and all sorts of stuff. But do we have specific sections in the legislation governing their activities which duplicate the Health Act?

**Mr Corbell:** There is necessarily some overlap in a range of statutes. If I can draw your attention to paragraph 59 of the government's submission, this issue is discussed in a little more detail. Essentially, whilst there are similarities in the approach between sections 24 and 25 of the Prostitution Act with sections of the public health regulations, there are some differences in relation to certain exclusions of liability. So, for example, under the public health regulations, knowingly transmitting is an offence, but only where reasonable precautions are not taken—that is, where what the doctor advises are reasonable precautions to prevent infection are not taken—whereas there is no such exclusion of liability under the Prostitution Act, so it is actually more stringent. You cannot transmit under any circumstances, even where you may have taken what would be considered reasonable steps under the public health regulations.

So there are differences here, and I think these provisions reflect the more specific concern the Assembly had with the passage of this legislation that there should simply not be circumstances where sex workers who have certain infections are able to continue to provide sexual services. These are judgment calls made by the legislature at the time about what the protections should be.

**MR HARGREAVES:** Thanks, minister. We might pursue that a little later on.

**Mr Corbell:** This is an issue of some contention, and it was raised, in particular, in relation to the matter that was dealt with in the courts two years ago.

**MR HARGREAVES:** I imagine that, along with many of the other things, the government is actually looking for a parliamentary view from this committee on where to go to next in this sense, and that is why we explore these things. Thank you.

**THE CHAIR:** Minister, we have gone over time. It may be, minister, that as this inquiry evolves we may find the need to call you back, but we will give you plenty of notice of that. There may be issues that arise that may require that interaction. Thank you for your time and for the officials' time this morning.

**QUAEDVLIEG, MR ROMAN**, Chief Police Officer, ACT Policing

**THE CHAIR:** I welcome the Chief Police Officer.

**Mr Quaedvlieg:** Thank you, Madam Chair.

**THE CHAIR:** You were present this morning when we talked about the privilege issues. You are familiar with the contents of the buff card. Would you like to make an opening comment about your submission?

**Mr Quaedvlieg:** Thank you, Madam Chair. As you are aware, prior to the announcement of the review of the act, I had committed at a previous estimates hearing to undertake some work in relation to identifying what issues may arise around the prostitution industry in the ACT. That work was conducted between May and December last year. It entailed a number of analyses of intelligence reports held by ACT police. It involved consultation with industry and advocacy groups. I believe it placed us in a very good position to ultimately put a submission to this review. It certainly contextualised the industry for me and it also provided me with a very clear indication of the criminality that sits around the industry, which I had some concerns about last year.

In essence—and I am happy to extrapolate further in questions in relation to that—what we have found, as my submission will indicate, is that there is a relatively low correlation between serious and organised crime and the sex industry in the ACT. Having said that, there is an amount of criminality that is attached and within the industry, again the details of which appear in my report, and again I can expand on that.

The submission from ACT police ultimately makes six recommendations, two of which relate to an expansion of police powers under the act, two of which relate to a strengthening of the regime in terms of identifying and protecting minors, one which relates to the expansion of disqualifying offences for persons involved in the industry, and the last—the sixth recommendation—relates to a provision to strengthen the protections around how sex services may be advertised in the press.

**THE CHAIR:** Can we go back to the beginning? You said that from the intelligence and the analysis of reports there was little correlation between crime and the Prostitution Act, and in your comments there you specifically mentioned serious and organised crime. Have you found any evidence of association of organised crime organisations with prostitution in the ACT?

**Mr Quaedvlieg:** The answer to that question is yes. We are still examining information reports that indicate there is some involvement of organised crime entities with the sex industry in the ACT. That information has been around for a little while. There is nothing at this stage to corroborate that, but certainly there is an indication that there is some element of organised crime involvement in the industry.

**THE CHAIR:** What sort of organised crime?

**Mr Quaedvlieg:** I ask privilege not to answer that question at this point in time. There

are matters that are still ongoing in terms of inquiries in relation to those entities and I would not like to pre-empt what they are at this point.

**THE CHAIR:** I thought that may have been the answer to the question before I asked it, but I just had to go down there. At the top of the second page of the submission you outline the sorts of criminal activities, but you do not anywhere quantify that. You go on to quantify some other aspects. I was wondering about things like the involvement of children in the sex industry, the involvement of illegal immigrants and illicit drug use. Can the ACT AFP quantify that in relation to the sex industry in the ACT?

**Mr Quaedvlieg:** Yes, I can do that for you, Madam Chair. In a five-year period between 2006 and 2011 we received 150 information reports about criminality in the industry. Ninety-three of those reports related to offences against the act. The other 57 offences related to other criminality, such as drug offences, property offences, assaults and that type of thing. Of that 57, my sense of it, without having gone to the granular level of detail, is that the majority of those relate to information reports around drug use in the industry.

**THE CHAIR:** What has happened with those informations?

**Mr Quaedvlieg:** You will see in the submission that 10 actions were taken in relation to the offences under the act. They were brought to court through various methods, either arrests or summonses. I should qualify that information reports can be made on a variety of types of information which may be corroborated, unsubstantiated or have varying degrees of credibility attached to them. For me to give you a quantification of how those other 57 information reports actually resulted in arrest and charges would be quite an onerous process, which I have not embarked upon at this point of time. But can I say that 57 reports across the period of five years at the rate of 10 a year is not an egregious amount of crime.

**MS HUNTER:** You talked about 93 offences against the act. What were the offences against the act?

**Mr Quaedvlieg:** Those information reports—and, again, the same comments I applied to the 57 other offences apply to the 93—were information reports about potential offences that were committed. The large majority of those, the critical mass, if you like, related to the registration and the regulatory type offences. There are very few that relate to the involvement of minors or sexually transmissible diseases; they are very low in that 93.

**MR HARGREAVES:** Can I pick up on that, Chief Police Officer? On the second page of your submission you indicate two charts, and I do not know if you can recall them—

**Mr Quaedvlieg:** Correct.

**MR HARGREAVES:** one of which talks about the number of offences in 2005, 2008, 2009 and 2010. I do not know what happened to 2006 and 2007 in the middle of that. Presumably, it is a similar trend, or whatever. You indicate in that one the types of offences. You indicate that there were, in fact, 10 in that period, but in the following

chart, with the same types of offences, there were only six arrests. I think I take the point that you make that these numbers are very, very low—

**Mr Quaedvlieg:** Let me clarify that, Mr Hargreaves.

**MR HARGREAVES:** Before you do, I wanted to know, and you can clarify this, how come you have got 93 offences against the Prostitution Act, because I take your point about the other acts and that is fine—we can go to the drugs and that sort of stuff some other time—yet there are 10 listed in here? Can you give me a reconciliation of those two?

**Mr Quaedvlieg:** Sure. The answer to your first question is the 10 offences that appear in that top table are proven offences against the act. The second table delineates how those offences are brought before the court—either through arrest or summons. That is the differentiation in that respect.

The 93 information reports that we have received in relation to offences against the act—and again I reiterate the point—are a range of informations that come to us from Regulatory Services or Health or members of the community in relation to offences that were potentially committed against the act. When those referrals or reports were investigated, determined and analysed we found that only 10 of those charges could be proven.

**MR HARGREAVES:** So it is something which really should be perhaps more clear—in our minds anyway—that, of the 93 episodes of information provided to your organisation, it turned out that 83 of them were either not substantiated or insufficiently substantiated to proceed to charge. Is that right?

**Mr Quaedvlieg:** Maybe I can contextualise it for you in another sense; it might make a little bit more sense to you. Take assaults against property, for example. In the ACT—and this is in parallel with other jurisdictions—we clear about 16 per cent of complaints made. So correlated there is no real discrepancy in terms of the amount of charges proven under the act in context with the referrals received.

**MR HARGREAVES:** Yes, I am aware of that. Thanks very much for that, for the record.

**MS HUNTER:** In your submission you do say that it is a view that the ACT is not experiencing the same levels of correlation between the sex industry and criminality as other jurisdictions. Another quote is:

... it is fair to state that we do not view the ACT sex industry as a provenance of significant criminality in this jurisdiction.

You make a distinction, and we have just gone through some of that, between offences that are specifically made under the Prostitution Act and those that are made under other acts—what you might call fringe crimes. I wondered about the type of crimes and the numbers. You have touched on it. I was just wondering if you can go into a bit more detail.

**Mr Quaedvlieg:** We have 57 information reports against all those other crime types that I mentioned. The critical mass of those, from my peremptory glance at the stats, is drug-related matters. The next category, if you will, in terms of frequency, is property related matters. That could be damage, theft or passage of stolen property. Then there is a smattering of assault complaints. That needs to be taken in the context of an indeterminate size of an unregulated industry. I think it is important to make that distinction, because we in the ACT police find it difficult to determine the exact size. I listened to the questions and the evidence given by the minister about the size of the unregulated industry and I would want to make some comments in relation to that at a convenient point. Would now be a convenient point?

**THE CHAIR:** Now would be convenient, yes.

**Mr Quaedvlieg:** If you look at the statistics for registered sole operators in the ACT, which is quite low—in the low teens: 14 or 15 at this point in time—one needs only to open the pages of the *Canberra Times* to see that there are many more advertisements than 14. That would, to the lay person, indicate a much larger unregulated industry that exists than what is being registered.

But there are some real difficulties in terms of the ACT police quantifying what the size of that unregulated industry is, and for a number of reasons. That population of the unregulated industry expands and contracts according to major events that may be occurring in the ACT or the broader region at any given point in time. It expands and contracts because participation in the unregulated industry is not permanent; quite a lot of the population come and go in an ad hoc manner. There is, I think, in my mind, an organisation, if you like, of prostitution in the unregulated industry by interstate elements. I think we would be naive to believe that every single sole operator advertisement that we see advertising the ACT is exactly that; there is a syndication that occurs, and there is not much doubt in my mind in relation to that. And there is a lot of transience in the industry itself.

So for us to put a finger on an exact size of the unregulated industry is difficult. And that industry, an unregulated one, is notoriously reticent in its reporting to police in relation to crime. There may be crime occurring, but we are just not aware of it because the reporting is not coming through.

**MS HUNTER:** Could I just go back. You spoke about what you thought were the top three, and they were drug-related property damage, theft, assault and things like this. With drug-related things, just so that I can get a bit of a sense of it—is that drugs being sold in these operations or is it drugs being used by workers on premises, by clients and workers? Could you give a bit of a breakdown of your sense of the drug-related reports?

**Mr Quaedvlieg:** I can. It is not exact but, based on the cursory examination I made of the reports, it is probably a blend of both drug use and drug supply. I do not think it should be a surprise to anyone—the lay person or the expert—that there is drug use within the prostitution industry. I do not think there is much surprise about that at all. In fact, drug use is quite prevalent across a whole range of sectors in the community. Why would the prostitution sector be immune to that?

**THE CHAIR:** Can I go back to your comments about the unregulated and transitory elements and the issue that the number of ads for adult services that we see in the *Canberra Times* does not correlate with the number of people who are registered. To what extent does police intelligence lead you to believe that some of these people might—you used the word “syndicated”—be moved around by other people, with the consent of the person who is being moved around or otherwise? To what extent do you have any intelligence about that?

**Mr Quaedvlieg:** Thanks for that question. I can say definitively that I do not know the exact answer to that question, because we have not dedicated resources to examining that particular sector of the industry. We simply cannot spare the resources to do that at this point in time. That response came from my experience as a police officer of 25 years, having worked quite actively in the prostitution industry for quite a number of years and having worked in the AFP national operations in relation to people trafficking in sexual servitude. I can definitively state that there are syndicated groups which work sex workers through various states.

**THE CHAIR:** Going back to the report that I quoted from earlier in the piece, which was the ACT government’s submission on illegal and non-citizens in the sex industry, which was an inquiry conducted by Sandra Nori in 2003 following a high-profile death of a trafficked woman in New South Wales, it says, amongst other things: “Reports have been made of the presence of cleverly disguised cupboards referred to as boltholes. It is assumed that such structures might be used for hiding but it is not known if it is to avoid detection, violence or for some other reason.” Is this the sort of experience that you have had, given the breadth of your experience, in dealing with prostitution from a national level and in other states—that there are people who are moved around and that some of them might do that as a business model, as a sole trader or, as the minister spoke of, that there would be people who would be moved around not of their own volition? And who is responsible for addressing those issues in the ACT? Is it ACT Policing or is it AFP national through their anti-trafficking structures?

**Mr Quaedvlieg:** Thanks for that question. The issue of boltholes is a very colourful one and you hear about these things quite often. But any population of sex workers in Australia is no different. There will be an element of that population which is trafficked. The statistics will show nationally that we do have trafficked sex workers in the industry in a national sense. I should caveat the point that in the ACT that is not in strong evidence at all. I have a firm belief that, in the regulated industry in the ACT, if not non-existent, it would be a very rare aberration for it to occur. I cannot say the same thing with the same level of confidence for the unregulated industry, because there is movement of trafficked workers through the sex industry in both the regulated and unregulated sectors. The responsibility for policing or enforcement, if you like, of trafficked sex workers lies jointly with the department of immigration and the Australian Federal Police. Certainly if it occurred within the ACT, ACT police would have a joint partnered role in that.

**THE CHAIR:** When would be the last time, for instance, that the AFP, jointly with immigration, conducted an immigration-type raid?

**Mr Quaedvlieg:** Not a raid, so much. Certainly in the period of time that I mentioned

since May last year when I decided that ACT Policing needed a more active role in examining the industry, we have worked very closely with the department of immigration in terms of intelligence holdings. We have put a forward plan in place that, where immigration receives information reports of this nature and is conducting activity in the industry, we will be assisting them in that regard. But in terms of the last time, whether there was a report, I cannot answer that question, but it was a long time ago.

**MR HARGREAVES:** Am I correct in understanding that the laws around the passage of people for exportation, commonly known as trafficking, are, in fact, as you indicated, covered by immigration laws—that is, federal laws—and the other laws which make this an illegal activity are federal laws anyway? Is that where the AFP actually gets its authority to act when it gets information that this is going on? Am I correct in assuming that, because it is covered by federal legislation, the ACT government per se does not have a role to play in it? We have to rely on that federal jurisdiction, and that is where we are fortunate in having the AFP, because you as an AFP officer actually have dual responsibility, do you not? So we do not have legislation outlawing trafficking per se.

**THE CHAIR:** We do. The Crimes Act has provisions about sexual servitude.

**MR HARGREAVES:** Sexual servitude is one thing, trafficking is another. If we had laws against trafficking, we would not have had artisans in a temple being brought in and being exploited. So where I am going is that we would have difficulty in recommending to government about introducing legislation, because it already exists.

**Mr Quaedvlieg:** I understand your question, and the answer is, yes, there are commonwealth criminal statutes that deal with the trafficking of people. Yes, it may be fortuitous that the ACT Policing is part of the Australian Federal Police, but any state jurisdiction or police service is able to enact commonwealth legislation. So if we were not part of the AFP, we would still rely upon the commonwealth statutes to investigate, enforce and prosecute people trafficking infringements.

**MR HARGREAVES:** The other question that I had is that you indicated on the second page of your submission that we had the high profile incident which gave rise to some of this, and, of course, it is necessary that we have this review because of the passage of time. But you have said that high profile incidents may give rise to public perception that crime is rife in the regulated sex industry, and the evidence over the last six years does not support this hypothesis. You have just underlined that in what you have said, and I thank you for that.

You have also indicated just now that your biggest concern is the unregulated industry. And I would imagine that would be the case in other jurisdictions as well. But if our regulated industry is doing okay, even compared with other jurisdictions, why do we need increased police powers? Why do we need to increase powers to demand name and address that do not, for example, exist in another activity? If you, for example, suspect an unregulated activity going on and, therefore, it has illegality attached to it, then you have the powers to do that already, do you not?

**Mr Quaedvlieg:** I will address that question secondly, but I will just make a

qualifying comment in relation to your introductory comments to that question. In terms of the unregulated industry, whilst I am not sure what the level of quantum is in terms of the level of crime within that, what I can say definitively is that we are not in ACT Policing receiving reports which would indicate there is a problem, irrespective of the size of that unregulated industry.

Problems are normally manifested in residents of communities making complaints about people parking on footpaths, ingress and egress, people coming. So there is always reporting where there is a problem. So the size of the industry—indeterminant quantity at this point of time—if it was large, is not manifesting in reporting to us of residential complaints or victims' complaints or any crime that is occurring as a hub around these things. So that is an interesting point I just wanted to make.

In answer to your question about the additional powers, there are other statutes which provide for the commission of offences—let us say extraordinary powers in relation to terrorist acts. Fortunately in the ACT, we have never had the need to invoke those. But, if, at a point in time we need to invoke those powers, they are very comforting to be able to have.

Now, under the Prostitution Act our power of entry relates only to those offences in sections 21, 22 and 23, which relate to children, so either the provision of sexual services by a child, proceeds derived from the provision of sexual services by a child or a child being on premises without necessarily being involved in sexual services. So that is our only power of entry, yet we have a role in terms of the other aspects of the act, as the previous questions and answers may have alerted you to.

We have a criminal investigative role in relation to a number of other offences in the act, and we do not have any power of entry, nor do we have, once we are on the premises, even if we invoke the powers under sections 21, 22 and 23, any power to demand name, address and identifying details. That is paramount to the conduct and genesis of any investigation—to find out who it is we are actually dealing with.

We are able to do that under the Tobacco Act and the Drugs of Dependence Act and the Liquor Act, but we cannot do it under the Prostitution Act. I question how effectively a police service can investigate offences without power of entry generally and without power to demand a name and address.

**MR HARGREAVES:** Can I just, therefore, join the conversation on this. When you make comparison with the Liquor Act, would I be correct in assuming that the predominance of our community worry is about underage consumption?

**Mr Quaedvlieg:** That is correct.

**MR HARGREAVES:** You had more people nicked for underage drinking at Skyfire in the one night than you had breaches in the whole of the 10 years of the Prosecution Act. Is it not a scale of things? If you have only got 93 informations lodged with you—and only 10 actually proceeded to charge, so we are missing 83 of them—is there a prima facie case for additional powers, given that the offences you have listed in your chart are actually the ones not included in sections 21 and 22? Clearly, you have been able to go on to the premises, at either Mr McCabe's invitation or

somebody else's. Is it really needed now or is the act actually sufficient to keep the inappropriate activity down at the levels at which you have indicated.

**Mr Quaedvlieg:** That question is almost a dixer, so I thank you for that. The issue with the Liquor Act is we detected 31 juveniles during the Skyfire incident on Saturday night because we were there in numbers and we have powers under the Liquor Act to actually undertake those powers. We do not have the same number of resources dedicated to the regulated prostitution industry. Even if we did, our powers of entry are only restricted to those offences involving children.

**MR HARGREAVES:** But in terms of the attack on underage consumption of alcohol, on any given Saturday or Friday night, we know that you are going to pick up X number of young people.

**THE CHAIR:** And he has the power to do that.

**MR HARGREAVES:** I defy many people here to say that they were not guilty of it when they were kids. Notwithstanding that, the size of the industry, the number of people you have applied to making sure that the Prostitution Act is adhered to is information based, is it not? It is risk management. Your entry into that particular thing is based on the risk of how many incidents you are likely to cop in a year relative to the other activities, like drugs and everything else.

**Mr Quaedvlieg:** Yes.

**MR HARGREAVES:** But, if, in fact, we are seeing only a dozen over a six-year period, that would presumably inform you about how many resources to actually put into it, which is reasonable.

**Mr Quaedvlieg:** Yes, and I agree with all your comments, but it is open to the committee to draw a comparison here in terms of a 15 or 16-year-old teenager consuming a couple of drinks of alcohol on a Saturday night in Commonwealth Park at Skyfire compared to a juvenile who is either working or attendant at a regulated sex worker premises and having access to alcohol. I think there is a risk comparison here that we just need to be conscious of.

**MR HARGREAVES:** Yes. Do you not have the power, though, anyway, for juveniles in the Prosecution Act? That is already there.

**Mr Quaedvlieg:** Yes, we could enter, but we would have to have the information in the first place, and that is restrictive. Once we are on the premises, we do not have any power to demand proof of age or name or details.

**THE CHAIR:** Could we move on from that.

**MS HUNTER:** I want to go to a question which is, I guess, calling on your experience over many years in investigating and knowing quite a bit around the sex industry nationally and, no doubt, internationally. Do you have a view on the re-criminalisation of prostitution in the ACT? We have had many submissions around this idea of the Swedish model. Do you have experience with that model? Have you

read any studies or reports of the benefits or otherwise of the Swedish model? Could you give us your thoughts on that?

**Mr Quaedvlieg:** My response to that question does stray a little into issues of policy in terms of re-criminalising or not; so I am going to be a little cautious and try to keep my answer within the remit of my expertise, if that is okay. I listened to the earlier evidence in relation to the suggestion about exploitation in the industry. I think that goes to the heart of the question, as well as whatever model is actually applied.

I think it is fair to say that the sex industry anywhere, internationally or nationally, is heterogeneous in that its population is diverse in gender, ethnicity, age et cetera. In any population, particularly where sex is the commodity, there will be an element in the population which is young people, male or female or transgender. Young people are much more vulnerable to exploitation because they have not had the experience or do not have the emotional intelligence. I think that contextualises the issue.

Decriminalising the sex worker and placing the criminal culpability on the purchaser of the commodity might shift the stigma which is associated with the sex industry to the purchaser as opposed to the sex worker but I am not necessarily sure that will actually eradicate the manifestation of prostitution. I am in accord with the government and the minister's view on this, which is that it is an ineradicable market that will always exist. Whilst I have not examined the Swedish model to any great extent, I think it can claim some successes but, talking to some of my Scandinavian counterparts, there is a huge displacement factor. Scandinavia is quite small.

Prostitution does still exist in Sweden, albeit it is now criminalised to the purchaser. In the surrounding countries there has been a commensurate increase, anecdotally, when I talk to the police commissioners in those countries. I am also concerned in relation to driving some of the activity underground.

You heard my comments earlier that I am quite comfortable that, within the regulated sex industry in the ACT, we have quite a strong visibility in terms of how that is operated. There is fringe criminality and there is the odd issue of concern, but it is visible to us and we can address it. I do not have that same level of visibility in the unregulated industry. My concern would be that, in whatever model you apply to a prostitution or a sex industry, you do not drive it underground. That has caused me some concern.

**MS HUNTER:** I do believe there are a lot of brothels set up along the border in Norway.

**Mr Quaedvlieg:** Yes. They are clustered.

**THE CHAIR:** On this subject, this raises the question which I touched on briefly with the minister. You have said—and I do not think there is much doubt about this—that this is a sort of economic activity and there does seem to be a demand-side push for the services provided in the sex industry. In your experience, are there effective means of addressing the demand-side push for increased services in the sex industry?

**Mr Quaedvlieg:** It is a very difficult question. Sex drive is a very powerful human

motivator. I do not think that is something that is able to be influenced by policy makers or health professionals. Certainly in terms of discouraging the demand side and in terms of what model you apply criminally, there could be some demand reduction manifested but I would really doubt that you could ever eradicate demand in any meaningful sense. I think the answer then becomes: how then do you ensure that criminality is kept to a minimum, sex workers are protected and minors entering the industry are protected?

**THE CHAIR:** Could I go back to the area of the unregulated, unknown sector of the community and your final recommendation for legislative change. It seems to address that issue that there needs to be some sort of regulation of the people who put the ads in the paper. This will be my final question as members have other commitments at 2 o'clock. I presume that your recommendation 6 is to address that and try to allow authorities to quantify the extent to which people may be transient and come in and out of the ACT to operate in the sex industry. Is that it?

**Mr Quaedvlieg:** Yes. I think that would certainly allow a better quantification of the unregulated industry. It would also assist my counterparts in Health to better regulate an unregulated sector. But there is a selfish aspect to it as well from my perspective. If you drive the demand out of the unregulated sector into a regulated sector, there is then more visibility for police. When I have visibility, I can actually enforce the law better. That is a more Machiavellian aspect. There is the dual benefit to that, as I see it.

**MR HARGREAVES:** Would you suggest that is why we have a more successful regime at the moment? It is not perfect.

**Mr Quaedvlieg:** I suspect that is right.

**THE CHAIR:** I have one more question. I know I said the previous one was the last but this is definitely the last. Do you have any experience of the internal trafficking, that is, inside Australia, especially of young people? It has come to my attention that one of the issues of trafficking in the United States is not necessarily the importation of people into the sex industry but people, especially young people and often minors, being moved from state to state and event to event. Does the AFP have experience of that or not?

**Mr Quaedvlieg:** We have heard the same anecdotes but we do not have a shred of evidence to support that.

**THE CHAIR:** Thank you for your participation today and for your submission.

**The committee adjourned at 1.03 pm.**