

Is Your House a Brothel? Prostitution Policy, Provision of Sex Services from Home, and the Maintenance of Respectable Domesticity

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Policy debates on commercial sex services provide increasingly complex insights into work on the street and in large commercial sex premises, yet remain largely silent on the contribution of the domestic realm to commercial sex, despite estimates that it accounts for a significant proportion of all commercial sex transactions. Policies that affect home-based sex work are ambiguous and at times contradictory, veering from the promotion of working from home to anxieties about the assumed offensiveness of sex work. These policies have been often developed without direct consideration of home-based sex work and in the absence of evidence. Remedying this silence, this article analyses policy development for, and the experiences of, home-based sex workers in New South Wales (NSW), Australia. The article concludes that working from home provides sex workers with opportunities for autonomy and wellbeing that are not available in other sex service environments, with minimal amenity impacts to the community.

Keywords: Prostitution, home-based sex service premises, rights, offensiveness, wellbeing.

Introduction

The buying and selling of sex services has long attracted different policy approaches. In some jurisdictions, such as Sweden and Norway, policies which criminalise the right to purchase or sell sex services have been introduced to effectively ban sex services outright (de Marneffe, 2009: 69). In other jurisdictions such as New Zealand, Nevada in the USA, and New South Wales (NSW) in Australia, more liberal policies towards sex services have been developed with different degrees of decriminalisation or legalisation. The development of policies for sex services draws on a range of circulating discourses, such as the assumed offensiveness and impact of sex services to communities (Matthews, 2008; Prior and Crofts, 2011), infection concerns (Raphael and Shapiro, 2004), labour rights (Sullivan, 2010), exploitation of sex workers through pimping and trafficking and liberalisation of sex services (see Sanders *et al.*, 2009). These discourses manifest significant local variations, and it is apparent that particular traditions of sexual permissiveness, religious repression and political interventionism produce very different policy approaches in different jurisdictions (Allison, 1994; Law, 1997; Outshoorn, 2004; Hekma, 2005; Kulick, 2005). Significantly, in part due to the development of a 'cultural turn' in research into the buying and selling of sex (Agustin, 2005), such discourses are

increasingly informed by evidence-based research about the effect these policies are having on soliciting and the provision of sex services, and the everyday life, wellbeing, health and safety of the diverse participants associated with sex services – not only sex workers, but also cleaners, cashiers, outreach workers and so on (Harcourt and Donovan, 2005; Hearn, 2006; Sanders and Campbell, 2007; de Marneffe, 2009; O’Neill and Pitcher, 2010; Crofts and Prior, 2012; Weitzer, 2012; Prior *et al.*, 2013).

Nevertheless, it is clear that the evidence base for policy development remains focused on the most visible sites for sex services, namely the street and large commercial sex premises, brothels. This is despite the fact that sex services are solicited and provided across a variety of public, semi-public and private spaces, including streets, doorways, clubs, hotels, brothels, massage parlours and private homes (Harcourt and Donovan, 2005), and increasingly virtually through telephony and the internet (Attwood, 2006; Hearn, 2006; Brents and Sanders, 2010). There is evidence to suggest that the home is one of the most frequent sites for the provision of sex services in NSW, with at least 40 per cent of sex workers estimated to be working in homes rather than on the street (accounting for 2 per cent) or from dedicated sex premises (accounting for 55 per cent) (Prior *et al.*, 2013: 3). Given these estimates, the lack of attention paid by researchers to home occupation sex services premises (HOSSPs) helps perpetuate the myth that street-based sex work remains a dominant form of sex work, leading to a disproportionate amount of policy and research being focused on this. There is little known about HOSSPs since these businesses are relatively covert and invisible within an urban landscape of homes.

The covert and invisible nature of HOSSPs is reflected in the policies that affect this type of work. Sex work and sex services premises have been decriminalised in NSW, but much of the policy and legislation has been developed around larger commercial sex premises and assumptions about the types of amenity impacts and offence that this size and type of business causes. HOSSPs are incorporated by definition under these policies, but their amenity impacts are not directly considered. Moreover, the impact of policies on HOSSPs is not examined. This article presents evidence-based research into the provision of sex services from private homes, to redress its omission in policy debates and to contribute to a better understanding of the challenges and rewards of working from home. We will outline the policies and regulatory regimes impacting on HOSSPs in NSW and detail original research-based on interviews with fourteen respondents who work in HOSSPs to highlight the impacts of existing policies, and to provide evidence for future policy development.

Conflicting policies: HOSSPs, brothels and assumptions of offence

In 1979 reforms were enacted that decriminalised most key prostitution offences, including solicitation, within NSW (Frances and Gray, 2007). The main rationale offered for the partial decriminalisation was harm minimisation. In 1983, the NSW State Government reintroduced soliciting offences in a restricted form, requiring that a person shall not solicit for the purpose of prostitution ‘near a dwelling, school, church or hospital’ (*Prostitution Act 1979* (NSW) s 8A) (New South Wales, 1979b). Under the *Summary Offences Act 1988* (NSW) (New South Wales, 1988), the scope of the restriction was widened to ‘within view’. The focus was on removing sex work from the awareness of those who might be offended, in particular those living in residential areas (Walker, 1983).

Since 1995, 'brothels' have been able to operate as legitimate businesses.¹ They are regulated by councils using their planning powers under the *Environmental Assessment and Planning Act 1979* (New South Wales, 1979a). Under the *Disorderly Houses Amendment Act 1995* (New South Wales, 1995), sex premises were no longer to be understood as illegal, but as either an *authorised or unauthorised land-use*, depending on whether or not they had received planning approval. This legislation revolved around the central category of 'brothel', which was defined as 'premises used for the purposes of prostitution. Premises constitute a brothel even though used by only one prostitute'. This catch-all category of 'brothel' is applicable to HOSSPs, even though the legislation was focused on larger commercial sex service businesses. The *Disorderly Houses Amendment Act 1995*, adopted similar assumptions and measures of offence. Under s17(5)(a), a 'brothel' can be closed if it is operating 'near or within view from a church, hospital, school or other place regularly frequented by children from residential or cultural activities'. Under the later *Brothels Amendment Act 2007* (New South Wales, 2007a), the notion of who could be offended was expanded considerably to anyone who may visit an area once, or even, a reasonable person who could potentially visit. These reforms were introduced due to claims by some local councils of powerlessness in the face of proliferating unlawful and disorderly brothels (Crofts, 2007).

The impact of the catch-all category of 'brothel' can be demonstrated in the development of planning principles in the case of *Martyn v. Hornsby Shire Council*. Although these principles are not law, they are highly influential and have since been referred to and/or applied in the majority of NSW Land and Environment Court (LEC) cases. These guidelines include the principle that 'brothels should not adjoin areas that are zoned residential, or be clearly visible from them'. Although there have been no LEC cases specifically considering HOSSPs, the LEC planning principles appear to include HOSSPs within its category of 'brothels', whilst at the same time precluding authorisation. This is because 'brothels' cannot adjoin, be in, or be seen from, residential zones. HOSSPs, by definition, take place in homes, in residential zones. They are accordingly, simultaneously included, and excluded, by the LEC planning principles (Crofts and Prior, 2012).

Whilst the new planning legislation for 'brothels' was built upon the notion of the assumed offensiveness of sex services to members of the broader public, the NSW legislature also justified its 1995 reforms by pointing to the link identified by the Wood Royal Commission (into the NSW Police Service) between an illegal sex industry and police corruption. The threat to close brothels led to the potential for law enforcers to demand and receive the payment of bribes (see Whelan, 1995). In addition, it was asserted that a harm minimisation approach should be adopted, by addressing public health risks and the more undesirable aspects (such as, used condoms and public sex) of prostitution (see Gaudry, 1995: 1937). Criminalisation offered no encouragement to brothel owners to run orderly businesses, and poorly run sex premises impacted upon workers, clients and nearby neighbours (see, for example, Moore, 1995: 1952). Moreover, it was recognised that sex premise closures resulted in an increase in street prostitution, amplifying negative impacts upon workers and nearby residents.

These various and often competing policy positions have played out in different regulatory approaches at different governmental levels. The 152 local councils in NSW have developed various planning and building instruments for the authorisation of sex premises, and these have been applied by the lawyers and judges in the LEC who hear appeals related to these authorisations and conditions of approval.

Over the past two decades, HOSSPs have been treated by local councils in NSW in one of three ways. First, approximately half of local councils regulate HOSSPs under the category of 'brothel', for example, Parramatta City Centre Local Environmental Plan (LEP), 2007 (New South Wales, 2007b). These councils tend to develop highly restrictive planning regulations that prohibit HOSSPs from residential areas and do not allow them to be classified as 'home businesses'. They rarely consider HOSSPs directly, but develop policy on the assumption that sex services in general are criminogenic, harmful to workers and have especially negative impacts in residential areas. This approach to the regulation of HOSSPs is effectively a prohibition, and forces those who engage in home-based sex work to operate clandestinely.

A second approach is applicable in those councils that have not developed sex industry-specific policies. In these councils, HOSSPs are regulated as home occupations under the State Environment Planning Policy Number 4: Development without Consent and Miscellaneous Exempt and Complying Development (SEPP 4) (New South Wales, 2011). SEPP 4 permits the development of home businesses without requiring development consent across the state. The SEPP 4 is based on the policy assumption that home occupations generally can provide a positive work environment. Working from home facilitates flexibility in the type of work done and when it is done, it eases the ability to work around other commitments such as child-care and reduces travel time.

Finally, a few councils have developed policies that specifically apply to HOSSPs (for example, South Sydney Local Environmental Plan (LEP) 1998 (South Sydney City Council, 1998a) and South Sydney Development Control Plan: Exempt and Complying Development (DCP) 1999 (South Sydney City Council, 1998b)). These councils regard HOSSPs as 'exempt developments' (that is, permitted to operate without a development application), provided they comply with specific requirements. For example, the South Sydney LEP 1998 allows HOSSPs as exempt developments, provided only one worker is working at any one time. Councils that have sought to directly regulate HOSSPs argue that such services can operate lawfully with minimal amenity impacts, and that this type of business can provide a positive work environment, especially for female sex workers.

The latter two approaches enable HOSSPs to operate as legitimate businesses, importing all the consequent rights and responsibilities associated with running a business. The effect of the inclusion of sex services within the legal framework of businesses was demonstrated in *Zhang v. Ashfield Municipal Council*. Conditions of consent imposed by Ashfield Council included compliance with the *Occupational Health and Safety Act 2000* (NSW) (New South Wales, 2000). Furthermore, it enables compliance with other pieces of legislation, such as the *Public Health Act 1991* (NSW) (New South Wales, 1991) and the *Injury Management and Workers Compensation Act 1998* (NSW) (New South Wales, 1998b), and allows access by the Sex Workers Outreach Project and any other relevant health services. Permitting HOSSPs to operate legitimately thus imports existing legislative and regulatory requirements and systems of enforcement and protection.

Providing insight into home-based sex service policy through evidence-based research in NSW, Australia

The above summary indicates very different policies and approaches to the regulation of HOSSPs. In the majority of councils, HOSSPs are regulated indirectly, whether under the category of 'brothel' or 'home occupation', and policies have been developed without

direct consideration of HOSSPs as a type of business or any evidence-based research. We address this dearth of evidence through the presentation of the results of interviews with fourteen HOSSP workers. These interviews build on five interviews that were carried out in earlier research (Prior and Lederwasch, 2010).

The workers interviewed were between twenty-four and sixty-one years of age, all were female, and came from extremely diverse socio-economic, ethnic/cultural and sexual orientations. Reflecting on this diversity, an interviewee stated:

Sex workers are as diverse as society comes, some have other jobs and some have it as their sole income, some educated, some uneducated.

The interviewees had provided home-based sex services in NSW for between six months and twenty-five years. Those that had provided sex services for longer periods of time reported that they had intermittently stopped service provision for periods of time ranging from a few weeks through to several years. Four of the workers were operating without council authorisation, due to their location within local council areas that regulated HOSSPs under the category of 'brothel'.

The interviews were designed to elicit information about the provision of sex services from home including: (i) number of workers/residents; (ii) number of work rooms and operating hours; (iii) location (suburb), building types and client access issues; (iv) amenity impacts and impact reduction strategies; (v) occupational health and safety issues, including health promotion and safety management; and (vi) knowledge and understanding of NSW Government and local council policies, legislation, planning instruments and services, and the perceived and real effect of these policies on the provision of sex services from homes.

Interviews were conducted with HOSSP providers on the basis that their identity would remain confidential. Interviewees were selected through a snowball technique, where they were asked to give another HOSSP provider our information with an invitation to contact us for an interview. The interview methodology was developed in consultation with the City of Sydney Sex Industry Liaison Officer, and approved by the University of Technology Sydney Human Research Ethics Committee. The interviews were conducted between August 2009 and March 2013.

Quantitative interview questions were analysed using basic descriptive statistics and a stepped qualitative data analysis was used to analyse the interview responses to each key discussion point. Responses to each key discussion point were thematically analysed. Two researchers carried out thematic coding, the second verifying the coding that had been carried out by the first researcher. This was a small study of the opinions and conditions of home sex-workers (often a very difficult-to-reach group). The interviews provided an opportunity for in-depth focus on the fine grained detail of current arrangements.

Sex work from home in New South Wales

Sex work as only one activity in the home

Home-based sex work was the main source of income for half of the respondents, and was a secondary source of income for the other half. Almost half of the respondents operated other additional businesses from the same home in which they provided sex services.

Respondents were confused about the legalities of the sex services they provided from their home, although they also expressed a similar confusion about the legalities of other home-based businesses. The majority appeared aware that HOSSPs are subject to different planning approaches in different areas of New South Wales, but were unaware of the exact details of these approaches. Eight of the respondents expressed confusion about the 'one worker policy' that operates in Sydney City. Whilst most respondents preferred to work alone from their premise, some expressed concern for how the 'one worker policy' might negatively impact on the health, safety and well-being of sex workers operating alone.

All fourteen respondents used the premises as their home, with six respondents indicating that other family members and friends also lived with them. Some of the respondents expressed concern about how the ambiguity of the classification of HOSSPs affected other family members who resided in the home. These concerns reflect the lack of consideration within NSW policy and legislation for how multiple uses of a premise result in a range of legal ambiguities for those living there. For example, if a child lives in a home that is also HOSSP, in some local government areas this may be classified as a 'brothel'. Since 'brothels' are restricted premises which people under the age of eighteen are prohibited from entering, the police and the Department of Community Services have the power to take action to protect children whom they consider to be 'at risk' – see *Restricted Premises Act 1943* (New South Wales, 1943) and *Children and Young Persons (Care and Protection) Act 1998*, s23 (New South Wales, 1998a). Thus policies based upon assumptions of respectable domesticity had the potential to impact on workers who were using their homes in unrespectable ways.

Eight of the respondents rented their home, while the other six owned their home. Some of those who owned their home indicated that the HOSSP operation had contributed to their decision to purchase the home. Most respondents preferred to use a dedicated area in the home for sex services; however, the limited space in some of the homes precluded this. Clients varied from two to twenty per week. When asked to describe what made particular homes and neighbourhoods appropriate for HOSSPs, interviewees indicated that it depended on the design of the entrance and exit, the surrounding environment, and its visibility to neighbours. Operators were concerned to present and preserve a veneer of domestic respectability. They looked for accessibility of public transport and street parking; a high degree of privacy; the presence of good security and lighting; and a location that is easy to explain to clients over the phone. As one respondent noted:

The interior is less important – if the business is to be successful, it needs to be inconspicuous. I pick a place because of its reduced potential for noise impacts, reduced potential for parking conflict and its clear but secure entry . . . you don't want a client going to the wrong door.

Those who operated from home without council approval in areas where HOSSPs were a prohibited land-use were asked why they continued to operate in the area. Some explained that their ownership of the home limited their ability to move to other locations in the city, others argued that sex services were a small part of their home life and that it seemed unrealistic to relocate. These perceptions of their premises as a home first, and workplace second, reflect general community perceptions of our homes, whilst paradoxically undermining assumptions of respectable domesticity.

Limited impact on local amenities

All of the respondents asserted that managing the potential for disturbance from their business was a priority. All engaged in activities that minimised the potential for disruption to their neighbours. Strategies they adopted included: (i) sealing off the home by closing windows/blinds during sex service provision to reduce any potential for disturbance; (ii) screening and vetting clients, particularly those that were drunk/disorderly; (iii) controlling access to the premises; and (iv) training clients how to enter and leave the premises discreetly. As one respondent noted:

I give clear directions, advise where to park, I don't give them my street number and ask them to call from a specific street corner, I make sure they do not wait around outside the residence, and I do not accept clients who are aggressive or intoxicated.

Eight of the respondents indicated that neighbours were not aware of the business. Four of the respondents had informed neighbours about the business and felt they had a 'friendly relationships with them'. These respondents had known their 'neighbours in the area for a long time, including shop owners'. Only two of the respondents had engaged with a neighbour as a result of a disturbance; in one instance a 'client [had] annoyed a neighbour by making loud noise'.

Safety and wellbeing of those working from home

In a recent study of the victimisation of sex workers in NSW (Prior *et al.*, 2013), only a small proportion of incident reports occurred within the worker's home (8.1 per cent). In comparison, victimisation rates at commercial premises were 26.4 per cent, and clients' vehicles or homes accounted for 44.4 per cent. For those who had been victimised in the home by clients, offences included sexual offences, assault, theft, harassment and disorderly conduct (Prior *et al.*, 2013: 7). There were a relatively high number (thirteen out of 333) of thefts reported in sex worker's homes. In these cases, the assailant had usually watched where the worker kept their money and then waited until the worker was in another room before stealing their belongings. The higher level and degree of reported victimisation within a client's car or home, as opposed to the worker's home, can be explained as a matter of control over environmental factors. These include the isolation of the site, ability to conceal crime facilitators (such as weapons) within the site and greater territorial awareness of the site (Prior *et al.*, 2013). Whilst this research highlights that HOSSPs are not entirely safe, it suggests that providing sex services from their own home does offer the sex worker a level of control over situational factors within the environment that can help reduce and/or mitigate the likelihood of victimisation. These degrees of safety and risk resonate with Weitzer's (2012) argument that certain types of sex work in certain types of spaces are more or less risky.

These findings were reiterated in the interviews. Four of the respondents indicated that they had experienced victimisation from clients. They discussed instances of theft (which included clients not paying for services); one instance of disorderly conduct; harassment by owners/management of brothels; and aggression and harassment (for example, stalking) by clients. Several of the interviewees noted that the most significant concern for them

specifically, and for sex workers generally, was pressure to engage in unprotected sex (for example, 'there is a big push for no condoms').

Respondents identified working from home as one of the healthiest environments for sex work within the sex industry. It offered 'increased control and freedom', 'increased financial independence', 'flexibility of work hours', 'personal autonomy' and 'increased self esteem' when compared to working in large commercial sex industry premises. HOSSPs were seen to be particularly important for increasing the self-esteem of older sex workers. This suggests that work in HOSSPs could impact positively on the emotional wellbeing of a sex worker. Conversely, however, HOSSP work was described as 'lonely work', with some suggestion that mental health was impacted negatively from a 'lack of social interaction'. One respondent nevertheless pointed out that these adverse impacts were 'common for all people who operate a business from home alone, not just sex workers'.

Respondents believed the health risks associated with 'working in isolation' were 'exacerbated' by planning regulations. The respondents expressed their frustration that current planning regulations made it difficult for HOSSP operators to work with other sex workers in the same premises as a result of the 'one worker policy'. One interviewee noted that some HOSSP workers work alongside other sex workers for companionship and appreciate the support of others within the home. Furthermore, respondents who worked from home in areas where local planning did not allow the authorisation of their business indicated that the approach prevented them from seeking help from authorities in situations ranging from engagement with health services to officials preventing or responding to victimisation.

Conclusion

Evidence suggests that home-based sex work accounts for a significant component of sex services in NSW. Despite this, there remains limited discussion of HOSSPs in Australian policy circles. In NSW, policies that impact on home-based sex services have been developed without specifically considering these types of businesses. HOSSPs are caught between policies that emphasise the desirability of working from home generally, and those policies that are sex industry specific and tend to focus on large commercial sex premises. Sex industry-specific policies have been developed based on underlying assumptions of offence and negative secondary effects associated with large commercial brothels in residential areas. In contrast, those policies developed specifically for the home are based on assumptions of respectable domesticity. As a consequence, HOSSPs tend to slip between gaps in policies, or are negatively impacted upon by policies developed for other types of businesses.

Evidence provided by the interviews suggests that HOSSPs excite little controversy or comment, and are rarely even known about by neighbouring residents. When operated discreetly this form of sex work is unlikely to cause public disturbance or negatively impact on the amenity or safety of a community. Here, assumptions of appropriate home-use advantage workers who rely on a veneer of respectability to hide their business. Working from home is likely to be safer than visiting client's homes or having sex in their cars (Sanders and Campbell, 2007). Having control of one's own environment, and being confident that clients are entering the premise on given terms, appear hugely important in boosting sex worker's self-confidence, safety and job satisfaction. As such, there are

good grounds for evolving policies for HOSSPs which assist with minimising the health and safety risks faced by those who sell sex at home. Home working is more flexible, less intrusive, more discreet, safer and potentially more rewarding than other modes of sex work, especially street-based and some forms of out-call work. All these factors indicate that the NSW state government and local councils should reconsider including HOSSPs within the category of 'brothel'. The available evidence increasingly indicates that HOSSPs can and should be regarded as 'home occupations'. Given the minimal amenity impacts, harm minimisation and all the rights and responsibilities associated with legality, HOSSPs should be subsumed within the existing planning category of 'home occupation' and should be permitted to operate without needing development consent.

Note

1 As we indicate throughout this article, the term 'brothel' is problematic in the way that it impacts on home occupations (sex services) premises. Throughout the article, we use the term 'brothel' as the majority of policies and legislation in NSW have tended to use the term 'brothel' as a catch-all category to include premises from which one person works.

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