

Sex work, regulation and social noise

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Abstract

This paper presents some of the findings from a study of sex work in Victoria. While the study was more broadly focused on regulation, enforcement and working conditions, this paper draws specifically on data gathered from the 55 sex worker participants in Victoria. We focus on one of our key findings: the value of flexibility to women employed in the sexual services industry. We then link this issue of flexibility to broader gendered employment conditions in Australia. We then consider the focus of the regulatory debates about sex work (on criminalization, harm, exploitation and stigma) arguing that issues such as work flexibility are often obscured in the vigorous contestations of legality and public morality. We conclude by asking whether ‘turning down the volume of the background debates’ could produce clearer insights and assist in the production of better regulation.

Key Words

Sex work, flexible employment, women’s work, regulation

Introduction

During a recent contracted government research study focused on sex workers in Victoria, preliminary research was presented at an in-house seminar focused on regulation and social harm. Whilst talking of alcohol regulation, one of the speakers used the phrase ‘noisy regulatory space’ to point to the vigorous social, political and economic debates that had the potential to obscure the most important intersections of social harm and regulation around alcohol consumption. This resonance of this phrase in the area of sex work and regulation provided the impetus for this paper, which poses a series of questions about the ways in which the ‘regulatory space’ (Freiberg 2009) where sex work is discussed and debated privileges some discourses and conditions and obscures others. This paper presents some new empirical findings and then examines what different potential debates might emerge if we framed those same questions about sex work differently.

Here, we examine some of the findings from a study of sex work in Victoria. While the study was more broadly focused on regulation, enforcement and working conditions, this paper draws on data gathered from the 55 sex worker participants in Victoria. We focus on one of our key findings; the value of flexibility to women employed in the sexual services industry. We link this issue of flexibility to broader gendered employment conditions in Australia. We then consider the focus of the regulatory debates about sex work (on criminalization, harm, exploitation and stigma) arguing that issues such as work flexibility are often obscured in the vigorous contestations of legality and public morality. We conclude by asking whether ‘turning down the volume of the background debates’ could produce clearer insights and assist in the production of better regulation.

Study outline and methodology

The research project *Working in Victorian Brothels* was undertaken for the Victorian Department of Justice. The study used semi-structured qualitative interviews with four different intersecting groups: enforcement, licensees, support agency workers and sex workers. This paper focuses only on the data from the latter group. Recruitment was undertaken through flyers distributed at legal brothels around Melbourne.

The interviews collected data on respondents’ current work and prior experience in the industry; key demographics; entry, tenure and exit experiences; movement between licensed and unlicensed sectors; experience with health services, drug related issues and interface with the criminal justice system; taxation; and social indicator questions (financial security, housing security, health status and social support). In the study, we interviewed a number of non-English speaking workers using translators. In

the first instance, all primary documents (flyers, consent forms and explanatory statements) were translated into Korean, Thai and Chinese and were distributed. If interest was expressed by workers, the interview was conducted with a translator.

Data analysis used a grounded theory methodology (Corbin and Strauss 1990) and the NVivo program. Transcripts were read by the whole research team to develop general themes; work conditions, autonomy and stigma, general health and well being were identified as central. Interview data were then coded in these categories. Transcripts were then re-read and validated against categories. In the worker interviews, in recognition of the sensitivity of the population and our ethical obligations towards informants who might be more than usually vulnerable, no pressure was applied around the provision of details of work or family circumstances, employment history, or any other information. As indicated above, this paper will only focus on flexibility as one of the key themes emerging under work conditions. For a full report of all key findings, please see *Working in Victorian Brothels* (Pickering et al. 2009).

Nice work if you can do it

Overall, for workers, flexibility was nominated as one of the key reasons for working in the sexual services industry. There were two types of flexibility that were identified as particularly important; the first was flexibility to nominate shifts that fitted into other life commitments and the second was the flexibility to cease and resume employment in sex work. This flexibility of entry, exit and working hours enables workers to meet certain short- or long-term financial goals, and manage their own health and wellbeing. This flexibility may be responsible for the prevalent trend identified in our study which sees workers exit and subsequently return to the industry, even after professional qualifications and experience in alternative industries

have been obtained. This has been a particularly noticeable trend for some workers who have entered caring professions like social work and nursing, where remuneration is considerably less than that offered by work in the sex industry. Moreover, many workers combine work and travel opportunities, using sex work to see Australia and work interstate, or work internationally.

I arrived yesterday from Hobart and I'm going away next week as in a small holiday in Queensland and on the way back I'll stop and probably work three days in Coffs Harbour or somewhere on the coast and I'll make the money I will normally make in a parlour here in two or three weeks. *Shanti, worker*

For particular groups of workers, however, those caring for dependent children and students, this degree of flexibility was vitally important because of the lack of other viable employment options. Almost half of the workers who participated in this study had completed or were currently enrolled in tertiary study (N=22). As James et al. (2007) identified, many students are facing very difficult financial conditions while they complete their study (see also Lantz 2005) and female students may face particular challenges with less savings and greater reliance on available supports. Many domestic tertiary students are working close to full time workloads in order to afford study and living costs (James et al. 2007). For international students, the additional pressures of fees, higher than expected living costs and visa conditions limiting them to 20 hours paid work created significant financial pressure (*Overseas Student Education Experience Taskforce* 2008). As these comments show, sex work provided a viable employment solution to these intractable conditions.

I study full-time so these hours suit me because I get good working hours and the pay is really good. I'm not limited. *Merry, Local student worker*

My Masters is a professional qualification. I have no scholarship for it so the fees are expensive. It is a coursework program. This work fits in well with the university schedule. Except one time I actually met my tutorial teacher in a brothel. I could only talk about this amongst my sex worker friends. *Ezra, International student worker*

I mean I knew that there was going to be things that I wouldn't be able to support and afford and things like that, but I hadn't like planned it. And when I came here and with time it was hard finding jobs and I went through issues of racism and races and there was so much going on and I just needed something that where I don't have to sort of be what I'm not, and you know, just have an easy life. And I didn't know I can do this, but when I did I just thought, you know what, this is what I want to do and there was no looking back. It was about being happy and enjoying yourself I guess. I didn't work, I didn't look at myself as a worker, but I looked at myself as this is something I enjoy doing. *Aliyah, International student worker*

I have a few days free, like I only have classes two days a week. It's a lot of work for two days because you have so many subjects to keep up with, but then I look at the brighter side and you've got so many days that you're free and that gives me time to sort of do my assignments during the day and work in the night and things like that. *Fleur, Local student worker*

The second group where broader workplace conditions and trends emerged as a key impetus for working in the industry were parents and carers. Nineteen female workers were parents, seventeen of whom were caring for dependent children. For these workers, lack of flexibility and lack of comparable pay in other industries were key factors in their decision to maintain sex work. The labour market patterns of Australian women are characterised by high rates of casualised labour in sex segregated service industries; the OECD considers the availability of family-friendly work options to be relatively poor in Australia (OECD 2002). Survey data indicates that flexibility is unevenly available and is a significant barrier to the employment of mothers and the management of family life (Baxter et al. 2008). The prevalence of shifts and non-standard schedules in service sectors has facilitated women's labour force attachment as shifts, part-time work and non-standard hours offer opportunities to preserve family care time, but many argue that women's social, economic and professional well-being are compromised by their over-representation in casualised employment (Watson et al. 2003). In this employment context, sex work offers significant, clear benefits. The flexibility enables workers to balance their work in the

industry with other commitments such as family responsibilities, education and employment in other industries. As the quotes below show, this issue of comparable employment is particularly intense when English is not the worker's first language and when mothers are the sole carers of their children.

My son just started school this year and ... and I was freaking out what I'm gonna (sic) do for like school holidays and she goes, "Well why don't you do days here because I can tell you right now, look my son's sick, I've got to go." You know, and they're quite fine with that, and even two weeks you know, I've gotta (sic) take two weeks off, I'll see you in two weeks, "That's fine. I'll see you then." It's so easy and it's flexible. There's not one job I can think of that would allow me to do that four times a year. *Elsie, worker*

That was, for a single parent, that's one of the biggest drawcards, is the fact that you can pick and choose your hours, like around Christmas or New Year or whatever, my family's always juggling, who can work, who's at work, who's not, what day? With me it's like, yep, whenever, so I like that. And I like, if my kids are sick, not coming into work and all those sort of things, you know? I think it suits single parenthood. *Marika, worker*

This is normal for Thai people. You have to help maternal/paternal aunties. It's not like in Australia where you move out when you are 17 or 18. You have to look after your grandchildren. When I think about my parents, I'm happy about what I'm doing. *Lina, worker*

Our findings suggest that parents and students who have other non-negotiable commitments are likely to continue to find sex work an attractive option, since flexible adequate paid work that meshes with other life commitments is in short supply in Australia. For these sex workers, questions about attachment to the sexual services industry, in our view, should be framed with attentiveness to the broader employment market at the centre of the debates. Yet, when we examine the key frameworks in the regulation of sex work, the importance of broader employment conditions is sometimes acknowledged but certainly doesn't dictate or define the regulatory debate and context.

Regulating sex work

Freiberg (2009) has argued that when thinking about regulation, policy making, its impacts and effect, a broad conceptualisation of regulation is crucial. He argues for the concept of the 'regulatory space' which will include all formal regulatory instruments (governments, courts, parliaments, law enforcement, NGOs, policy making bodies etc) involved in the development, promulgation and enactment of regulations, but should also include relevant existing moral codes, informal social and political networks and social and economic conditions that will frame and shape these same regulatory instruments and practices. This inclusive framework is particularly useful for considering regulatory debates focused on sex work.

Many scholars and activists have argued that a complex discursive *mélange* emerges when sex work and appropriate policy and regulatory outcomes are proposed. Munro and Della Giusta suggest that 'diverse agendas about gender equality, the regulation of sexuality, personal self-determination, state protectionism, public nuisance and socio-economic disparity ... fus[e] and/or [clash]' (2004:1) when sex work regulation is considered. West argues that the balance of 'prohibition, legalization and decriminalization' (2000:106) in regulatory schemas for sex work varies across national and local jurisdictions and reflects the dominance of particular discursive constructions of sex work in these different jurisdictions. West suggests the framing of sex work as labour for example has shaped the Netherlands legislative and regulatory responses to sex work, while Britain's responses have been dominated by concepts of public nuisance (West 2000).

In Australia, West (2000) argues, the situation across the different states reflects a complex mix of imperatives and outcomes. In Victoria, planning controls and licensing procedures were adopted as a mechanism to manage sex work, criminality

and public interest but ‘the reformers’ case for legitimizing prostitution as just another employment sector had yet to win widespread support’ (West 2000: 111). Brants (1998) has argued for a distinction between ‘regulationist’ (1998:622) where protection of society is the key objective of regulation (rather than workers) and ‘legalised’ where sex work is treated as simply another labour market with no specific defining features. Using this distinction, it could be argued that Victoria has adopted a mixed approach where protection of workers is important, as the provisions of the *Prostitution Control Act* (1994) suggests, but full legitimization of the industry has not occurred (see also Dobinson undated). We argue that this ambiguity is important when we consider how discussions, debates and policy frameworks for sex work emerge and operate.

Beyond the noise?

Brants argues that ‘policy on prostitution in any country depends on the underlying ideology about the moral (un)acceptability of paid sex’ (1998:622). There is significant evidence that this proposition holds true in Australia as elsewhere. In Victoria, in particular, the failure of the recent Government proposal for ‘tolerance zones’ for street workers (Kerkin 2003; Sanders et al. 2007) suggests that the ambivalence West (2000) identified in the Victorian regulatory approach to sex work model continues to exist. This ambivalence about the morality of the work takes higher profile in discussions of sex work than does the flexibility of work conditions and the lack of viable alternatives. As discussed, our findings indicated flexibility is central in understanding women’s and students’ sex work decisions in Victoria.

Arguing that flexible work needs to be framed as a key priority in considering sex work is not analogous to suggesting that sex work is not a specific form of

employment and that questions of occupational health and safety, social stigma and other issues are not important (see Pickering et al. 2009; Pyett et al. 1996). But it does change our understanding of the regulatory context for sex work, since this broader view would necessarily include a consideration of the lack of viable alternate forms of employment for women that offer adequate remuneration and flexibility. This framing of regulation could turn down the noise focused on morality and ambivalent feelings about sex work and push the discussion towards the patchy flexibility of Australian workplaces.

As Munro and Della Guista caution, we need to be alert to the ‘complex, unpredictable and controversial ways’ (2008:1) sex work regulations operate and impact on workers. Relevant labour market conditions for Australian women workers are the entrenched issues of pay inequality (Whitehouse 2001), the high level of sex segregation (OECD 2002) and low comparative levels of pay in highly feminised industries such as childcare. One of the problems that might occur if we centre flexible employment in sex work debates is the transfer of these poor pay rates and conditions that occur in other highly feminised industries in Australia to sex work. These existing labour market factors suggest if we framed sex work in terms of women’s flexible work options, we might potentially diminish one of other key benefits associated with sex work flexibility, which is the beneficial ratio between hours spent at work and pay received.

This paper draws on recent empirical findings about the drivers for employment in the sexual services industry and links these findings to the ways in which the regulatory spaces (Freiberg 2009) of sex work are configured. We have pointed to the dichotomy between our findings about women’s reasons for sex work and the frameworks for regulation and regulatory discussion. This disjunction has prompted us to consider

whether reframing the regulatory spaces of sex work might offer opportunities for new policy responses and better social discussions.

References

- Baxter, J., Gray, M., Alexander, M., Strazdins, L., and M. Bittman (2007) *Mothers and fathers with young children: paid employment, caring and well-being*. FACSIA, Canberra, Social Policy Research Paper 30 URL <http://www.fahcsia.gov.au/about/publicationsarticles/research/socialpolicy/Documents/prp30/index.htm>
- Brants, C. (1998) 'The Fine Art of Regulated Tolerance: Prostitution in Amsterdam', *Journal of Law and Society* 25(4): 621-635.
- Corbin, J. and A. Strauss (1990) 'Grounded Theory Research: Procedures, Canons, and Evaluative Criteria', *Qualitative Sociology* 31(1): 3-21.
- Dobinson, S. (undated) 'The Victorian Situation with Legalisation', URL <http://www.scarletalliance.org.au/library/dobinson-s/view>
- Freiberg, A. (2009) 'The Tools of Government', Unpublished paper.
- James, R., Bexley, E., Devlin, M. and S. Marginson (2007) *Australian University Student Finances 2006 Final Report*. Canberra: Universities Australia, URL <http://www.universitiesaustralia.edu.au/documents/publications/policy/survey/AUSF-Final-Report-2006.pdf>
- Kerkin, K. (2003) 'Re-placing difference: planning and street sex work in a gentrifying area', *Urban Policy and Research* 21(2): 137-149.
- Lantz, S. (2005). 'Students Working in the Melbourne Sex Industry: Education, Human Capital and the Changing Patterns of the Youth Labour Market', *Journal of Youth Studies* 8(4): 385-401.
- Munro, V and M. Giusta (2008) 'Editors' Introduction. The Regulation of Prostitution: Contemporary Contexts and Comparative Perspectives', in *Demanding Sex: Critical Reflections on the Regulation of Prostitution*. Aldershot: Ashgate.
- OECD (2002) *Babies and Bosses: Reconciling Work and Family Life, Vol 1, Australia, Denmark and the Netherlands*. Paris: OECD.
- Overseas Student Education, Experience Taskforce Report* (Victoria) (2008) URL http://www.diird.vic.gov.au/corplivewr/_assets/main/lib60069/victorian%20overseas%20student%20experience%20taskforce.pdf
- Pickering, S, Maher, J and A. Gerard (2009) *Working in Victorian Brothels*. Melbourne: Monash University.
- Pyett, P., B. Haste and J. Snow (1996) 'Who Works in the Sex Industry? A Profile of Female Prostitutes in Victoria', *Australian and New Zealand Journal of Public Health* 20(4): 431-433.
- Sanders, T. and R. Campbell (2007) 'Designing out vulnerability, building in respect: violence, safety and sex work policy', *British Journal of Sociology* 58(1): 1-19.
- Watson, I., Buchanan, J., Campbell, I. and C. Briggs (2003) *Fragmented Futures - New Challenges in Working Life*. Sydney: Federation Press.
- West, J. (2000) 'Prostitution: Collectives and the Politics of Regulation', *Gender Work & Organization* 7(2): 106-118.

Whitehouse, G. (2001) 'Recent Trends in Pay Equity: Beyond the Aggregate Statistics', *Journal of Industrial Relations* 43(1): 66-78.