

# The sex industry and the OH&S laws

The occupational health and safety of sex workers is one of the most difficult areas to write about as the industry is politically and ideologically charged with matters of feminist ideology, human rights and sex trafficking, religious morality and NIMBY lobbying. In such an environment, it is important that the OHS needs of sex workers not be forgotten.

On 13 July 2011, The Age newspaper reported on the threat of legal action by one sex worker on a Victorian licensed brothel, Butterflies of Blackburn. The article raised many OHS issues for the brothel industry. In short, the article reports that a sex worker is suing the brothel because the brothel, allegedly, established an expectation that the sex workers would allow unprotected sex, sexual acts without a condom or other protection, an offence under Victorian law. This particular sex worker's experience in Butterflies of Blackburn was that, when refusing unprotected sex to a client, the client assaulted her, attempted to rape her and threatened her with a gun.

The Age reports that the woman "has since been diagnosed with post-traumatic stress disorder, whiplash in her neck and a torn muscle in her shoulder". The worker is already receiving workers' compensation and is pursuing compensation for permanent impairment. Her plans for suing the brothel relate to the accusation that the brothel failed to provide a safe workplace.

The Age published an opinion piece on 15 July 2011 by Caroline Norma, an academic with RMIT and member of the Coalition Against Trafficking in Women Australia (CATWA). An important background element of Norma's comments is that, according to the media release, Norma "researches in the areas of legal prostitution, violence against women and sexual trafficking. Her current research focuses on trafficking into legal brothels in Victoria. OHS does not feature. However

SafetyAtWorkBlog has some responses from Caroline Norma which are included below.

Although Butterflies of Blackburn has Australian and Asian sex workers, SafetyAtWorkBlog has been told that there is nothing unique in this, and that the brothel has not been accused of sex trafficking.

Many sex work opponents equate sex work in a brothel as little more than street sex work indoors. Street sex work is illegal, although tolerated, in Victoria whereas working in a licensed brothel is not. Street sex work is unregulated whereas licensed brothels must comply with the safety obligations under both the Sex Work Act and the Occupational Health and Safety Act. The working environments are diametric opposites although similar sex acts, similar work tasks, are undertaken.

Caroline Norma states that "The idea that women are safe and protected in legal brothels in Victoria is a bureaucratic fantasy."

Sex workers in brothels are safer than street sex workers. Many brothels have distress buttons in each room. Many brothels have willingly undertaken OHS assessments (dozens provided by this author). All sex workers in licensed brothels must undergo sexual health checks on a monthly basis (although this is a highly contentious issue) and it is illegal for a brothel owner to allow a sex worker to work if infected with a sexually transmissible disease or if drug-affected. No alcohol is allowed in licensed brothels. One brothel in Queensland has its safety management systems independently audited to the OHS management standard AS4801. Some brothels have been asked by sex workers to provide Wi-Fi to allow them to pursue their academic studies.

A source from within the Victorian sex industry has provided SafetyAtWorkBlog with additional details of the case reported on 13 July

2011 that illustrates some familiar OHS matters.

## **Bullying**

The sex worker believes that since the assault she has been removed from the work rosters for the brothel. Exclusion has been identified as an element of workplace bullying in other industries.

## **Employment status**

The sex worker has been required to establish her employment status in order to justify action under WorkCover, a justification that is rarely required in other industries and one that, come the OHS law changes on 1 January 2012, may not be required in the future as the employer/employee relationship is replaced in the work health and safety laws by the relationship between worker and a person conducting a business or undertaking.

## **Personal Protective Equipment**

Condoms and dams are essential personal protective equipment (PPE) for sex workers and are legal requirements in legal brothels. Sex work advocates point to the very low STI incidence in sex workers as an indication of the success of such a requirement. The CEO of the 'Resourcing Health and Education in the Sex Industry' program Inner South Community Health Service, Robbi Chaplin, said

*"...epidemiological data consistently shows that sexually transmissible infections (STIs) are lower among sex workers than in other sections of the general community. Furthermore, Victorian surveillance data has not recorded a single instance of HIV transmission in a sex work setting."*

The issue of unprotected sex in brothels is often seen as a public health issue but it is more an OHS issue for workers in a similar way to the use of hearing protection, safety

glasses and suitable clothing on construction sites and in manufacturing.

## Firearms

A customer was able to enter the brothel with a gun. This is of considerable concern, as it would be in any workplace. Many brothels already have a secure reception area where clients wait for an available worker. In some brothels there are pool tables, coffee machines, and large screen televisions in these waiting areas. Many brothels also have pop-up security screens similar to those in the banking sector. Following the case reported in the papers it would be surprising if some brothels did not consider some sort of metal detection or an additional administrative process for addressing this risk.

## Occupational Violence

Occupational violence in the licensed brothel industry is considerably less than one may expect. One sex worker once told me that this is because clients visit the brothel to “f\*\*k, not fight”. Of course, this low level of violence operates on the definition of occupational violence applied by OHS regulators.

“Occupational violence is a physical attack or threat to an employee or group of employees that creates a risk to health and safety. It includes aggression and challenging behaviours and can be categorised as client-initiated and external or intrusive occupational violence.”

Sex work critics assert that sex work is a form of violence itself and that only the elimination of sex work will control violence.

## Workers' Compensation Data

Workers' compensation data for sex work is difficult to obtain for several reasons. A major reason is that there has been less than a dozen claims and the authorities refuse to release details as the small number of claims enables identification of the claimant.

The other reason is that there is no dedicated workers' compensation classification for sex work. Classification L9369R is for “Personal Services N.E.C.[not elsewhere classified]” where the occupations of “brothel keeping” and “escort agency

service” co-exist with solarium operations, tattooing, “weight reduction services” and marriage celebrant (!).

Sex work can be a complicated occupation due to the unique intimate interaction of client and worker. But workplace health and safety in this industry sector is not necessarily complex as the basic principles can be applied, and are being applied, in the licensed brothel industry. It is possible to protect against the transmission of infection, statistics show administrative controls and PPE use have been enormously effective. There are many effective engineering and administrative controls against inappropriate behaviour and occupational violence. Legislation establishes benchmarks for hygiene, worker health and the licensing of brothels, their managers, and owners.

Sex work becomes complex when issues that are secondary to the operation of a huge majority of the workplaces intrude, such as sex trafficking. Sex trafficking is a problem that must be addressed but even trafficked workers have a right to work in a safe and healthy work environment, just as do illegal workers in other industries such as construction or agriculture. Their citizenship or employment status does not diminish the obligations of employers, or “persons conducting a business or undertaking”, to provide a safe workplace however it may indicate that an employer who is willing to exploit workers in an economic context is unlikely to have much regard for worker safety.

The action being taken against Butterflies of Blackburn has many layers of complexity, some that SafetyAtWorkBlog cannot divulge without breaching the privacy of the sex worker. The complexity of the proposed legal action and the commentaries on media reports illustrate that “fringe occupations” like sex work are often forgotten in the development of OHS laws and practices. Yet it is often these fringe occupations and unique work tasks that can illustrate flaws in the one-size-fits-all, harmonised work health and safety laws.

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Caroline Norma responded by email to several questions put to her following her opinion piece in the The Age Newspaper on 15 July 2011. Below are her unedited responses:

KJ: What action do you recommend that brothel owners should take, beyond the current legislative and licensing requirements, to ensure that only safe sex occurs on their premises?

CN: "Brothel owners are currently commissioning violence against women by operating prostitution businesses. Prostitution is inherently a practice of violence against women, and can't be made 'safe' for women by any action by pimps. In fact, brothel owners have a financial conflict of interest with regards to ensuring the safety of women in their venues, because clients will pay more for unprotected sex acts, violent sex, body punishing sex acts like anal penetration, sex with younger women, etc."

KJ: Are there additional control measures that owners should apply to prevent clients entering brothels with guns or other weapons, such as knives?

CN: "Brothel owners should be required by government to employ expensive security guards, buy high-quality monitoring technology, and take other measures that will make their businesses unviable. The currently viability of prostitution businesses rests wholly on women's sexual insecurity."

KJ: What safety measures would you recommend brothel owners install within the rooms?

CN: "No physical contact should take place between women and clients--just like any other workplace where sexual harassment is outlawed."

KJ: What training would you recommend for women choosing to enter sex work in licensed brothels?

CN: "Re-training for alternative income generating activity that values their inherent dignity and worth as full human beings. Training in self-defence, assertiveness and self-confidence so that women might evade the predatory behaviour of 'brothel owners' or pimps."

KJ: Should there be an alternative mediation strategy on OHS issues for sex workers to pursue instead of needing to involve lawyers?

CN: "No, women in prostitution should be supported to the fullest extent to pursue civil action against brothel owners and clients."

KJ: What safety lessons could Australian brothels learn from comparable licensed sex industries in other countries, such as those in Nevada?

CN: "Melissa Farley has documented the violence of the Nevada brothels, which is perhaps even worse than here."

KJ: Do you think that the new nationally harmonised OHS laws to be introduced in 2012 will have any impact on sex workers and brothel owners?

CN: "I have not familiarised myself with these laws yet."