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Select Committee on Personal Choice and Community Safety  
Parliament House  
4 Harvest Terrace  
West Perth, WA  
6005

5<sup>th</sup> October, 2018

To: The Select Committee on Personal Choice and Community Safety,

Thank you for the opportunity to submit into the Inquiry on Personal Choice and Community Safety. Scarlet Alliance is the Australian Sex Workers Association. Through our objectives, policies and programs, Scarlet Alliance aims to achieve equality, social, legal, political, cultural and economic justice for past and present workers in the sex industry. Formed in 1989, Scarlet Alliance is the national peak body representing a membership of individual sex workers, and sex worker networks, groups, projects and organisations from around Australia.

Scarlet Alliance is a leader when it comes to advocating for the health, safety and welfare of workers in Australia's sex industry. Through our work and that of our membership we have the highest level of contact with sex workers in Australia of any agency, government or non-government and a high level of access to sex industry workplaces throughout Australia. Scarlet Alliance represents sex workers on a number of Commonwealth committees and Ministerial advisory mechanisms.

Please find our submission attached. If you have any questions relating to our submission please do not hesitate to contact, CEO Jules Kim at [ceo@scarletalliance.org.au](mailto:ceo@scarletalliance.org.au) or on 02 9517 2577.

Regards,

Jules Kim

Chief Executive Officer

***On 29 August 2018, the Legislative Council ordered that a select committee be established to inquire into and report on the economic and social impact of measures introduced in Western Australia to restrict personal choice ‘for the individual’s own good’, with particular reference to—***

***-any other measures introduced to restrict personal choice for individuals as a means of preventing harm to themselves.***

### ***Executive Summary***

Scarlet Alliance, Australian Sex Workers Association submit that the current laws affecting sex workers in Western Australia do not protect sex workers and in fact create more harm and violate the rights and safety of sex workers.

Despite claims that the criminalisation of large sections of the WA sex industry reduce ‘unlawful prostitution’<sup>1</sup>, the incidence of STIs and BBVs<sup>2</sup> and organised crime<sup>3</sup>, criminalisation has placed sex workers in more dangerous working environments by restricting sex workers’ occupational choices, with negative effects on our health and safety. The criminalisation of brothels reduces sex workers options to redress workplace exploitation or unfair work practices as sex workers access to industrial rights is dependent on the political and legal climate and viewpoints of sex work at the time.<sup>4</sup> The broad application of brothel keeping offences to capture two or more sex workers operating together from the same premise significantly limits the ways in which private workers are able to ‘lawfully’ operate, creating barriers for private workers to implement crucial safety strategies.

The unofficial continuation of the ‘containment policy’ by which the police largely decide on the type, size and location of brothels has restricted the variety of workplaces available for sex workers to choose to operate from, limiting sex workers choices of safe and suitable workplaces. The application of criminal offences specific to sex work and police being the main regulators of the sex industry limits sex workers legal options when addressing harassment or crime as sex workers fear that reporting crime to the police will result in surveillance, charge, stigma and discrimination.

The decriminalisation of the WA sex industry alongside the implementation of comprehensive anti-discrimination protections, improves sex workers occupational choices by supporting autonomy, control, workplace health and safety, and industrial rights. Ensuring sex workers have access to anti-discrimination and workplace health and safety (WHS) rights ensure sex workers have a variety of practical legal options to redress unfair or exploitative workplace conditions.

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<sup>1</sup> Western Australia. Mr Christian Porter. Parliamentary Debates. *Legislative Assembly*. Hansard. 14<sup>th</sup> June 2011. p4171b. Retrieved from: [http://www.parliament.wa.gov.au/Hansard/hansard.nsf/0/c986b852cedcd3ff4825799f000feb2e/\\$FILE/A38+S1+20110614+p4171b-4171b.pdf](http://www.parliament.wa.gov.au/Hansard/hansard.nsf/0/c986b852cedcd3ff4825799f000feb2e/$FILE/A38+S1+20110614+p4171b-4171b.pdf).

<sup>2</sup> Western Australia. Hon George Case. Parliamentary Debates. *Legislative Assembly*. Hansard. 13 March 2008. p848. Retrieved from: [http://www.parliament.wa.gov.au/Hansard/hansard.nsf/0/0b33a9cf9a7dcc0bc8257570000f9f15/\\$FILE/C37+S1+20080313+p848d-851a.pdf](http://www.parliament.wa.gov.au/Hansard/hansard.nsf/0/0b33a9cf9a7dcc0bc8257570000f9f15/$FILE/C37+S1+20080313+p848d-851a.pdf).

<sup>3</sup> Western Australia, Mr Christian Porter. Parliamentary Debates. *Legislative Assembly*. Hansard. 3 November 2011. p8940b-8942a. Retrieved from [http://www.parliament.wa.gov.au/Hansard/hansard.nsf/0/444ee06516bbe0454825799d000fc615/\\$FILE/A38+S1+20111103+p8940b-8942a.pdf](http://www.parliament.wa.gov.au/Hansard/hansard.nsf/0/444ee06516bbe0454825799d000fc615/$FILE/A38+S1+20111103+p8940b-8942a.pdf).

<sup>4</sup> *Phillipa v Carmel* [1996] IRCA 451.

There have been a number of attempts to reform WA's sex industry regulation. In 2007, the Labor Government produced a model of decriminalisation that was supported and applauded by sex workers and other primary stakeholders. The legislation was passed in 2008, but an election was called before the laws were proclaimed and the incoming Liberal Government abandoned them. Later, when the *Prostitution Bill 2011 (WA)* was introduced, there was a notable shift in focus from sex worker health and safety to morality concerns, organised crime and law and order. The *Prostitution Bill 2011 (WA)* was condemned by sex workers and healthcare workers because it was developed without consultation with sex workers or our representative organisations, and as a result failed to address our needs and acts against sex workers' and sex worker organisations' best interests.

*The inquiry into Personal Choice and Community Safety* provides the WA government with an important opportunity to learn from previous experience and place sex workers health and safety at the forefront of sex industry regulation. Effective sex industry regulation supports sex workers occupational choices and prioritises sex workers health and safety.

***Criminalisation of large sections of the sex industry restricts sex workers' occupational choices while undermining sex workers safety.***

In Western Australia (WA) large sections of the sex industry are criminalised, such as brothels<sup>5</sup> and street-based sex work.<sup>6</sup> Although escort work is not explicitly criminalised, *section 190 (3) of the Criminal Code Act Compilation Act 1913 (WA)*, which makes it an offence for anyone to live 'wholly or partly off the earnings of prostitution', may extend to those involved in running an escort agency.<sup>7</sup> Private workers who work from the same premise can be prosecuted with brothel keeping offences listed under *section 190 of Criminal Code Act Compilation Act 1931 (WA)*.

In 2000, WA moved to abandon the 'containment policy' with the passage of the *Prostitution Act 2000*. The 'containment policy' allowed the police to provide brothel keepers 'immunity' from brothel keeping offences provided they complied with particular requests<sup>8</sup> and were located in areas nominated by the police. The move to abandon the 'containment policy' in 2000 was decided after findings of numerous reviews that indicated that the policy lacked legal clarity, had no legislative foundation and increased opportunities for corruption, particularly police corruption.<sup>9</sup> However, evidence shows that a variant of the 'containment policy' continue to prevail and sex workers are largely forced to operate outside of WA sex industry laws.

Restricting sex worker's choices on how we work and who we work with creates barriers for sex workers to implement a variety of strategies to safeguard our wellbeing. As stated above, it remains unlawful for a private worker to work with another sex worker from the same premise. The *Criminal Code Act Compilation Act (WA)* broadly prohibits a wide variety of acts relating to 'premises used for the purposes of prostitution', including keeping, managing, assisting in the management, being the tenant, lessee or occupier, lessor, landlord, agent or rent collector. Private workers operating with another sex worker can be captured under

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<sup>5</sup> *Criminal Code Act Compilation Act 1913 (WA)*, Section 190.

<sup>6</sup> *Prostitution Act 2000 (WA)*.

<sup>7</sup> Donovan, B., Harcourt, C., Egger, S., Schneider, K., O'Connor, J., Marshall, L., . . . Fairley, C. K. (2010). *The Sex Industry in Western Australia: A Report to the Western Australian Government. National Centre in HIV Epidemiology and Clinical Research, University of New South Wales, Sydney: Pg26.*

<sup>8</sup> *Ibid.* Pg32-34.

<sup>9</sup> Prostitution Law Reform Working Group. (2007). *Prostitution Law Reform for Western Australia: Report of the Prostitution Law Reform Working Group. Office of the Attorney General. Pg14.*

brothel keeping offences listed in the *Criminal Code Act Compilation Act (WA)*. Working with other sex workers, is a well-known strategy used by sex workers to:

- improve physical safety as there may be a greater risk to violence if working alone;
- improve occupational health and safety as sex workers are able to self-regulate their workplaces in partnership; and
- lower overheads as working in partnership with other sex worker allow sole operators to split rent, utilities, and labour such as laundry.

However, current legislation in WA forces sex workers to break the law in order to operate in a way that safeguards our safety. It is well documented the significant barriers faced by sex workers who are excluded from the 'legal' sex industry in accessing their human rights. Criminalisation:

- Reduces sex workers access to justice mechanisms as sex workers fear that reporting crime will result in surveillance, being exposed as a sex worker, charge, harassment, incarceration, or deportation.<sup>10</sup> For example, in the *WA Law and Sex Worker Health (LASH) Study*, a large study investigating the impact of WA laws on sex workers health and welfare, found that 25.5% and 23.4% of sex workers surveyed respectively responded that they felt 'not comfortable' or 'very uncomfortable' when asked about their level of comfort of contacting the police in relation to complaints such as sexual assault, threats, theft, unpaid services;<sup>11</sup>
- Anecdotal evidence from Scarlet Alliance associate member organisation in WA, Magenta, indicates that fear of been charged for breaching sex industry laws upon reporting crime is frequently cited by sex workers as a primary reason for sex workers feeling unable to report crimes to the police;
- Forces sex workers to operate covertly, creating significant barriers to accessing essential services, such as health, support and legal services, in fear that having our sex work known to services will result in stigma and discrimination or being reported to the authorities;<sup>12</sup>
- Reduces sex workers access to work health and safety protections;<sup>13</sup> and
- Brothel licensing and criminalisation in Australia has resulted in poorer access to health promotion and support.<sup>14</sup>

***Current WA sex industry legislation significantly restricts sex workers access to WA's industrial laws and structures.***

Criminalisation of large sections of the sex industry in WA has meant that rates of pay, workloads, shifts and other employment conditions remain largely at the discretion of sex industry operators. Where sex workers are unable to work together, sex workers are less visible to each other and hinders opportunities to

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<sup>10</sup> Amnesty International. (2016). Amnesty International policy on State obligations to respect, protect and fulfil the human rights of sex workers. Retrieved from <https://www.amnesty.org/en/documents/pol30/4062/2016/en/> on 07/2/18.

<sup>11</sup> Selvey, L., Hallett, J., Lobo, R., McCausland, K., Bates, J., & Donovan, B. . (2017). Law and Sex worker Health (LASH) Study: A summary report to the Western Australian Department of Health. *School of Public Health, Curtin University, Perth*.

<sup>12</sup> UNAIDS, UNFPA, & UNDP,. (2012). Sex work and the law in Asia and the Pacific Thailand. *United Nations Development Programme*.

<sup>13</sup> Donovan, B., Harcourt, C., Egger, S., Schneider, K., O'Connor, J., Marshall, L., . . . Fairley, C. K. (2010). The Sex Industry in Western Australia: A Report to the Western Australian Government. *National Centre in HIV Epidemiology and Clinical Research, University of New South Walse, Sydney*.

<sup>14</sup> Harcourt, C., O'connor, J., Egger, S., Fairley, C. K., Wand, H., Chen, M. Y., . . . Donovan, B. (2010). The decriminalisation of prostitution is associated with better coverage of health promotion programs for sex workers. *Australian and New Zealand Journal of public health, 34(5)*, 482-486.

collective bargaining and advocacy. The LASH report found that Perth brothels had ‘low occupational health and safety standards, including little or no evidence of health promotion resources.’<sup>15</sup> Anecdotal evidence by SWEAR, Magenta and the Street Worker Outreach Project WA (SWOPWA) highlighted that sex workers have reported that sex industry businesses:

- Have withheld wages. WA sex workers indicated that wages can be arbitrarily withheld if a worker becomes unfavourable with the management, refuses a client, does not adhere to the dress code or is late to work;
- Have no process to deal with workplace bullying and harassment. In the absence of these formal procedures, disputes are resolved according to worker’s favourability with management;
- Can cut rates of pay or change other employment conditions without any negotiation or notice; and
- Are not held accountable if a workplace violation occurs, such as not managing problematic clients. Sex workers have complained that it is not uncommon that sex industry businesses prioritise revenue over sex workers workplace health and safety.

The criminalisation has meant that sex workers have limited options to redress working conditions that are in breach of WA’s industrial laws and structures. The landmark *Phillipa v Carmel* case highlighted the uncertainty faced by sex workers when accessing our industrial rights. In the *Phillipa v Carmel* case ‘the applicant, a sex industry worker, claimed that her employment had been unlawfully terminated by the madam of the brothel where she was engaged in her work.’<sup>16</sup> In this particular case, upon extensive examination, Phillipa was found to be entitled to her industrial rights, despite evidence that both Phillipa and Carmel had contravened sex industry laws. However, the Judicial Registrar, Mark Ritter, took into consideration whether the ‘illegality’ and ‘immorality’ of the sex industry ‘had the effect of denying Phillipa the right to compensation under the law.’ The *Phillipa v Carmel* case highlighted that, despite the success of Phillipa’s case, sex workers access to industrial rights is granted on a case by case basis and is largely dependent on the political and legal climate and viewpoints on sex work. As a result, there remains great uncertainty and ambiguity as to whether sex workers can access their industrial rights. The absence of mechanisms and processes to pursue our industrial rights and any labour violations against us, means sex workers must weigh up the considerable costs of engaging in a process of an uncertain outcome before the courts.

***The application of the ‘containment policy’ in deciding the location of brothels fails to consider the needs and desires of the community and sex workers.***

Sex workers strategically choose the location of their workplace based on access to essential services, public facilities, visibility, access to clients, lighting, and safety. Although “officially” abandoned on 1 August 2000 by the then Police Commissioner, de facto application of the ‘containment policy’ has remained in effect. The continuation of the ‘containment policy’ has meant that the police largely determine the location of brothels by providing ‘immunity’ to brothels that comply with police requests, such as sex workers and sex

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<sup>15</sup> Donovan, B., Harcourt, C., Egger, S., Schneider, K., O’Connor, J., Marshall, L., . . . Fairley, C. K. (2010). The Sex Industry in Western Australia: A Report to the Western Australian Government. *National Centre in HIV Epidemiology and Clinical Research, University of New South Walse, Sydney.* pg 13.

<sup>16</sup> Government of Western Australia. (2018). Ministerial Review of the State Industrial Relations System: Interim Report. Retrieved from <https://www.commerce.wa.gov.au/labour-relations/interim-report-ministerial-review-state-industrial-relations-system>. pg 319.

industry operators 'voluntarily' providing personal information to the police.<sup>17</sup> The police's practice of applying the 'containment policy' when deciding the location of brothels fails to provide the community, sex workers and sex industry operators an opportunity to choose the location and scale of each premise. As a result, the application of the 'containment policy' in deciding where brothels are located fails to prioritise the needs and desires of the local community, sex workers and sex industry operators. The 'containment policy' ultimately restricts the variety of workplace options available for sex workers to choose from.

Rather than regulating brothels through the unofficial application of the 'containment policy', sex industry businesses should be regulated through standard business, planning and industrial codes. Allowing local councils to apply planning controls for sex service premises gives the local council and the community an opportunity to choose the scale and potential impact of each premises. The NSW sex service premises planning advisory panel highlighted that 'establishing planning controls which are reasonable (rather than unnecessarily restrictive) is likely to result in a high proportion of sex services premises complying with council requirements, with corresponding benefits to council operations, the local community and health service providers.'<sup>18</sup>

### ***Police as the main regulators of the sex industry creates significant barriers for sex workers to report crime.***

Previous experience and consistent evidence of corruption when police are the main regulators of the sex industry clearly demonstrates that police are *not* the appropriate regulators of the sex industry. One of the major drivers for decriminalisation in NSW was the findings of the Wood Royal Commission showing 'a clear nexus between police corruption [in the NSW Police Force] and the operation of brothels'.<sup>19</sup> *The Royal Commission Into Whether There Has Been Corrupt or Criminal Conduct By Any Western Australian Police Officer* noted that without adequate legislative support, the WA police has limited capacity to effectively plan and implement corruption prevention strategies, creating a situation of high risk.<sup>20</sup>

Criminal laws specific to sex work and increased policing severely affects sex workers' willingness to engage with police in the event of a crime as sex workers fear that engaging with the police will result in been charged with sex industry offences. The removal of specific sex industry criminal laws alongside police as the main regulators of the sex industry will mean that there are far fewer barriers for sex workers to report crime and fewer opportunities for police corruption.

A whole of government approach needs to be implemented to effectively regulate the sex industry. Under a decriminalised sex industry regulatory model, a number of authorities and agencies play an active role in contributing to the effective, comprehensive regulation of the different components of the sex industry. The regulation of sex industry businesses occurs in the same manner as the regulation of many other businesses. These businesses then have a legal obligation to comply with a number of different laws and agencies, such as local councils, WorkSafe WA, FairWork Australia and health and support services, making for a highly transparent sex industry. In a decriminalised sex industry, police continue to have the same powers to detect

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<sup>17</sup> Donovan, B., Harcourt, C., Egger, S., Schneider, K., O'Connor, J., Marshall, L., . . . Fairley, C. K. (2010). *The Sex Industry in Western Australia: A Report to the Western Australian Government. National Centre in HIV Epidemiology and Clinical Research, University of New South Wales, Sydney.* Pg33.

<sup>18</sup> Sex Services Premises Planning Advisory Panel (2004). *Sex services premises: planning guidelines NSW. NSW Department of Planning.* Pg ii.

<sup>19</sup> New South Wales Government. (1997). *Royal Commission into the NSW Police Service: Final Report- Corruption (Vol. 1).* Retrieved from <https://www.pic.nsw.gov.au/Report.aspx?ReportId=100>. Pg 13.

<sup>20</sup> The Hon G A Kennedy AO QC (2004). *The royal commission into whether there has been corrupt or criminal conduct by any Western Australian Police Officer: Final Report. The Parliament of Western Australia, Perth.* Pg11.

and investigate crime and prosecute offenders, same as investigating crime in other industries. Additionally, ensuring sex industry businesses are regulated as other businesses means that sex workers are afforded the same rights as other workers.

### ***The criminalisation of street-based sex workers undermines sex workers safety.***

Street-based sex work is heavily criminalised with heavy penalties in WA. There are offences in the *Prostitution Act 2000* for both street-based sex workers and clients who seek another to act as a sex worker in or within view or hearing of a public place.<sup>21</sup> Although street-based sex work makes up a tiny proportion of the sex industry in WA, street-based sex workers are the most visible, heavily policed and highly marginalised group of sex workers. As highlighted in the 2017 LASH report, street-based sex workers are issued with move on notices that 'restricts sex workers from accessing that area again for a certain period of time'. For sex workers who work and live in the same area, move on notices prevent those workers from returning to their homes. Historically, the street-based sex work scene was mostly located in Northbridge and the Highgate area of Perth. The Northbridge and the Highgate area of Perth is also where a number of support services are located, including Magenta, the WA sex worker organisation that 'offers support, health services, education and information to WA sex workers.'<sup>22</sup> The heavy policing of street-based sex workers and the issuing of move on notices limits streets-based sex workers choices of where and when they are able to work, creating barriers to accessing essential services and implementing critical harm reduction and safety strategies at work. The criminalisation of street-based sex work has:

- Forced street-based sex workers to operate covertly to avoid detection by the authorities as the work they do is regarded as criminal activity;<sup>23</sup>
- Created significant barriers for street-based sex workers to report crime to the police in fear that reporting will, in turn, result in charges being laid against them;
- Forced street-based sex workers to take greater risks to avoid detection, such as working alone, only at night, and in poorly-lit, isolated areas, increasing their vulnerability to violence;
- Creates barriers for outreach workers to deliver essential harm reduction programs, such as condom distribution and the needle and syringe program, as street-based sex workers are reluctant to use services in fear that it may lead to further discrimination and stigmatisation or been reported to the police;<sup>24</sup>
- Resulted in charges being recorded in street-based sex workers' criminal records which can greatly undermine street-based sex workers' access to alternative work, government assistance, or training opportunities;<sup>25</sup> and
- Forced street-based workers to work more frequently, for longer hours, and take greater risks to pay off fines.<sup>26</sup>

Despite claims that decriminalising street-based sex work will proliferate street based sex work scenes everywhere, there is no evidence indicating that decriminalisation has increased the size of the sex industry,

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<sup>21</sup> *Prostitution Act 2000* (WA), Section 5-6.

<sup>22</sup> Magenta/SWOPWA. (2016). Welcome to Magenta: Sex worker support project for Western Australia. Retrieved from <https://magenta.org.au/>.

<sup>23</sup> Albright, E., & D'Adamo, K. (2017). Decreasing human trafficking through sex work decriminalization. *AMA journal of ethics*, 19(1). Pg 123.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid. p124.

<sup>26</sup> Ministry of Justice. (2008). Report of the Prostitution Law Review Committee on the operation of the Prostitution Reform Act 2003. *New Zealand Government*, New Zealand. Pg130.

including street-based sex work: the most visible form of sex work. The evidence shows that street-based sex work remains stable in decriminalised sex industries. The NSW sex industry has been decriminalised since 1995. Evidence from the Kirby Institute, a leading global research institute based in NSW, has found that ‘the NSW sex industry has not increased in size or visibility’ since decriminalisation.<sup>27</sup> Sex work in New Zealand was decriminalised with the passage of the *Prostitution Reform Act 2003 (NZ)*. The impacts of decriminalisation on the sex industry, sex workers and the public were reviewed in the *2008 Report of the Prostitution Law Review Committee on the Operation of Prostitution Reform Act 2003*. This report showed ‘that the number of sex workers in New Zealand has not increased as a result of the passage of the PRA [Prostitution Report Act 2003]’<sup>28</sup> and endorses the findings of another study that found ‘the numbers of street-based sex workers have remained stable since the enactment of the PRA’.<sup>29</sup>

### ***The anti-discrimination rights of sex workers must be protected.***

Providing sex workers with comprehensive anti-discrimination protections will send a clear message that discrimination against sex workers is unlawful and there are practical legal options to redress discrimination. The presence of anti-discrimination protections remains crucial regardless of legal frameworks. A number of states and territories have introduced anti-discrimination protections with the intention of providing protection for sex workers.

Former UN Secretary General Ban Ki-Moon states that “in most countries, discrimination remains legal against women, men who have sex with men, sex workers, drug users, and ethnic minorities. This must change.”<sup>30</sup> Former Australian High Court judge the Hon. Michael Kirby AC CMG states that “We will insist on human rights for all, including for sex workers. Nothing else is acceptable as a matter of true public morality.”<sup>31</sup> UNAIDS and the United Nations Population Fund state that it is essential for governments to create an enabling legal and policy environment which insists upon universal rights for sex workers and ensure their access to justice.<sup>32</sup>

### ***Sex workers need access to comprehensive workplace health and safety protections.***

Sex work workplaces should be subject to workplace health and safety (WHS) regulations that sets standards for health and safety of every workplace regardless of working arrangements or the ‘illegality’ of the sex industry. There are duties under WHS legislation that ensure workplace conditions do not expose workers to risks to their health and safety. Work conditions must be in accordance with industrial relations laws, WHS, and workers compensation laws. The Best Practice Guide to Occupational Health and Safety in the Sex Industry (The Best Practice Guide) states that ‘all workers, no matter what industry they work in, have a right

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<sup>27</sup> Donovan, B., Harcourt, C., Egger, S., Watchirs Smith, L., Schneider, K., Kaldor, J., . . . Tabrizi, S. (2012). The sex industry in New South Wales: a report to the NSW Ministry of Health. *Kirby Institute, University of New South Wales, Sydney*. Pg 7.

<sup>28</sup> Ministry of Justice. (2008). Report of the Prostitution Law Review Committee on the operation of the Prostitution Reform Act 2003. *New Zealand Government, New Zealand*. Pg 29.

<sup>29</sup> Ibid. Pg 16.

<sup>30</sup> UNAIDS. (2012). *UNAIDS Guidance Note on HIV and Sex Work*. Retrieved from Geneva [http://www.unaids.org/sites/default/files/media\\_asset/JC2306\\_UNAIDS-guidance-note-HIV-sex-work\\_en\\_0.pdf](http://www.unaids.org/sites/default/files/media_asset/JC2306_UNAIDS-guidance-note-HIV-sex-work_en_0.pdf). pg 2.

<sup>31</sup> UNAIDS, & UNFPA. (2011). Building Partnerships on HIV and Sex Work: Report and Recommendations from the first Asia and the Pacific Regional Consultation on HIV and Sex Work. pg 14.

<sup>32</sup> Ibid. pg 13.



not to have their health put at risk through carrying out the normal requirements of their work.<sup>33</sup> The Best Practice Guide is comprehensive in its recommendations to protect the occupational health and safety of sex workers. The Guide recommends that sex industry businesses:

- Provide information on safer sex in a variety of common community languages;
- Provide free supplies of personal protective equipment (such as condoms, lubricant, alarms and mobile phone for escort workers);
- Provide training for staff in cleaning toys, aids and surfaces;
- Prevent occupational overuse (such as repetitive strain injury) by ensuring proper work tool design (adjustable massage tables, correct massage techniques, alternating between repetitive and non-repetitive activities);
- Install safety devices (alarm buttons, policies of ejecting inappropriate clients);
- Maintain temperature regulation (heating and cooling);
- Ensure adequate lighting; and
- Provide written policy documents for staff covering trauma, condom breakage and safety procedures.

### ***Decriminalisation improves sex workers' occupational choices.***

The full decriminalisation of sex work improves sex workers' occupational choices by supporting autonomy, control, workplace health and safety (WHS) and industrial rights. Decriminalisation means that sex workers and sex industry businesses are treated like other workers and businesses with the same access to their industrial, health and human rights. Decriminalisation will mean sex workers can report crime to the police without fear of prosecution. In New South Wales (NSW), decriminalisation has brought:

- Exceptionally good public health outcomes and low rates of STIs and HIV;<sup>34,35</sup>
- No evidence of organised crime;<sup>36</sup>
- Better access to OHS. In NSW, WorkCover and NSW Health worked with sex workers to create the Health and Safety Guidelines for Brothels, which has been translated to Thai, Chinese and Korean. A recent update to the guidelines has been conducted by Safework NSW together with the NSW Ministry of Health, SWOP NSW, Touching Base, Urban Realists and Scarlet Alliance;<sup>37</sup>
- Little to no amenity impacts,<sup>38,39</sup>

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<sup>33</sup> Edler, D. (n.a). A guide to best practice: occupational health and safety in the Australian sex industry. <http://www.scarletalliance.org.au/library/bestpractise>. Pg1.

<sup>34</sup> Department of Health. (2014). Seventh National HIV Strategy 2014-2017. *Commonwealth of Australia*. Retrieved from <http://www.health.gov.au/internet/main/publishing.nsf/content/ohp-bbvs-hiv>.

<sup>35</sup> Donovan, B., Harcourt, C., Egger, S., Watchirs Smith, L., Schneider, K., Kaldor, J., . . . Tabrizi, S. (2012). The sex industry in New South Wales: a report to the NSW Ministry of Health. *Kirby Institute, University of New South Wales, Sydney*.

<sup>36</sup> Minister for Innovation and Better Regulation. (2016). NSW Government Response to the Legislative Assembly Inquiry into the Regulation of Brothels. Retrieved from <https://www.parliament.nsw.gov.au/committees/listofcommittees/Pages/committee-details.aspx?pk=185#tab-governmentresponses>

<sup>37</sup> NSW Department of Health, & WorkCover NSW. (2001). Health and safety guidelines for brothels in NSW. *WorkCover NSW*.

<sup>38</sup> Hubbard, P., Boydell, S., Crofts, P., Prior, J., & Searle, G. (2013). Noxious neighbours? Interrogating the impacts of sex premises in residential areas. *Environment and Planning A*, 45(1).

<sup>39</sup> Donovan, B., Harcourt, C., Egger, S., Watchirs Smith, L., Schneider, K., Kaldor, J., . . . Tabrizi, S. (2012). The sex industry in New South Wales: a report to the NSW Ministry of Health. *Kirby Institute, University of New South Wales, Sydney*. Pg43.

- No increase in the size of the sex industry<sup>40</sup>;and
- More transparent operation of sex industry businesses and increased access to support for all sex workers and reducing the opportunity for exploitation.

### **Recommendations**

- Police must be removed as the main regulators of the sex industry and specific criminal laws specific to sex work must be repealed to ensure the removal of barriers for sex workers to report crime to police;
- Sex workers' anti-discrimination rights must be safeguarded. The decriminalisation of the WA sex industry alongside the introduction of comprehensive anti-discrimination protections will support sex worker's legal options to redress discrimination, exploitation or unfair labour practices;
- Sex industry businesses must be regulated through standard business, planning and industrial codes. Allowing local councils to apply unbiased planning controls for sex service premises gives the local council and the community an opportunity to choose the scale and potential amenity impact of each premises;
- Sex work workplaces must be subject to WHS regulations that sets standards for health and safety of every workplace regardless of working arrangements or 'illegality' of the sex industry; and
- Sex work must be fully decriminalised in WA to ensure a whole-of-government approach is used to regulate the sex industry. Within a decriminalised sex industry, a number of authorities and agencies play an active role in contributing to the effective and comprehensive regulation of the different components of the sex industry, promoting the rights and safety of sex workers and ensuring transparent operation of the sex industry. Decriminalisation of sex work is recognised as evidence based, best practice regulation of the sex industry by a growing number of experts and agencies including the World Health Organisation, Amnesty International, International Labour Organization and the United Nations.

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<sup>40</sup> Donovan, B., Harcourt, C., Egger, S., Watchirs Smith, L., Schneider, K., Kaldor, J., . . . Tabrizi, S. (2012). The sex industry in New South Wales: a report to the NSW Ministry of Health. *Kirby Institute, University of New South Wales, Sydney*. Pg7.