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Scarlet Alliance Submission
To Consumer Affairs Victoria
19 May 2009

To whom it may concern,

RE: Decriminalisation of sex work in Victoria and removal of CAV responsibilities regarding Sex Worker Health

Scarlet Alliance is the peak body of sex workers and sex worker organisations in Australia. Our membership, leadership and staff comprises of individual sex workers, including many from Victoria, from all sectors of the Victorian sex industry, city, regional, male, female and transgender, and sex worker organisations, groups and networks, including RhED and VIXEN in Victoria.

In March 2009, Scarlet Alliance became aware that while not calling for public submissions, the Consumer Affairs Victoria would accept them until May. Scarlet Alliance elects to make our submission public to our membership in late May 2009, in an effort to increase the accountability of this process, and in accordance with due process of releasing similar materials for all sex workers to access. We will be making the submission publicly accessible on the 1st of June 2009.

Thank you for the opportunity to submit our recommendations. Scarlet Alliance extends recognition towards Serena Mawulisa, and Christian Vega for their expert assistance in writing this submission. RhED and Vixen, Scarlet Alliance organisational members in Victoria, also were consulted and had input.

Elena Jeffreys
On behalf of the Scarlet Alliance Executive



Submission on the Decriminalisation of Sex Work in Victoria
Removal of CAV Responsibilities regarding Health
June 2009

Contents

Executive Summary.....	3
SUBMISSION TO CONSUMER AFFAIRS VICTORIA	4
The 2009 appraisal of sex industry regulation in Victoria is not public.....	4
Decriminalisation	5
Licensing Has Failed	6
Terminology	10
Recommendation.....	10
Licensing, Planning and Registration Fees and Requirements (BLA and CAV)	11
Private sex workers- small owner operators	11
Administration of the BLA:.....	16
Consumer Affairs Victoria Regulatory Staff Powers	19
Enforcement re: Licensing Team for CAV and BLA	22
- Infringement Offences and Penalties	23
Sexual Health	24
Surveillance.....	24
Perceived risks	25
Sex workers attitudes.....	27
Removal of testing laws and regulations.....	29
Reducing Frequency Of Testing	29
Visas.....	30
'UnderAge' Workers.....	31
Advertising	33
Decriminalising the restriction of advertising to head and shoulders.....	33
Decriminalisation of advertising for staff.	34

Executive Summary

Licensing has failed in Victoria

Licensing in Victoria has proven to be expensive, unenforceable, and has creates barriers to compliance.

Licensing, Planning and Registration Fees and Requirements

Scarlet Alliance recommends the decriminalisation of all private sex work, removing requirements to register with the Business Licensing Authority or lodge development approvals with their local council. Scarlet Alliance supports a reduction in all licensing costs and increased ease of obtaining a license. Scarlet Alliance opposes the proposal to turn the License document into a wallet-sized card with a photo. Scarlet Alliance opposes background checks on licensees, proposing decriminalisation and removal of all background character checks relating to sex work in Victoria.

Consumer Affairs Victoria

Scarlet Alliance opposes increased regulatory powers for Consumer Affairs Victoria Staff, in relation to licensed brothels, suspected non-compliant brothels and private sex workers. Scarlet Alliance opposes increases in on-the-spot fines and opposes removal of natural justice for sex workers. Increased powers and fines will simply increase corruption potential among compliance officers, and is enforcing a failed system. All policies regarding health should be transferred to the jurisdiction of the Minister for Health.

Sexual Health

STI surveillance activity and excessive testing of sex workers in Victoria is stretching resources and creating barriers to the delivery of adequate sexual health services for sex workers. Sex worker risks are perceived by regulation as being higher than they practically are, including the requirement for sexual health certificates for sex workers who are not engaging in penetrative sex. All testing laws and regulations should be decriminalised, and jurisdiction for this responsibility should be handed to the Minister for Health. Reducing the frequency of STI testing should be considered.

Visas

Scarlet Alliance urges improved visa arrangements for migrant sex workers to have more equitable access to travel for sex work in Victoria.

Young Sex Workers

Scarlet Alliance opposes the introduction of Proof of Age cards in brothels in Victoria.

Advertising

Advertising should be decriminalised in Victoria, including removing the restriction of advertising to “head and shoulder” photos, and removing restrictions on advertising for staff.

SUBMISSION TO CONSUMER AFFAIRS VICTORIA

The 2009 appraisal of sex industry regulation in Victoria is not public.

The CAV process is without transparent structure, lacking a public terms of reference, and has not been resourced appropriately for sex worker consultation.

This is a failure of Consumer Affairs Victoria – and in opposition to Recommendation 1, ‘Review of the Prostitution Control Act 1994, by The Prostitution Control Act Ministerial Advisory Committee, 2007.’¹ The Government supported this recommendation in part, saying that it would review the Prostitution Control Act in stages. However resources towards the review have been limited to date, with little or no investment into allowing sex worker consultation.

We recognise that that Consumer Affairs Victoria is seeking to circumvent a reactionary public campaign against sex workers by accepting submissions from identified stakeholders only. However this approach is not working – anti-sex work community groups have formed and will be lobbying during the process, regardless of the level of secrecy surrounding the review. Attempts to silo the review from reactionary anti-sex work campaigners has been a failure.

Deep stigma, discrimination and misunderstanding about sex work in Victoria are themselves illustrations of the failure of Victorian sex work regulation – holding a closed appraisal of sex industry regulation does not make these problems go away. Consumer Affairs Victoria is trying to avoid a public stoush with the anti-sex work proponents of Victoria who are calling for criminalisation of sex work, sex work businesses and/or clients, however by doing so is also avoiding standing up for sex worker rights publicly and taking on the popular anti-sex work crusaders. Victorian sex workers remain targets for moralising anti-sex work feminists and church groups, and are unprotected by anti-discrimination legislation. A well-resourced review of the Victorian laws, with emphasis on evidence rather than moral beliefs, would be a step towards countering some of the prejudice sex workers face.

Both the Prostitution Control Act Ministerial Advisory Committee in 2007 and the 2008 Government response committed to resourcing research with sex workers, sex work ancillary staff and owners, and our clients. However research efforts have been minimal, and let down by low resources, lack of sex worker consultation and involvement, and without sex worker peer-education community based approaches. The \$97,000 research funded for the 2007 report less than scratched the surface of the sex industry in Victoria, only accessing those individuals who are compliant with the failed licensing regime. Research that does seek to include the voices of sex workers fails to make any significant impact on improving legislation. This is evidenced by the numerous reports published since 1994 recommending necessary change to sex work legislation and the very little progress the government has made in this area that has narrowly focussed on the regulated industry. The non-licensed of the sex industry remains alienated and marginalised from this review. Secrecy surrounding this processes has only compounded this problem.

¹ Government Response to “Improving the Regulation of the Sex Industry and Supporting Sex Workers Who Want To Move On,” A Report By The Prostitution Control Act Ministerial Advisory Committee, Consumer Affairs Victoria, State of Victoria 2008, pg 5.

Decriminalisation

Decriminalisation of sex work is the internationally recognised best practise model of sex industry regulation.

“Sex work has been wrongly identified in many countries as a form of social pathology, a type of maladaptive social behaviour. This model leads to policies which are incredibly harmful and dangerous. Instead, sex work needs to be recognised as a form of labour, with access to the same labour rights, occupational health and safety rights and the same human rights that people in other occupations enjoy.”²

Trends in contemporary law reform in Australasia indicate that decriminalisation is the regulatory model that dominates sex work regulation. Regulation in Victoria will eventually follow suit. This will mean repeal of the licensing system and increased reliance on existing business and local council regulation.

Moves towards decriminalisation mean that new regulations for sex work are not needed.

Decriminalising sex work will extend to sex workers justice and human rights that the rest of the community takes for granted.

For example :

- Not fearing criminal sanctions or police.
- Voluntarily participating in sexual health regimes, rather than being forced to because of regulations.
- Access to workplaces without fear of criminal sanctions or police, regardless of the status of that workplace (i.e. compliant or non-compliant with regulation regimes).
- Access to reporting crime, regardless of the status of their workplace (ie compliant or non-compliant with regulation regimes).
- Private workers may work from a residential address as long as they are compliant to local council business policies – like any other similar low-impact small business – without fearing inappropriate and unnecessary disclosure or breaches of confidentiality
- Inclusion in anti-discrimination laws.
- Industrial protections for all sex workers.
- Local councils taking a balanced and responsible approach to sex work – regulating as a result of amenity impact and health and safety, not as a result of moralism.

² Rachel Wotton, “Harm Reduction Frameworks in Sex Worker Peer Education” presented at the International Harm Reduction Conference in Warsaw 2007, on behalf of Scarlet Alliance

Licensing Has Failed

According to a recent national study³, the sexual health of sex workers in Victorian licensed brothels is proportionately lower than their brothel counterparts in (decriminalised) NSW and (criminalised) Western Australia. This is the evidentiary proof to back up what sex workers in Australia have been saying for years – the licensing system in Victoria has failed, made conditions worse for sex workers and excluded huge swathes of workers from the regulatory regime.

Sex work has evaded regulation for the entire history of the state of Victoria. Economic times ahead indicate that the licensed brothel sector will continue to struggle.⁴ It is not acceptable that brothel owners blame non-compliant businesses, private workers and migrant workers for their dropping profits. The incessant pressure to increase penalties for non-compliance in Victoria is not matched with any evidence that it is going to encourage compliance or profit margins. Rather, compliant brothels and private sex workers will be financially hurt by increased/new regulations and fees, and they will serve to create increased barriers to compliance and participation in existing regulations.

The failure of licensing will only deepen if regulations, offences, powers and fees are increased.

Our assessment that the Prostitution Control Act 1994 has failed is based on the stated objects of the act. In practice, each has not been achieved. Scarlet Alliance believe much of the confusion and lack of progress regarding the Act stems from the lack of direction, lack of focus and lack of simplicity present in the Objects identified.⁵

(a) to seek to protect children from sexual exploitation and coercion

We question the over-emphasis of child protection in this object. We believe that if the Act were to include this object it should focus on keeping the industry free of all forms of sexual exploitation and coercion, for people of all ages.

Also, this paranoia has been unhealthy and has resulted in extremely bad consequences for sex industry employees and for young people themselves. The Act places too much responsibility on Consumer Affairs Victoria to carry out Child Protective Services, for which it is ill-prepared and under equipped. This is especially true when it comes to the sex industry that is non-compliant with licensing. Recent media attention on underage street based sex work and in brothels has emphasised that the current regulatory infrastructure that could effectively engage with this issue is currently not present, with Consumer Affairs Victoria silent and inactive on this very sensitive topic.

(b) to lessen the impact on the community and community amenities of the carrying on of prostitution-related activities;

³ Laws and Sexual Health Study (L.A.S.H.) presented by Chief investigator Basil Donovan at the Australasian Society of HIV Medicine Annual Conference in Perth, September 2008.

⁴ Reference to the IBIS World Report, economic trends for sex work in Australia.

⁵ Scarlet Alliance acknowledges the work of VIXEN in preparing this section of policy material and recommendations.

The Act has failed to achieve this object by the very nature of its existence and further reinforces the need to move towards decriminalisation. The Act tries to achieve too much in its present form and that there are some parts of the Act that are contrary to others, particularly in terms of this object.

For example, the Act compels sex workers to attend for monthly testing. However, epidemiological evidence has demonstrated the lack of risk amongst sex workers and their clients of STIs and therefore has undermined the necessity of this aspect of legislation. Does this not impact the community through its unnecessary diversion of resources that should be made available to it? This is harm towards the community, further reinforced by the lack of resources directed towards the increasing numbers of STIs (including HIV) in the general population.

Another example is the many responses to street based sex work. Over the years local council has deployed various creative strategies in an effort to stymie the illegal trade (according to the current Act) including traffic control and limiting the availability of public toilets in St Kilda. All this has resulted in is road blocks and blocking street based sex workers' access to public amenity. Street sex work (predictably) still prevails through such resource intensive and failed attempts to squash it. Scarlet Alliance argues that the impact on the community and community amenity has been exacerbated by a punitive approach brought on by the criminalisation of street sex work and therefore the Act fails to achieve this objective.

(c) to seek to ensure that criminals are not involved in the prostitution industry;

Scarlet Alliance views this object, with its lack of definition, as misguided and confusing. We question the intention of this object and whether it is at all well founded. We also maintain that the Act has failed to achieve this object by the very nature of its existence. In this case, legislation, in an effort to create a regulated industry, has created a largely unregulated industry and minute regulated industry. Since aspects of this legislation criminalise parts of the sex industry, there can be no exit from this criminal activity with hope of becoming legitimate. Also, if legitimate workers in the industry make a mistake this object and the sections that stem from it, determine that there is no recourse for that worker to re-enter the industry. This object becomes a self fulfilling prophecy – the Act criminalises sex workers and then excludes them from the regulations that are designed to protect them.

(d) to seek to ensure that brothels are not located in residential areas or in areas frequented by children;

Since licensing was introduced in 1994, many brothels remained exempt from introduced planning restriction and so continued to operate in residential and commercial areas. Since no great negative consequence has occurred as a result of this continued operation, Scarlet Alliance questions the necessity of this object. Also, we question the rationale of this object in that it discriminates against sex industry businesses. Why can't brothels be treated in the way any other business is where the presence of children is inappropriate (such as nightclubs, strip venues, sex on premises venues, building sites, factory floors and so on)?

Scarlet Alliance also asserts that this object contradicts two later objects, (e) and (f), regarding the protection of sex workers against health risk, violence and exploitation. Planning restrictions on brothels have resulted in most being located in industrial zones. As such brothels are no where near public transport, public amenity (such as public phones), police stations, taxis, are in areas with less lighting and limited main road access. Since most sex work occurs at night, the personal sense of safety upon leaving work is compromised for many sex workers.

(da) to seek to ensure that no one person has at any one time an interest in more than one brothel licence or permit;

This object illustrates the micromanagement of the sex industry by the Act in Victoria. Scarlet Alliance has no comment bar to question the relevancy of such an 'object' to sex workers, the general public or policy makers. It makes no logical sense to ban people who are experienced in brothel management from having an interest in other brothels in Victoria. Surely the Act should be promoting the sharing of human resources?

(e) to maximise the protection of prostitutes and their clients from health risks;

Scarlet Alliance believes that sex workers and their clients should be afforded the same protection as everyone in the wider community. That this object must be stated indicates two things: that there is a perception that the protection the wider community receives from health risks is inadequate and that the health risks are magnified in the sex industry. Since the time this object was written, there has been evidence to demonstrate that both these assertions are not true.

Further, there are sections in Act that undermine this protection. One example is criminalisation of HIV positive sex workers. This criminal status does not protect anyone; rather it marginalises an already highly stigmatised portion of the sex working population. Scarlet Alliance recognises that Consumer Affairs Victoria will never be interested or capable of working with sex workers living with HIV. However, there are many services that already engage with HIV positive people and with sex workers and most of these are funded by DHS. We know that this criminalised status prevents many sex workers from disclosing their HIV status at work, or their sex work status when accessing health services. As such services rarely have the capacity to appropriately engage with complex issues such as this. Agencies who do engage well with sex workers living with HIV cannot share this knowledge as best practice. It is this expertise that should inform legislation and the only way this is going to happen is if it is available at a governance level.

(f) to maximise the protection of prostitutes from violence and exploitation;

Again, Scarlet Alliance believes that sex workers and their clients should be afforded the same protection as everyone in the wider community. We also maintain that the Act has failed to achieve this object by the very nature of its existence.

We know, both anecdotally and from an immense amount of documented evidence, that sex workers who have the least amount of access to justice and human rights are those who fall outside of the regulated industry (ie: street based sex workers, sex workers working in non-compliant brothels, sex workers living with HIV, sex workers who are underage etc). Furthermore, the protective measures currently outlined in legislation for other sex workers are considered ineffective. The only violence preventative measure expressed in legislation for sex workers in compliant brothels is the use of alarm buttons. There has been much contention as to where this alarm should go and it is the experience of brothels in Melbourne that the expectations of Consumer Affairs Victoria are both unrealistic and impractical, often resulting in costly notifications for failing to comply. Scarlet Alliance sees this as entirely unreasonable particularly because we know that sex workers do not often use these buttons and in the handful of brothel incidents that we are aware of via the Ugly Mugs program, the alarm button failed to offer any protection to sex workers. Since it is not Consumer Affairs Victoria's role to investigate actual safety measures, they continue to enforce this futile regulation. Scarlet Alliance recommends the governance and determination of safety regulations be placed under the department that currently funds violence prevention in the sex industry, DHS.

Practise wisdom tells us that the most effective strategy to protect sex workers from violence and exploitation is peer education. Currently the effectiveness of this is outlined by UNAIDS best practice when working

with sex workers and demonstrated by sex worker organisations throughout the country. An effective initiative that emerged from this strategy is the Ugly Mugs Program, the success of which is recognised internationally. Scarlet Alliance believes that determining effective protection from violence against sex workers must come from within the community of sex workers themselves; measures that are imposed by an external agency without any consultation have clearly failed.

(g) to ensure that brothels are accessible to inspectors, law enforcement officers, health workers and other social service providers;

Scarlet Alliance questions the number of enforcement bodies required by this object. Given the limited impact that they could make on health risk and their limited ability to reach sex workers that require protection from violence, exploitation and health risks, we question whether their access to brothels is at all necessary.

Scarlet Alliance believes that brothels should be treated in the same way as any other business. We see the over-regulation of these businesses as highly stigmatising and an act of discrimination, contravening the Victorian Charter of Human Rights. Anecdotally, we are aware that the current enforcement bodies are taking a highly punitive approach to these premises, registering a high number of non-compliance notices and instilling a culture of fear and disempowerment in the regulated sex industry. We would support their diligence if the regulations they were enforcing provided some benefit to sex workers (as discussed above).

Scarlet Alliance would like to see the principles of community development and a culture of inclusion govern the regulation processes of brothels. We believe that government has the capacity to work in partnership with the business owners and sex workers to make more informed and progressive change. An inter-departmental approach would achieve this. Anti-discrimination protection for sex workers is an important ingredient to this approach.

(h) to promote the welfare and occupational health and safety of prostitutes.

Scarlet Alliance believe that if this object is to be up held it must not be part of this legislation but incorporated into the Occupation Health & Safety Act.

Scarlet Alliance acknowledge that occupational health and safety standards can be outlined in legislation but for if this to have any benefit to workers in the industry they must be determined and governed by a set of policies and principles that have the best interests of the people most affected by them at its core. Currently the standards being enforced do not serve the needs of the industry and therefore we do not believe they can be claimed as healthy or safe.

Terminology⁶

Scarlet Alliance supports a change of terminology in the legislation, regulations and policy in Victoria, from the words “prostitute” and “prostitution” to “sex worker” and “sex work.”

The Prostitution Control Act consistently refers to sex work as “prostitution” and sex workers as “prostitutes”.

The use of the words “prostitution” and “prostitute” throughout the Prostitution Control Act continues to stigmatise the sex industry. This terminology is outdated and further demonstrates how this legislation will cause ongoing offense to sex workers if it remains in its current state. Sex work is legitimate work. Reflective, accurate terminology will aid in further educating the general community. UNAIDS states that “the term “sex worker” is intended to be non-judgmental, focusing on the conditions under which sexual services are sold”⁷.

Recommendation

Terminology throughout all legislation relating to the sex industry should reflect current best practice terminology in consultation with sex workers; the terms “prostitute” and “prostitution” must be replaced with “sex worker” and “sex work.”

⁶ Scarlet Alliance acknowledges the assistance of RhED in preparing this policy material and recommendation

⁷ UNAIDS, *UNAIDS’ Terminology Guidelines*, UNAIDS, 2008.

Licensing, Planning and Registration Fees and Requirements (BLA and CAV)

Private sex workers- small owner operators

Planning Requirements create barriers to exempt brothel worker participation in the regulation system in Victoria. The requirement to contact local councils and publicly request permission to work as a private worker is a serious impediment to sex workers ability to work within the law. There is no incentive for sex workers to share such information, but many reasons not to:

“Scarlet Alliance fundamentally opposes the licensing or registration of individual sex workers under any circumstances. The following points outline our concerns:

- 1) Public health - Concerns about public health are often cited as a reason for laws aimed at increasing control over sex workers’ lives and indeed the CMC discussion paper includes 'health and safety reasons' as possible reasons for monitoring compliance. However, recent history has demonstrated that despite the major barriers of criminalisation and stigma, sex workers enjoy higher standards of sexual health than other members of the general community.⁸
- 2) Human rights - The registration of individual sex workers is a violation of their human and civil rights. Sex workers have the right to privacy, the right to work in an occupation of their choice, the right to live and work free from violence and harassment, the right to live free from discrimination, vilification and stigmatisation.⁹ When a government singles out individual sex workers for surveillance in excess of how other industries are treated, they endorse sex workers being treated differently and the stigma and discrimination which results.
- 3) Privacy - It [registration] unnecessarily creates a barrier to individual sex workers working legally. Many sex workers fear their identity and profession being known for fear of potential violence, extortion, coercion, family breakdown, discrimination, harassment etc. It raises serious concerns over who has access to the information, how this information is secured, confidentiality, privacy and a range of other issues.
- 3) Over-regulation - The registration of sex workers is also unnecessary and counterproductive to the aims of controlling the activities of sex workers and the sex industry. There are a range of other ways in which the professional standards of the industry can be maintained - through codes of practise, general criminal laws if required, and other statutory laws. The registration of individuals in the sex industry is perceived to be done for no other reason than surveillance and is in excess of the way in which other industries are regulated. It does not improve the occupational health and safety of sex workers.

⁸ STD Control Branch South Australia Health Commission (Epidemiological evidence submitted to the Social Development Committee of the Parliament of South Australia Inquiry into Prostitution).

⁹ Banach and Metzenrath, *Unjust and Counterproductive: The failure of Governments to Protect Sex Workers from Discrimination*, Scarlet Alliance and AFAO, 1999 and Metzenrath *Prostitution Law Reform: Towards a Human Rights Based Model*, Prostitution Law Reform Forum in Queensland, Brisbane, 1997

4) Low compliance - The outcome of attempts to register individual sex workers has at best met with low compliance. Unfortunately, even the threat of penalties do not outweigh the fear of possible discrimination due to the high level of stigma attached to working as a sex worker. Criminal penalties will not stop people working but rather add a criminal record to those who, in other states, would be considered legitimate private sex workers and who may have worked as such for many years without negative impacts to themselves, their families or the community.

Concerns and negative outcomes for the broader community include:

The considerable cost associated with the adoption of a registration system on community and government resources

The devotion of significant police resources to policing unworkable laws which make historical sex industry working practises illegal rather than focussing on significant crimes such as rape and assault

The significant costs associated with the prosecution and incarceration of unlicensed sex workers. .

Public health initiatives aimed at maximising sexual health among sex workers and their clients would be undermined by commercial sex being pushed further underground.^{10,11}

Lack of access to justice as a result of ‘registration’ – first person account

“About 10 years ago some girlfriends and I flew to the Northern Territory with the intention of earning mega bucks working as sex workers. We didn’t know much about the legislative requirement of working in the NT and to our surprise discovered upon arriving in Darwin that brothels were illegal and escort work was the only legal form of sex work on offer. As there was only one escort agency in town we undertook interviews with the owner, only to discover that it was a legal requirement for escort workers to register with the NT police. Upon considering a worker’s application to register as an escort, police have the power to refuse an application should the worker have a past conviction for any drug or violence related offence. Once an application has been lodged and approved, details of the workers’ status as a ‘prostitute’ remain on police file indefinitely. Although my girlfriends and I were hesitant to register we were assured by the owner of the agency that our registrations would not be available to ordinary police and would not be included in a police computer data base.

Content in my belief that my registration application was gathering dust in the cop-shop basement, several years later I moved to Darwin and became involved in an activist group which attracted a great deal of police attention (i.e. harassment). Myself and other members of the activist group were arrested for participating in direct-action type activities. After being released from the police station and given bail I was shocked to find that my bail papers stated my profession as ‘prostitute,’ despite me stating my profession to police as ‘student’ and not having worked in the NT sex industry for several years!! Upon demanding an explanation for police, I was told that I had held a police file since registering as an escort!

¹⁰ Scarlet Alliance Submission to the Queensland CMC inquiry into the Queensland Prostitution Act 1999, Escort, April 2005 [viewed March 2006 http://www.scarletalliance.org.au/library/qld_sub05/file_view]

¹¹ “Sex worker registration – privacy and ethical concerns,” *HIV Australia*, Australian Federation of AIDS Organisations, Vol 5. No. 2, December 2006, http://www.afao.org.au/view_articles.asp?pxa=ve&pxs=103&pxsc=127&pxsgc=139&id=582

Once in court to answer the charges against us, my comrades and I decided to plead ‘not guilty’ and to represent ourselves. Our defence tactics included personally cross-examining the police witnesses against us. To my surprise the police witness stated that I was a known and notorious prostitute! How this was relevant to the charges I was defending was questionable at best, and I believe that the police only mentioned this fact in an attempt to discredit my character to the presiding magistrate.”¹²

Registration of private workers becomes a barrier to justice for individuals. This is an incentive to not comply with regulations.

There are currently discussions in Victoria about making it easier for private workers to operate within regulations. Removal of registration would improve human rights, health effects and access to justice for private workers in Victoria.

Scarlet Alliance recommends:

- The decriminalisation of private sex workers working in groups of 5 or less, providing sexual services from a premises in Victoria. This would be in line with existing successful approaches in New Zealand. Tasmania has decriminalised for 2 workers or less.
- An exemption from the current planning restrictions placed on private brothel operators.
- Remove requirement to register and end the collection of information from Private Workers.

Scarlet Alliance opposes requiring private sex workers to lodge an annual statement to verify their details on the register. We understand that the Government was urged to require private sex workers to notify the Business Licensing Authority whenever their personal circumstances change (ie home address). The annual requirement to submit an annual statement is a scaled down version of this recommendation.

Scarlet Alliance would like more information on what would happen if a registered sex worker didn't comply with the annual update of information? Would this mean that they are immediately deregistered and become illegal? Scarlet Alliance strongly recommends against the annual requirement to update personal information, because it creates more avenues for illegality.

For example:

- If a sex worker does not update their information, they are immediately made illegal. Thus the requirements to update the register will simply result in more non-compliance and illegality, creating more sex workers who are excluded from regulations.
- New compliance activity will be needed to ensure that sex workers are following the new regulation. This will be expensive and with no benefit to anyone.

Scarlet Alliance would like more information on the arguments in favour of maintaining personal details from private sex workers, at all, or annually. All of the anecdotal evidence, research, policy materials and consultation collated by Scarlet Alliance in the last 20 years has concluded against the registration or collection of personal details from private sex workers. It should be noted that the majority of sex workers are not involved in any

¹² Anonymous, “My wrath-inducing experience of institutional misogyny and whore hatred,” *provision*, Issue 2, 2007, pp 8-9, p 9

criminal or anti-social behaviour, so such high levels of surveillance are unnecessary and simply reinforce stigma against sex workers.

Scarlet Alliance opposes empowering the BLA to remove a person from the register if they are contravening the requirements of private worker registration. This will simply create more illegality, more regulatory and compliance activity, and less participation in the registration process.

The Prostitution Control Act Ministerial Advisory Committee recommended that the Government update the private sex worker registration regularly due to the ongoing inaccuracy of the register.¹³ Scarlet Alliance believe that the register will NEVER be fully accurate, regardless of the regulations surrounding it, because it is in private sex workers interests to withhold information from the register, for the purpose of confidentiality and privacy. Sex workers have no incentive to give their information to the register, creating a stick to punish them for not doing so is not incentive enough. It is not the responsibility of individual sex workers to ensure the accuracy and efficiency of Government registration systems.

An argument of the Business Licensing Authority for collecting information from private workers is the fear of instances of multi-purpose brothels acting under the guise of private workers. The Business Licensing Authority believes that by collection of information from private workers it helps them to form a picture of the industry, as in who knows who, and who each individual private worker is, in order to police the entire licensing regime. However the lack of sex workers who comply with registration means that actually the Business Licensing Authority has no better picture of the industry as result of registration, all they have is a very expensive mud-map. The original policy basis for private sex worker registration was not related at all to policing the licensing scheme. Private sex worker registration was originally a response to community anxiety about sex workers per se. By introducing registration, the Business Licensing Authority believed they could allay unsubstantiated community fears about private sex workers by announcing that they were collecting personal information about them. However private sex workers in Victoria have chosen not to comply with registration. Registration has failed and irrational community fears continue to be unchallenged.

Scarlet Alliance was informed in March 2009 that a new approach towards private sex workers, such as removing registration, would not be considered by Consumer Affairs Victoria. However, arguments to maintain registration however are not based on evidence, and are fraught with the irresolvable problem that private workers are not complying with registration and no extent of new laws or compliance powers will increase registration.

At a recent briefing meeting hosted by RhED in Victoria: "Vixen mentioned that the exempt brothels clause [for private sex workers] needed to be re-examined as it was obviously a failure, as there were only two operating, and as one of them had since got a licence. As the arduous processes to get planning approval from Council, very few people would think it worth it to operate a two person business. (Particularly when you consider that you also need the written permission of the owner of the premises to use it as a brothel, given community hysteria

¹³ "Improving the Regulation of the Sex Industry and Supporting Sex Workers Who Want To Move On," *A Report By The Prostitution Control Act Ministerial Advisory Committee*, Consumer Affairs Victoria, State of Victoria 2007, pg 39.

and misinformation in relation to sex work, it is highly unlikely that most land lords would give permission for their premises to be used to carry on a sex work business).”¹⁴

Scarlet Alliance recommends Consumer Affairs Victoria needs a new approach to private sex worker rights in Victoria. In the absence of coherent arguments in favour of registration, and overwhelming non-compliance, CAV must reassess the reasons and expense relating to registration.

Scarlet Alliance is in favour of removing and reducing the DPCD Requirements for private sex workers. This would be the best way forward in the interim to reduce the weight of regulation on private sex workers. This needs to be in co-ordination with The Department of Planning and Community Development (DPCD) and local councils. Consumer Affairs Victoria can look at these possibilities.

Scarlet Alliance recommends that the Minister for Consumer Affairs commit resources and better attention to the Prostitution Control Act Ministerial Advisory Committee for the purposes of better informing policy regarding the regulation of sex work. Written into the Prostitution Control Act, the Ministerial Advisory Committee is already made up of members from Vixen and RhED, as well as the wider community. However, despite the numerous recommendations for progress, legislators have ignored the committee. Scarlet Alliance recommends the resourcing of a panel constituted by the people most affected by sex work legislation, Victorian sex workers, to provide better insight and advice to government regarding issues and decisions that effect them directly, and the inclusion of Scarlet Alliance on this Advisory Committee.

¹⁴ Minutes, RhED Briefing Day , RhED, Melbourne, 23rd March 2009

Administration of the BLA:

Scarlet Alliance supports all efforts by Consumer Affairs Victoria to reduce waiting time, fees and regulations for the licensing process. This would be in line with moves towards decriminalisation and away from the arduous and failed licensing system.

Scarlet Alliance supports efforts to lower the turnaround time from application to approval for Brothel Manager Applications, however we recognise that applications and approvals are a huge waste of time for both the Consumer Affairs Victoria as it should not be necessary for Brothel Managers to go through such an arduous and detailed process – a process that Managers of other similar businesses are not subject to.

Recommendation:

- Consumer Affairs Victoria establish an enquiry into the licensing of managers, not only to improve the application process, but to clarify its role, determine pay conditions outline duties and move towards the removal of the approvals process.

Scarlet Alliance approves allowing the portability of licenses in the event of death or incapacity of a licensee. This would be similar to Real Estate Agents - someone else can operate the license for 30 days in case the licensee dies. However, as above, we believe the licensing system itself needs to be devolved into a system that is more like other similar businesses ie operating without licenses.

Scarlet Alliance approves removing the requirement of a single licensee in each premises to pay license fees, room fees and telephone fees. There currently is no provision for companies to be licensees. Each individual in the business is paying the same costs as if they were running totally separate brothels. Scarlet Alliance supports the Business Licensing Authority seeking to remove those extra costs for the licensees. A reduction in licensing fees collected would be part of the natural process of decriminalisation; as unnecessary regulation is reduced, so too is the amount of money required for its administration. As above, removal of the licensing system is the ultimate aim of this measure.

Scarlet Alliance opposes requiring the licensee to inform the Business Licensing Authority about the change of hands of the building ownership. Scarlet Alliance also opposes requiring the Business Licensing Authority doing background record checks on the owner of buildings for brothels applications, or any licensee, manager or receptionist. The current proposal is that the person buying a building with a brothel already licensed operating within it, will need to have a known associate checks. The original building owner will have already been through a known associate check. Consumer Affairs Victoria proposes that these checks will stay for all parties but with the addition that new owners will have to have the checks. The basis for the known associate checks in Victoria is to ensure that only "suitable people" are involved in the sex industry. The rhetoric includes that this will ensure a separation of between licensed brothels and organised crime. "Known Associate Checks" look for organised crime among a person's relatives and friends. Removal of the need to have "Known Associate Checks" is an important part of decriminalisation of sex work in Victoria.

Creating barriers for participation in the licensed brothel industry does not make a lot of sense given the currently small size of the licensed brothel industry in Victoria – there are many more people running unlicensed brothels than applying for “Known Associate Checks.” These checks and other licensing requirements are creating barriers for compliance in the regulatory system. In other states and territories where background checks are not required, i.e. NSW, South Australia, Western Australia, organised crime syndicates are not involved in running brothels. The argument for “Known Associate Checks” does not stand up to existing evidence.

There are currently people who have been excluded from participating in the regulations in Victoria as a result of their associates, and according to some at the Consumer Affairs Victoria there is still a need for it. However there is a lack of evidence that the “Known Associate Checks” has assisted in brothel compliance with licensing, and much evidence that the “Known Associate Checks” has created a barrier to compliance.

Scarlet Alliance opposes increased fees for variation of licensing. Currently, variations of application for licensing does not attract a fee. It is proposed that it should attract a fee, for the purpose of cost recovery. It is not a profit area or revenue stream for the Business Licensing Authority. Scarlet Alliance acknowledges that this area constitutes the bulk of Consumer Affairs Victoria’s work. However, we also recommend that Consumer Affairs Victoria explore the reasons as to why there is such a strong demand of license variation. Perhaps there are flaws in the process that can easily be corrected without resorting to making the process of variation costly. For example, greater education and support throughout the application process would ensure future licensees would be better informed and less likely to make mistakes at the application stage, thus reducing the need for later variation.

Scarlet Alliance would like to know exactly how much it currently costs to submit such a document, and how much is the proposed cost recovery is. We also believe that making variation costly will create a barrier to compliance with regulations. Presently, licensees are doing the right thing and notifying Consumer Affairs Victoria in their applications for variation. Scarlet Alliances asks, if Consumer Affairs Victoria were to add a cost to this process would licensees be less likely to participate in it and further exacerbate the failure of licensing.

Applicants for licenses (as well as full licensees and registered private sex workers) must currently apply to their Local Councils for a planning permit. There is a proposal that these applications should be able to be heard by Local Councils concurrently while their licensee application is being processed by the Business Licensing Authority. Scarlet Alliance supports this. However Scarlet Alliance would like to know what is the turnaround time for the licensee application, and how much of this is the known associates check. Scarlet Alliance opposes the “Known Associate Checks” and recognises that licensing itself has failed. However, reducing the burden on existing licensees is important, and is a step in the direction of decriminalisation.

Scarlet Alliance is opposed to including photographs on licenses for approvals. Currently the document that indicates a ‘license’ is an a4 sheet of paper. The proposal to turn this into a wallet sized card including photograph to identify who is in control of the premises is another extreme method of micro-management of individual licensed brothels in Victoria. These efforts will do nothing to increase compliance generally in the licensing system. The failure of licensing is a strong reason not to turn the license a4 paper into an identity card with photo on it.

Becoming insolvent is currently a reason to have your licence application/approval being cancelled. Scarlet Alliance supports the proposal is that the brothel can apply to keep/hold their approval even if they become insolvent. Any

lessening of regulations for licensed brothels in Victoria is a step towards decriminalisation – and is supported by Scarlet Alliance.

Currently there is a list of Business Licensing Authority decisions that can be reviewed by Victorian Civil and Administrative Tribunal. Scarlet Alliance supports the proposal is to add to that list decisions under S36.a of the PCA. This would mean that if an application is refused because the applicant does not produce to the Builders Licensing Authority in a reasonable time the information the Builders Licensing Authority has requested, the applicant can take it to the Civil and Administrative Tribunal and have their refusal appealed.

Embargo Until 1 June 09

Consumer Affairs Victoria Regulatory Staff Powers

There is a culture of prosecution rather than celebration of the sex industry by Consumer Affairs Victoria. In their annual report for 2008, Consumer Affairs Victoria refers to “inspections,” “investigations,” and prosecutions, but no reference at all to partnership with sex workers, consultation with sex workers or any successes at all relating to sex work. Consumer Affairs Victoria seemingly has nothing good at all to say about sex work, brothels or the sex industry. This is an attitude change that needs addressing within Consumer Affairs Victoria. For there to be true partnership between sex workers and the regulator in Victoria, at least one strong point or common ground must be found and celebrated.¹⁵ Consumer Affairs Victoria is not the appropriate body to regulate sex worker health. Scarlet Alliance recommend that the Health Minister take jurisdiction of this issue.

Unlicensed Brothels

Scarlet Alliance opposes extending immunity to the Consumer Affairs Victoria compliance branch so that they can go undercover, ask for sex and entrap sex workers into illegal acts. This power would mean that Consumer Affairs Victoria compliance branch would have the same powers that are given to Police, simply for the purpose of policing the exchange of money for sex in Victoria. For example, Police can break the Prostitution Control Act as long as they are doing it to entrap/prosecute people under the Prostitution Control Act. This is similar to the entrapment laws in Western Australia and the deception laws in Queensland, in relation to police immunity for entrapping sex workers. These powers have created human rights violations in those states and there are no benefits for either sex workers or compliance officers in having these powers. It is against the interests of sex industry regulation to be setting up compliance officers with powers that are simply going to contribute to corruption. Recent cases in Parramatta City Council and the ensuing NSW Independent Commission Against Corruption enquiry highlight the vulnerability of compliance officers to corruption. Increased powers would only increase potential corruption, and would not serve to improve compliance activity.

Scarlet Alliance also has concerns regarding increasing Consumer Affairs Victoria enforcement powers to match those of the police. We doubt that Consumer Affairs Victoria could ensure the safety of their staff entering a premise for the purposes of investigation. What else will Consumer Affairs Victoria staff be empowered to do to ensure this proposal is sustainable? The carrying of weapons, perhaps? If there is a need for increased powers in this area, then clearly there are deficiencies with the current process. The MOU that exists between Police, Consumer Affairs Victoria and MAV is now in place. Scarlet Alliance recommends more time to review the efficacy of this protocol before an extension of Consumer Affairs Victoria’s powers is granted.

Scarlet Alliance is aware that there is a strong push for increased enforcement against unlicensed brothels, as an effort to curb dropping profits in licensed brothels. The failure of licensing is not going to be ameliorated by increased enforcement – there is little reason for brothels to participate in the arduous licensing system.

¹⁵ For examples of this imbalance, link to the Consumer Affairs Victoria Annual Report 2008, section on sex work, [http://www.consumer.vic.gov.au/CA256902000FE154/Lookup/CAV_Publications_Annual_Report_2008/\\$file/other_industry_regulation_schemes.pdf](http://www.consumer.vic.gov.au/CA256902000FE154/Lookup/CAV_Publications_Annual_Report_2008/$file/other_industry_regulation_schemes.pdf)

Decriminalisation would encompass ALL brothels in existing business regulation, without needing costly compliance. Scarlet Alliance strongly opposes increased taxpayers monies going towards the failed licensing regime, compliance or enforcements and urges an approach that moves towards decriminalisation.

Regardless of the facts, the licensing system has failed and isn't participated in is not up for discussion at all by Consumer Affairs Victoria this year. Scarlet Alliance has been told that regulation and licensing is not being revisited except in relation to increasing penalties, powers, fines and regulation for licensed brothels. Scarlet Alliance questions the vested interest that Consumer Affairs Victoria has in this process and urges broad scale recognition that licensing has failed. Consumer Affairs Victoria is running the unofficial 'review' of the Prostitution Control Act AND recommending that their powers be increased. Consumer Affairs Victoria has a conflict of interest.

Scarlet Alliance opposes the proposed increasing penalty for running an unlicensed brothel, up to 1200 penalty units. This is a proposed increase of the existing penalty for not having a license. This proposal increases the penalty for running an unlicensed brothel, so that it matches the penalty for not having a permit. The proposal is that the penalties should match, but rather than drop one, they have increased one. However none of these penalties have worked to encourage compliance and slightly raising it will not assist.

Scarlet Alliance opposes empowering Consumer Affairs Victoria compliance inspectors to stop and question people if they are entering or leaving suspected unlicensed brothel premises. Licensing has not worked, it is a failure and this is a bigger problem for Consumer Affairs Victoria than who may be working at or frequenting non-compliant premises. Harassing suspected clients, sex workers and members of the general public will only lower the rate of compliance and increase the potential for abusing the position of authority of Consumer Affairs Victoria compliance inspectors that is currently being anecdotally discussed amongst business owners in Victoria. Scarlet Alliance also questions how Consumer Affairs Victoria will determine what is a suspected unlicensed brothel premises. Given that any premises used for the transaction of sexual services may be deemed a brothel (ie the definition of an illegal brothel quite broad), this proposal would mean that Consumer Affairs Victoria staff could stop and question anyone leaving a public toilet, anyone leaving a strip club, any one leaving a sex on premises venue, anyone near any premises that could house the transaction of sexual services. Consumer Affairs Victoria should be concerned that these powers may instil a culture of fear and non-compliance with the most marginalised and disadvantaged populations as well as the general public.

Scarlet Alliance opposes empowering Consumer Affairs Victoria inspectors to request name, address, information and statements etc when they ask for them from people suspected of being attached to suspected unlicensed brothels. These powers to harass and question people will only lower the rate of compliance of Consumer Affairs Victoria compliance inspectors and are in violation of the Victorian Charter of Human Rights. As above, Scarlet Alliance also questions how Consumer Affairs Victoria will determine what is a suspected unlicensed brothel premises. Consumer Affairs Victoria should be concerned that these powers may be used for corrupt ends to blackmail private sex workers for sex or money.

Scarlet Alliance opposes empowering Consumer Affairs Victoria inspectors to enter suspected unlicensed brothels without warrant. At the moment the police can enter a licensed premises and break into a suspected illegal brothel without a warrant. Prostitution Control Act s.62 and s.63 entry to unlicensed premises with search warrant, S64 entry is without a search warrant, these powers are currently only for police. Scarlet Alliance

opposes police having these powers, and is strongly opposed to Consumer Affairs Victoria inspectors being given these powers.

Scarlet Alliance opposes provision for suppression of witness details in relation to prosecution of unlicensed brothels. The sex industry should be allowed transparency in prosecutions, and unless ALL brothel prosecution is allowing for witness detail suppression, we are concerned that suppressing it for unlicensed brothels alone will simply lead to increased corruption and abuse of power. Allowing witnesses to suppress details when giving evidence against suspected unlicensed brothels creates the conditions for operators of nearby rival brothels to use Consumer Affairs Victoria and the legal process to 'take down' any business rivals, creating a monopoly in their areas. This reduces sex workers choice of workplace. If there are less choices of workplace, brothel owners have less incentive to provide good working conditions to remain competitive. It is not in sex workers' interests to suppress witness details in relation to prosecution of unlicensed brothels.

Scarlet Alliance supports the proposal for licensees to be able provide reasons why their license should not be suspended. This may be called a "Show Cause" provision. For example: If someone is found with underage workers on premises or other alleged 'gross' 'high risk' transgression, its a criminal matter and there are discipline proceedings as well. The Business Licensing Authority would be able to suspend the license and give the person an opportunity to refute the evidence if they want to. This is a new power proposed. It's a streamlining of an old power. The Business Licensing Authority would currently need a 'serious and irreversible threat to public interest' in order to suspend a persons license. However the changes will mean it is easier for the BLA to suspend a license.

Enforcement re: Licensing Team for CAV and BLA

The Scarlet Alliance position is that there should be decreases in enforcement by Consumer Affairs Victoria, and decreases in licensing costs by the Business Licensing Authority. Victoria should decriminalise the sex industry, and not have exorbitant fees for licensing, or unlimited and enforced entry to compliant or non-compliant brothels in Victoria. Increased enforcement means increased costs – costs that will never be recovered if brothel owners face irreconcilable barriers to compliance – fees from a small sector of the brothel industry can never match the costs for enforcing the rest, and nor should it. The gap will always be met by the taxpayer. Scarlet Alliance opposes taxpayers money being spent on enforcement of a licensing system that has failed.

Scarlet Alliance endorses the VIXEN position on this issue, that moving towards less arduous policing and regulation is the answer, not creating more laws or powers to make life more difficult for sex workers and brothels. Additionally, Scarlet Alliance has heard anecdotally that this opinion is shared by many within the sexual health sector in Melbourne.

Licensed brothels are some of the most over-visited work places in Victoria. DHS Infection Control Officers, Consumer Affairs Victoria, local council drop in, as well as Immigration, Australian Federal Police (TSETT) and the Australian Tax Office. Also we have become aware of a discrepancy in the interpretation of brothel enforcement practice within Consumer Affairs Victoria. Consumer Affairs Victoria have expressed that licensee enforcement does not interfere with the daily business of a brothel and enforcement staff are not to interact with sex workers as they go about their business. Anecdotal evidence, however, informs us that these enforcement visits have become more like “raids”, halting business, harassing sex workers and instilling a culture of fear in stakeholders who are already compliant. These visits become an added barrier of stress and work-interruptions that make legal brothel work less attractive, and work in non-compliant brothels more relaxed.

There is no need for increased regulation or visits in either compliant or non-compliant brothels – it is a waste of taxpayers’ money and is both failing and contributing negatively to sex worker work conditions.

Any increase in visiting powers, regulation, surveillance or penalties in relation to compliant and non-compliant brothels will increase potential corruption, as shown at the Parramatta Council case heard at NSW’s Independent Commission Against Corruption.

Increased enforcement powers will have negative repercussions for Victorian sex workers, because it will expose them to more corruption. Another concern is the greater risk of unintended disclosure. The more people who access brothels, including the ‘office’ parts, the greater risk that someone who knows a sex worker outside of a work context will discover them, creating enormous risks for sex workers privacy and lifestyle.

- Infringement Offences and Penalties

Consumer Affairs Victoria is reviewing all penalties under the Prostitution Control Act. Scarlet Alliance asserts that the review should decriminalise sex work by removing all offences and penalties in place for sex work in particular. Existing regulations regarding business generally in Victoria should be implemented instead. There are more than enough non-sex work specific laws, infringements and penalties in Victoria already.

Some stakeholders consider the current penalties are considered low and are lobbying for them to be increased. The huge number of existing penalties are already unwarranted and unenforceable, rendering increases redundant. If increased, Scarlet Alliance is concerned that sex workers and sex work businesses that already are marginalised from the licensing and registration regime will be further marginalised by unnecessary infringement offences and penalties.

There are existing offences that currently have to go through the court system and be prosecuted prior to a fine being given. Some stakeholders have proposed that some of these offences be subject to an immediate fine, like a speeding ticket. The proposal is that an on-the-spot fine will be given if regulations are not being adhered to. Scarlet Alliance opposes these styles of fines. They reduce access to justice and would create a culture of unnecessary fining.

For example, licensed brothels are supposed to have a license displayed, if it is not on display Consumer Affairs Victoria can currently attempt to prosecute a licensee on these grounds. The proposed change would result in an immediate fine being given. Scarlet Alliance opposes a fine for this offence, no matter what form the fine takes.

Another existing offence that may attract new fines is "Giving an Incorrect Answer" i.e. name and address (S.58, s.61 c, subsection 1, 2 and 3 of the Prostitution Control Act). Scarlet Alliance opposes a fine for the offence of "Giving An Incorrect Answer".

Further penalties being reviewed is the offence of failure to surrender the license or approval in the situation of suspension or cancellation and failure to produce license or approval when requested. Scarlet Alliance opposes fines for the offence of failing to surrender of produce license.

Currently there are generally applicable guidelines regarding offences. This includes natural justice, and electing to challenge a fine in court etc. Consumer Affairs Victoria is considering the removal of natural justice for some charges. Scarlet Alliance opposes the removal of natural justice for any laws or regulations relating to sex work.

Sexual Health

All brothel workers in Victoria are subject to illogical and expensive medical testing regimes. The testing regime in Victoria for sex workers includes swab tests every month, with blood tests every three months. A vast amount of clinical resources are spent on this testing, however, not nearly enough to adequately meet the needs of all brothel sex workers in Victoria.

The sexual health of sex workers in Melbourne are behind Perth and Sydney, according to the recent LASH study.¹⁶

Many Melbourne sex workers attend Melbourne Sexual Health Clinic. This clinic is coping with a huge amount of negative sexual health tests due to unnecessarily high frequency of testing. Anecdotally we know that in order to be seen within 1 hour of attending the clinic, sex workers have to be there upon opening, at 8.40, or wait for hours to have sexual health test. If sex workers attend before midday, they are likely to be seen within about 3 hours (or have your details taken and asked to come back after lunch when they will be seen in order. Sex workers first show up after lunch, are likely not be seen that day.

Obviously this is due to the enormous strain on the services by sex workers, who for the most part will not have experienced any symptoms of sexually transmitted infections or condom breakages since their last test. Scarlet Alliance assume the clinic prioritises people who (once determined after the brief interview with the triage nurse) demonstrate some genuine risk of being infected; however, it simply isn't possible for everyone who needs access to have adequate access to the service, under the current system. For most people, setting aside a significant amount of time out of their day to wait for testing is difficult and costs time that would be spent at work.

Victoria is one of the few places in Australia that will almost always take more than an hour to get in to see a nurse from all the major metropolitan sexual health clinics. Scarlet Alliance believes that this bares a direct relation to the fact that there is unwarranted frequency of sexual health testing of sex workers.

Surveillance

In order for sex workers to be seen at the clinic, Medicare card is not needed, however, unlike other jurisdictions (such as Sydney) there is only one of these Centres operating in this way in Melbourne. If seeing a private doctor to get a certificate, a Medicare card is expected.

This in an environment where private workers are expected to get a PCA number in order to advertise, and in order to obtain one of those private workers have to provide all of contact details. The requirement of name and contact details for testing, and the difficulties of truly anonymous testing feels to sex workers like another way of collecting data on all sex workers who don't have a PCA number. Sex workers are experiencing testing policies as surveillance point, creating anxiety and reducing sex workers ability to control their privacy.

¹⁶ Basil Donovan, Laws and Sexual Health preliminary results, September 2008 (ibid), publication pending.

Is it the desire of governments to use testing systems ‘know who and where all the sex workers are’? If this is so, it is creating barriers to access to testing, even if it is an unintentional outcome of the frequency of tests.

Perceived risks

Fetish/BDSM sex workers who provide no penetrative services, and massage and hand relief workers also have the same testing regime, as sex workers working from a licensed premises, than sex workers providing penetrative services. Sex workers who pose no risk still must have a certificate to be able to work. The arbitrary nature of testing isn’t remotely based on any real understanding of risk.

Perceived risk of sex workers in non-compliant brothels or working on the streets does not account for the frequency of testing that brothel workers in licensed premises face. As there is no way to enforce mandatory testing in sex workers who are not in licensed premises, these brothel workers face an unjust amount of regulatory attention to their sexual health. The regime has no way of policing the noncompliant sector, and is over-policing some sex workers.

Scarlet Alliance acknowledges that regulation means that sex workers who have an STI outbreak face barriers to treatment due to not wanting to be known within the system as having an STI. They may avoid treatment at Melbourne Sexual Health Centre, as refusal of a certificate will get in the way of their working in the future, and may choose to work in the non-compliance brothel sector where they don’t need a certificate.

Sex workers living with HIV are excluded from working in Victoria, but continue to do so by evading regulation. All criminalisation of sex workers living with HIV must be repealed so sex workers living with HIV can work without penalty in Victoria, and enjoy the same rights and responsibilities as other sex workers.

Sex workers will do best regulating their own bodies and testing regimes. In contrast, in Victoria, individual sex workers must show a ‘regular’ testing regime as a defence to charges of ‘knowingly’ infecting a client with an STI or HIV.

“Even though mandatory [and compulsory] testing has not been a feature of successful prevention strategies in Australia, it is still entertained as a method of ‘controlling HIV and STIs amongst sex workers’, often to allay community fears around public health. This points to the implementation of mandatory testing being motivated by perception, rather than evidence, or the best interests of sex worker health and safety.

Currently a range of different laws and regulations in Australian states and territories cause sex workers to receive mandatory or compulsory testing. In some cases this is a result of regulations which require brothel owners to collect certificates from sex workers working in legal brothels, as part of their licensing requirements.¹⁷ In other States, the laws shift responsibility for proof of testing away from sex workers and onto the owners of sex industry businesses, who must prove they have taken all reasonable measures to ensure employees of their business do not have an STI or HIV.¹⁸

¹⁷ Queensland Prostitution Licensing Authority Regulations, www.pla.qld.gov.au

¹⁸ Section 19, *Prostitution Control Act*, Victoria

Laws and policies which promote or enforce mandatory or compulsory testing:

- are in opposition to best practice models of voluntary testing and self regulation of sexual health amongst sex workers;¹⁹
- are not evidenced by current epidemiology in Australia;²⁰
- endorse a false sense of security in the form of a 'certificate,' which, due to window periods, doesn't actually confirm a sex workers' sexual health status;
- create an expensive, unnecessary cost burden on public health funds;
- overload sexual health services denying access to sex workers with symptoms or who have experienced a condom breakage and need to access sexual health services quickly;²¹
- result in reduced quality of sexual health services to sex workers;²²
- leads to sex workers hiding their profession from medical experts or avoiding the health system altogether;
- and has the unintentional consequence of endorsing stigma and the misconception that sex workers are 'vectors of disease'.

The Australian Government²³, sexual health professionals²⁴ and non-government organisations^{xiv}, including Scarlet Alliance²⁵, acknowledge that voluntary testing is the optimum approach to sexual health testing for sex workers in Australia. In 2005, research by Donovan and Harcourt found that, "When sex workers are compelled to attend health services in jurisdictions that attempt to regulate prostitution, the often cursory or inhuman treatment they receive within these services can be counter productive".²⁶ Laws requiring mandatory testing (along with registration) may actually drive sex workers away from health services.

¹⁹ Australian Government, *National HIV/AIDS Strategy – Revitalising Australia's response 2005-2008*, Australian Government, Canberra, 2005.

²⁰ NCHECR, HIV/AIDS, viral hepatitis and sexually transmissible infections in Australia, Annual Surveillance Report, 2006

²¹ Brisbane Sexual Health Clinic (BIALA) staff and individual sex workers raised access problems as a result of mandatory testing, Scarlet Alliance Community Forum, Brisbane, March 2005

²² Basil Donovan and Christine Harcourt, 'Sex Workers', *Sexual Health Medicine*, (Fairley, Russell, Bradford ed), IP Communications, Melbourne, 2005.

²³ Australian Government, *National HIV/AIDS Strategy – Revitalising Australia's response 2005-2008*, Australian Government, Canberra, 2005.

²⁴ Basil Donovan and Christine Harcourt, 'Sex Workers', *Sexual Health Medicine*, (Fairley, Russell, Bradford ed), IP Communications, Melbourne, 2005.

²⁵ Metzenrath and Banach, "Public Health and Mandatory Testing 'Model Principles for Sex Industry Law Reform, Scarlet Alliance and AFAO, 2000

²⁶ Ibid, Basil Donovan and Christine Harcourt, 2005.

Donovan and Harcourt surmise: "While most health workers try to assist [sex workers] in a hostile policy environment, sex workers consistently demonstrate that capacity to protect themselves and their clientele if the basic resources for health promotion are available".²⁷ Commonwealth HIV and STI strategies concur: "Despite the occupational risks, the incidence of STIs in sex workers in Australia is among the lowest in the world. This has largely been achieved through the adoption of voluntary health policies implemented by the sex industry."²⁸ ²⁹

All of the epidemiological evidence shows that sex workers self-regulate sexual health effectively, and mandated testing regimes only act as barriers to accessing quality health care.

Sex workers attitudes

Sex worker community development and peer education must be better resourced in Victoria, so that the policies and services for sexual health are informed by sex workers themselves. The Minister for Health needs to take leadership in this area. Educational material that explains the testing regimes in Victoria must be made available for sex workers. Opportunities to discuss this in sex worker only spaces through peer education may shift local opinions regarding suspicion and mistrust of both the mandatory testing regimes and those who evade them. In particular, national sexual health peer education resources need to be funded to be reprinted. Resources that were a success in increasing sex worker confidence and general knowledge levels about sex work would improve sex workers' understanding of sexual health issues in the future. This would result in long term commitment to appropriate testing patterns by sex workers, *without* having to spend more money on excessive STI and HIV testing that is fruitless and does little more than create alienation among the sex worker community it is intended to serve. IE: a broken condom, or any symptom is an appropriate trigger to seek a sexual health test, rather than doing it simply when your brothel boss requires it.

Sex workers already perform a role of education for clients in sex work settings, as explained by Mawulisa and Robinson in *HIV Australia*:

" Sex workers worldwide have unique and exclusive access to men that may never actively seek information about HIV or STIs. Clients generally view sex workers as 'sexperts' and as a result, they may ask questions that they would never dare broach with a health professional, making sex workers a valuable resource in HIV education work.

In Australia, sex workers continue to demonstrate high levels of sexual health of which we can be proud. In over 20 years of HIV in Australia, no cases have been recorded of transmission of HIV between a sex worker and a client or vice versa.³⁰ Sex workers also have consistently lower rates of sexually transmitted infections (STIs) than the general community.

²⁷ Ibid, Basil Donovan and Christine Harcourt, 2005.

²⁸ Commonwealth Government Department of Health and Aged Care, National Sexually Transmissible Infections Strategy 2005–2008, 2005, Pg 28

²⁹ Scarlet Alliance "Mandatory or compulsory testing of sex workers for HIV and/or sexually transmissible infections in the Australian context" *Briefing Paper for HASTI Committee of MACASHH*, 1 August 2007
http://www.scarletalliance.org.au/library/briefingpaper_mandtest/

³⁰ Harcourt, C, 1994, "Prostitution and Public Health in the Era of AIDS." In *Sex Work and Sex Workers in Australia*, edited by R. Perkins, G. Prestage, R. Sharp and F. Lovejoy, University of NSW Press, Sydney: 218-219.

However, the maintenance of good sexual health among Australian sex workers has occurred despite less than optimum conditions. In most States and Territories, some sex work contexts are still criminalised. Sex workers have shown much skill in continuing such high levels of safer sex practices in what is a far from an enabling environment.

Female workers in particular – the largest and most researched group in the sex industry - use condoms for oral, vaginal and anal sex. The reasons for Australian sex workers having been so successful at implementing wide scale condom usage in commercial transactions are complex, ranging from the obvious prevention of transmission to the creation of a psychological barrier between worker and client during penetrative sex. Female sex workers were using condoms prior to the emergence of HIV in Australia to avoid other STIs such as gonorrhoea, however HIV increased the support of sex industry management for safer sex and also reduced client resistance to condoms. Sex workers have been linked with disease in our culture since the days of syphilis epidemics in Europe, and sex workers use this stereotype strategically with clients - alluding to the fact that the client needs to protect himself against the worker to reinforce the expectation of safer sex.³¹

For male sex workers, HIV/AIDS education often involves expelling some of their client's myths of transmission. For instance, men visiting male and pre-operative transgender workers may try to encourage the sex worker to have sex without a condom with comments like, "I'm married. I'm clean. I/you don't need to use a condom" or "I'm not gay so I don't have HIV." The worker's insistence of condom usage may go some way towards educating their clients on not only the risk of HIV, but STIs."³²

It is important that a partnership response to sexual health occurs in Victoria. Firstly this partnership response must recognise the role of sex workers as sexual health experts. Secondly this response should be within the jurisdiction of the Health Minister. Scarlet Alliance looks forward to discussing this in more detail with relevant policy staff within the Government of Victoria.

³¹ The overwhelming majority of clients of sex workers are male, and for the purpose of the quoted article, the focus was on male clients.

³² Serena Mawulisa and Kenn Robinson, "Sex workers as educators" *HIV Australia*, VOL 3, No. 1, Sept-Nov 2003, http://www.afao.org.au/view_articles.asp?pxa=ve&pxs=103&pxsc=127&pxsgc=137&id=335#313

Removal of testing laws and regulations

Scarlet Alliance supports the VIXEN position “Testing is framed in the Prostitution Control Act to be used as a defence, should a sex worker be charged with infecting a client. Sex workers could currently use regular STI testing as a defence against clients who claim to have become infected with an STI. However, there is a lack of clarity, and rather than a defence, testing is in actuality used as a stick against sex workers.”

Removal of testing laws and regulations is a central part of this review. Scarlet Alliance would like to refer Consumer Affairs Victoria to the Scarlet Alliance Briefing Paper for HASTI Committee of MACASHH, “Mandatory or compulsory testing of sex workers for HIV and/or sexually transmissible infections in the Australian context” 1 August 2007 http://www.scarletalliance.org.au/library/briefingpaper_mandtest/

Scarlet Alliance concurs with most stakeholders and policy makers in Victoria, in opposing mandatory testing. We would like to further reinforce that testing, as outlined in the Prostitution Control Act, is causing more harm to the wider community in its current state. Fairley et al articulates, “The current legislation requiring monthly STI testing is compromising access higher risk individuals to sexual health. Legislative reform with less frequent testing of sex workers is required.”³³

Mandatory testing should be part of this review because it Victoria currently is implementing a regime that is practised as mandatory testing. This creates a false sense of protection among clients from sexually transmitted diseases and results in more clients requesting penetrative sex or oral sex without a condom. Mandatory testing leaves clients mistakenly thinking that it is safe to do it without a condom.

Sex workers have been asserting for over a decade that mandatory testing results in clients believing it is ok to have sex without a condom, and pressuring sex workers for unprotected sex due to mandatory testing laws. This problem is evidenced in Victoria and removal of mandatory testing is the only long term solution.

Reducing Frequency Of Testing

Scarlet Alliance supports the frequency of testing in Victoria for sex workers being reduced.

Scarlet Alliance understands that some stakeholders are campaigning for a new definition of sexual services, however believes topic this needs more discussion. Our organisation and our members are available to discuss this further at the appropriate time.

Some stakeholders have argued that there should be an enforceable obligation on the client as well as operator to practise protected sex. There is no proposal for people to do this in their own homes, only in brothels. However increased regulation of ANY sexual activity, on sex worker or client, is a step away from decriminalisation and is opposed by Scarlet Alliance. We believe that the sexual health requirements of sex workers should reflect those of the wider community.

³³ “Legislation requiring monthly testing of sex workers with low rates of sexually transmitted infections restricts access to services for higher risk individuals” Fairley, K, et al, Melbourne Sexual Health Centre, 2009

Visas

Scarlet Alliance urges Consumer Affairs Victoria and other stakeholders to pressure the Federal Government to improve visa arrangements for migrant sex workers from developing countries, particularly Asian Pacific nations. The obsession with surveillance of, raiding, prosecuting and criminalising migrant workplaces is as fruitless in the long term as criminalisation was generally throughout most of the 20th Century. If allowed to travel freely, migrant sex workers on contract would choose an independent visa over a strict contractual arrangement. This would have outcomes including marked improvements to sex workers rights, and also address a myriad of trafficking issues.

'UnderAge' Workers

Scarlet Alliance asserts that the proposal for a requirement to ensure all persons on premises carry proof of age is an infringement on the rights to privacy for sex workers. Proof of Age cards have a persons' real name and address and it is not in the interests of sex workers to expose their identity in such a way while at work. Pseudonyms are common within sex work for a reason – sex workers don't want to disclose their identity. As such compliance with carrying proof of age cards would be low and would put compliant sex workers at risk.

It would be costly for the Victorian Government to develop a special proof of age card for sex workers. Victoria already has a proof of age card. Scarlet Alliance strongly recommends that this issue requires more attention and should not be subject to the changes at this time. We welcome a more detailed draft proposal from Consumer Affairs Victoria on this issue, which would allow us to consult our membership in Victoria more thoroughly and provide feedback on specific issues.

Existing cases of prosecutions relating to young workers include sex workers carrying fake ID – which would not be prevented by requirement to carry a proof of age card. Underage workers were being 'compliant' by showing a document, albeit fake.

In the recent case in Victoria, there wasn't "fake ID" as such, more negligence on behalf of the manager in checking the ID.³⁴

This response to this negligence was severe and inappropriate to the crime. This is further evidence of a culture of fear that is being applied to regulated brothels struggling with compliance.³⁵

In particular the rights of workers who are considered 'underage' should be respected and people from that specific age group of young workers be key stakeholders in any law reform. Vilifying young people who are experiencing poverty is not an equitable part of any legislation or policy response to underage work. In particular street based sex workers who are underage may benefit from a more human approach – putting human rights before punitive measures.³⁶

³⁴ Link to story on this topic in The Age, "Brothel Manager Hires 14 Year Old," AAP, 29th January 2009, <http://www.news.com.au/story/0,27574,24980435-421,00.html>

³⁵ Link to further media coverage, Elissa Hunt, "Brothel Manager convicted after girl, 14, worked as prostitute," Herald Sun, 03 Feb, 2009, <http://www.news.com.au/heraldsun/story/0,21985,25001960-2862,00.html>

³⁶ Link to media coverage of underage street based sex workers and the effect on an already strained welfare system, Peter Munro, "Childhood lost, underage prostitution strain a system in crisis," The Age, March 1, <http://www.theage.com.au/national/childhood-lost-underage-prostitutes-strain-a-system-in-crisis-20090228-8l2b.html>

Alcohol

There has been concern expressed by some stakeholders and members of the community about the proximity of licensed brothels to licensed bars. Arguments against proximity include concern about incidents of harm to workers is increased when alcohol is introduced. In NSW brothels and some brothels in Western Australia alcohol is served for free on premises without a specific alcohol license. In Queensland alcohol cannot be served in brothels. There is no trend towards NSW having higher rates of violence perpetrated against sex workers or Queensland lower as a result of alcohol being served on premises. There is no evidence that links violence in brothels to the proximity of available alcohol. Scarlet Alliance challenges Consumer Affairs Victoria to produce contemporary evidence

There are problems with bringing in new laws regarding alcohol, just for brothels – propose that existing laws regarding intoxication, violence and assault are sufficient to protect sex workers. If sex work was decriminalised then sex workers would have access to the same protections as the rest of the community – regardless of the status of the workplace.

There are community concerns about development of alcohol/entertainment strips in areas that are currently suburban areas. This is a planning issue to be taken up on a case-by-case basis with Local Councils. Increased regulation in this area is not encouraged by Scarlet Alliance.

Existing Prostitution Control Act Section 21 states that a sex worker, licensee or others involved in sex work must not sell supply or consume alcohol at a brothel or permit any of those activities.

In the Prostitution Control Act Ministerial Advisory Committee findings in 2007, inner-city brothel owners and private workers preferred that some alcohol be allowed on premises.³⁷ This would be in line with other states and territories and regulations to the serving of alcohol (excluding Queensland where alcohol on premises of licensed brothels is illegal).

³⁷ "Improving the Regulation of the Sex Industry and Supporting Sex Workers Who Want To Move On," *A Report By The Prostitution Control Act Ministerial Advisory Committee*, Consumer Affairs Victoria, State of Victoria 2007, pg 27.

Advertising

Scarlet Alliance proposes that advertising restrictions must be amended. Any advertising prohibitions stand in the way of the sex industry operating without stigma and discrimination of particular regulations. Restrictions experienced by the sex industry are unfair and without merit.

Why isn't Consumer Affairs Victoria looking at the prohibition of advertising for sex worker or other sex industry business staff? Reducing regulations would be an inexpensive way to ameliorate some of the areas where sex workers are currently overly restricted by a registration and licensing regime, and move towards decriminalisation of advertising for sex work.

Scarlet Alliance understands that Consumer Affairs Victoria is not seeking to review these restrictions however calls on all stakeholders to take action as a matter of urgency. We support the VIXEN position that sex work should have the same advertising guidelines as any other business.

Decriminalising the restriction of advertising to head and shoulders.

An example of restrictions in Advertising includes being restricted to showing your head and shoulders in advertising for sex work. Head and shoulders is the most identifiable part of your body and for privacy issues reason it is not preferred by many sex workers. Removing restrictions on being able to show other parts of your body, or other photos or images would be an improvement to the current regulations.

The Scarlet Alliance conclusion is that advertising restrictions impact negatively on the privacy of sex workers.

The Government 'noted' The Prostitution Control Act Ministerial Advisory Committee recommendations to remove restrictions on advertising for sex workers, but referred to 'harm minimisation' principles that needed to be adhered to.³⁸ Yet the restriction currently is in opposition to harm minimisation, which should allow sex workers to present themselves in whatever manner they choose within their advertising, and be policed by general advertising restrictions. Sex workers do not need special restrictions to ensure 'harm minimisation' is applied. The restrictions cause harm rather than address it.

Scarlet Alliance supports the Vixen position that other businesses like strip clubs could use a variety of body parts in advertising.

Sex workers are currently creatively trying to get around the regulations, and this illustrates that the regulations don't work as intended. Sex workers and should be able to express their human rights and advertise however we want to, as long as it fits within general advertising guidelines that apply to all industries.

Scarlet Alliance supports The Prostitution Control Act Ministerial Advisory Committee recommendations to "remove the advertising restriction that only allows 'head and shoulders' images to be used for advertising. Rationale: There are sufficient controls in place to ensure advertising is not offensive to the community."

³⁸ Government response to "Improving the Regulation of the Sex Industry and Supporting Sex Workers Who Want To Move On," A Report By The Prostitution Control Act Ministerial Advisory Committee, Consumer Affairs Victoria, State of Victoria 2008, pg 15.

Decriminalisation of advertising for staff.

Deregulation of advertising is another demand of decriminalisation. Scarlet Alliance supports the ability to openly advertise for sex worker staff.

It was also a finding of The Prostitution Control Act Ministerial Advisory Committee that “prohibition on advertising for ancillary staff compromised the safety of workers due to the inability to recruit the most qualified staff.”³⁹

Scarlet Alliance concurs with The Prostitution Control Act Ministerial Advisory Committee findings that “removing the restrictions on advertising for sex workers may benefit sex workers currently operating in the industry... Removing the restrictions on advertising for sex workers may remove some of the stigma associated with working in the sex industry.”⁴⁰

³⁹ “Improving the Regulation of the Sex Industry and Supporting Sex Workers Who Want To Move On,” *A Report By The Prostitution Control Act Ministerial Advisory Committee*, Consumer Affairs Victoria, State of Victoria 2007, pg 24.

⁴⁰ “Improving the Regulation of the Sex Industry and Supporting Sex Workers Who Want To Move On,” *A Report By The Prostitution Control Act Ministerial Advisory Committee*, Consumer Affairs Victoria, State of Victoria 2007, pg 25 – 26.