

The South Australian Sex Industry Network (SIN) is a program area of the AIDS Council of South Australia. SIN's mandate is to provide HIV/AIDS, STD, legal, health and other information, education, advocacy, support and referral services to the South Australian sex industry within a peer education and community development framework. SIN's projects and services include an outreach service to sex industry businesses and workers, the provision of wholesale priced condoms and other safe sex 'tools of the trade', a quarterly magazine, training, self and career development opportunities for sex workers and education to the community and other organisations about sex work and the sex industry.

The Sex Workers Action Group (SWAG) is a new organisation dedicated to crusading for the rights of sex workers, with particular emphasis on progressive legislative change in South Australia. SWAG membership is managed by and comprised of sex workers, with associate memberships open to supportive individuals and organisations. Both SWAG and SIN are members of the Scarlet Alliance: the national body representing sex worker rights organisations throughout Australia.

Introduction

Prostitution is generally thought of as an *industry* by both those involved and the State. The South Australian Police, for example, acknowledged the profitability of the sex industry estimating that it generated an income in excess of \$17 million in 1994.¹ Throughout this paper, the term *sex industry* rather than prostitution, will be used to refer to the provision of commercial sexual services. Strictly speaking, the sex industry also encompasses stripping, pornography, table top dancing, etc, but these associated activities and their Occupational, Health & Safety concerns will not be discussed here. Finally, given our definitions, we will use the term *sex worker*, rather than prostitute, because this also serves to reflect the notion of prostitution as work located within an industry structure.

Overview of the existing laws surrounding sex work in South Australia

The laws surrounding prostitution in South Australia are contained in the Summary Offences Act (1953) and the Criminal Law Consolidation Act (1935-1976). Apart from some very minor changes, these laws have remained intact since they were first enacted.

The act of prostitution itself is not illegal in South Australia, except when it occurs in a brothel. Of course sex work has frequently been organised in this manner and traditionally brothels have made up a substantial proportion of sex industry businesses. South Australian law, therefore, contains a range of offences that aim to suppress the sex work that occurs in brothels. These

¹ Ransom, A. (1995) A Police Assessment Of: 1. Contemporary Prostitution In South Australia 2. Current Prostitution Laws, Strategic Development Branch, South Australian Police.

range from the most commonly used offences against sex workers; *Section 21: [b] of the Summary Offences Act* which effectively makes it illegal to be on a premises frequented by prostitutes without a reasonable excuse; *Section 28 [b] of the Summary Offences Act* which charges sex workers with ".....receive(ing) money paid in a brothel in respect of prostitution"; through to offences for "keeping" or managing or assisting to manage a brothel (*Section 28 [1] [a],[2] Summary Offences Act*), "procuring" any person to become a prostitute (*The Criminal Law Consolidation Act Section 63 [a] ,[b]*), "living on the earnings of prostitution" (*Section 26:[1] of the Summary Offences Act*) and "keeping a ...common bawdy-house" (*The Criminal Law Consolidation Act Section 270 [1] [b]*). The last four laws mentioned are aimed at the organisers of prostitution, however, sex workers can be and are charged under these laws. Additionally, there are several laws that target landlords and tenants who permit their premises to be used as a brothel. These offences are contained in *Section 29 [a], [b]* and *section 31 [1],[2],[3],[4] of The Summary Offences Act*.

The definition of a brothel is pivotal to enforcement of most of the above charges, because law enforcers must prove that the alleged offence occurred in a brothel, or, indeed that a premises is a brothel. The definition contained in the Summary Offences Act (1953) Section 27 states that; "brothels means premises-

- (a) to which persons resort to for the purposes of prostitution
- or
- (b) occupied or used for the purposes of prostitution
- (premises includes a part of premises)

This definition is quite broad and could even, for example, be used to encompass an escort agency office/premises if it were to openly operate and admit to providing prostitution services rather than 'escort' services. However, this is difficult for law enforcers to prove and brothels are usually premises where the sex work takes place at that location on a regular or consistent basis. A client's home is not considered to be a brothel even if a client uses prostitution services at their residence regularly. The same applies to hotels/motels under normal circumstances. Occasionally, however, when rooms are let out on a regular basis for the purpose of prostitution, proprietors have been charged with "keeping a brothel". A sex workers own home may be defined as a brothel if the sex work takes place overtly ie; is advertised and there is a demonstrated frequency of use.

The definition of what constitutes an act of prostitution is also very broad. The Summary Offences Act (1953) states that " prostitutes are persons offering themselves as participants for reward in a physical act of indecently for the sexual gratification of another". A recent court appeal ruled that a nude, Thai (a euphemism for a body to body massage or 'body slide') massage was intended to provide lewd or sexual gratification and was therefore an act of prostitution.²

² Begley v Police, 24 October 1996, Judgement no. S5851

In summary, the laws pertaining to prostitution mainly relate to brothel based sex work although offences such as 'procuring' and 'living on the earnings' can be applied in other sex industry contexts. In practice, these laws are usually applied to sex industry businesses that can be determined to be brothels whether or not they operate overtly as brothels or as masked businesses such as massage studios. Escort based prostitution, although a more modern context for sex industry work, continues to flourish in light of these prohibitive brothel based prostitution laws. Escort agencies also operate as a masked businesses, in that operators maintain that they provide staff for the company of clients rather than for sexual services because the latter could leave operators open to charges of 'living off the earnings' and 'procuring'.

Street based sex work is very minor feature of the sex industry in South Australia and has been so for many years despite being a historically favoured mode of sex working. The Summary Offences Act section 25 [a], [b] makes it illegal to solicit or loiter in a public place for the purpose of prostitution. This law was amended some years ago and is the only prostitution law which is equally applicable to clients and as it is to sex workers.

The structure and organisation of the South Australian sex industry and it's modes of operation.

The sex industry in South Australia is structured and operates primarily in response to policing levels. The South Australian Police enforce the laws available to them in respect of prostitution via a special ongoing task force of the Vice and Gaming squad code named Operation Patriot. Operation Patriot's task is to police the existing sex industry laws with the aim of suppressing and containing the operations of the sex industry. As sex industry laws are mainly centred around brothel based sex work, it is this sector of the industry that receives the most police attention.

A police witness to the Victorian inquiry into prostitution in the early 1980's told the inquiry that policing the sex industry was akin to pressing on a waterbed; if you press in one place, the waterbed merely bulge's in another place. This analogy is certainly a truism in South Australia. Adelaide had a brothel based sex industry until the late 1980s when prostitution laws started to be more systematically enforced. With the formation of Operation Patriot in 1990, the escort agency sector of the industry increased substantially until it accounted for approximately 75% of the sex industry in 1995.³ SIN believes that another trend is now evident, probably as a result of oversupply of escort based services and the traditional high demand for brothel based sexual services. The continued and arguably higher levels of policing of brothels has forced many sex industry businesses and workers further underground in the guise of massage studios/parlours. SIN staff have observed that in metropolitan Adelaide, only a handful of overt brothels remain in operation but massage studios are mushrooming. The escort sector seems to have declined

³ This figure is cited in Ransom, op.cit. P.7

evidenced by a small downturn in operators and workers advertising their services. There has also been a steady exodus of sex workers to the eastern states particularly, where at least some forms of sex work have been decriminalised or legalised.

How does the present legal situation impact upon the sex industry and sex workers in respect of Occupational, Health and Safety issues?

The sex industry in South Australia is essentially illegal or at a minimum involves businesses operating as masked businesses to disguise the true nature of their operations. In terms of Occupational, Health, Safety and Welfare for sex workers, this illegality or covertness of operation means that adherence to the Occupational, Health, Safety and Welfare Act (1986) which applies to most workplaces in South Australia, is impossible for sex industry businesses to implement. Clearly by decriminalising or legalising the sex industry, the Occupational, Health & Safety (OHS) issues that naturally arise from sex work employment could be more easily addressed. Attempts by sex industry business proprietors to implement the most basic of OHS standards, for example, the availability of the safe sex 'tools of the trade' such as condoms, lubricants etc. and the support of management to use them, has been severely undermined by the South Australian police who use them as evidence of prostitution offences.

The evidentiary use of condoms and other safe sex materials constitutes a serious OHS infringement and this situation should be resolved immediately. In light of the harm minimisation philosophy that Australia has adopted in its response to the HIV/AIDS pandemic, it is ludicrous that the health of sex workers and their clients is being compromised by this practise. The influential Inter-Governmental Committee on AIDS⁴ recommended that this practise be stopped and this position was agreed to by all State Attorney Generals. South Australia remains one of the few jurisdictions where safe sex materials are still used in evidence. This practice entails police seizing and/or photographing condoms, lubricants, dental dams (for safer oral sex), latex gloves, safe sex literature, posters, and sex worker peer education materials such as the quarterly magazine that SIN produces. **This remains the major barrier to the provision of minimum standards of OHS for the South Australian sex industry**

Despite this abhorrent police practise, the Australian sex industry has managed to create a culture of safe sex that deserves wider recognition. To date there is no record of client to female

⁴ The Final Report Of The Legal Working Party Of The Inter-Governmental Committee On AIDS, 1992, Department of Health, Housing and Community services

sex worker or female sex worker to client transmission of the HIV virus in Australia.⁵ This defies international epidemiological trends that suggest sex workers (and intravenous drug users) are at a significantly higher risk of contracting and passing on the HIV virus within the heterosexual community. In addition, sex workers in South Australia enjoy better sexual health than the rest of the general community.⁶ SIN is concerned however, that due to these current policing practises which both drive the sex industry underground and interfere with the maintenance of the safe sex culture, that sex workers are being unnecessarily placed at risk.

Imagine this scenario: A suburban massage parlour which operates covertly as a brothel by offering nude massage and hand relief is having a quiet day. In the privacy of the massage room, a client pressures a nude masseuse for oral sex rather than the obligatory masturbation. He offers her a significant amount of money as a tip to perform this service. However, the management have a strict 'no sex rule' which forbids workers to engage in penetrative sex with the clients. They have good reasons for this rule; the evidentiary use of condoms and safe sex materials and hopefully less or no police harassment for this 'legitimate' business. So what does a woman do? Our masseuse has several pressing bills to pay as well as the mortgage due in a few days time and the offer of extra money is tempting enough for her to agree to provide the service. The fellatio occurs without a condom. *Why?* Well, how does a sex worker manage to smuggle a condom or better still several condoms (in case one breaks) into the room and dispose of them hygienically and in an environmental friendly way without her co-workers or the management detecting her? Did she have condoms with her in the first place? Or maybe it is the case that our masseuse is inexperienced as a sex industry worker and genuinely doesn't realise that it is common practice in the sex industry to use a condom for fellatio. The client is a clean, well dressed older guy, married and a businessman. He assured her that this is the first time that he has ever been to 'a place like this'. She cannot talk about these issues with her co-workers as the prevailing attitude is that sex is something that prostitutes do and they are masseuses who just provide a little 'extra' with the massage. The SIN outreach workers have been turned away by the management because their presence may destroy the parlour's legitimate image; they may give out some free condoms and worse still, it may encourage the massage staff to identify as sex workers, even though the only sexual service they provide is masturbation which really isn't sex. Is it?

The moral of this story is that commercial safe sex practises require support from both management and beyond, as do any OHS practices, in any workplace.

The evidentiary use of condoms and other safe sex materials is not the only OHS issue for sex workers although it is the most pressing at this time. Despite the views of many law enforcers and public officials, this situation could easily be remedied. The South Australian police simply

⁵ C. Harcourt "Prostitution and Public Health in the Era of AIDS" in Perkins, R., Prestage, G, Sharp, R., Lovejoy, F.(eds) (1994) Sex Work and Sex Workers in Australia, University of New South Wales Press; Sydney, P. 217

⁶ See Appendix A for epidemiological reports

need to agree to refrain from using any safe sex materials (including safe sex educational materials) as evidence of prostitution offences. Such agreements have already been struck in other jurisdictions of Australia where prostitution remains illegal. Most current OHS issues for South Australian sex workers relate directly to the illegality of the sex industry and the practise of evidentiary use of condoms epitomises this situation.

For example, sex industry business premises are usually not set up and designed as locales for which they are ultimately used, namely, for the provision, or arranging, of commercial sexual services. Brothels tend to be tenuous day to day propositions for their proprietors and owners are unlikely to invest much capital into a premise. Typically, brothels lack adequate showering facilities and a premises would usually have to be modified at considerable expense to accommodate for the safety and hygiene of both clients and sex workers. Commonly, no separate lounge area or bathroom and toilet facilities exist for exclusive use of the staff and inadequate heating and cooling are not unusual. In massage parlours, whether or not penetrative sex is tolerated, sexual activities usually occur on a massage table or on the floor rather than on equipment that was purpose built or ergonomically designed for the activity.

Some brothels have elaborate security systems in order to delay the admittance of the police which effectively lock staff and clients inside; this could quite well pose a serious risk of trapping people inside if a fire started. Escort agencies generally do not provide security devices or mobile phones to sex workers and it is widely acknowledged that escort work can pose personal security risks without careful management and a consciousness about these security issues.⁷ Many escort agencies provide a driver (for a fee) but this can create safety problems such as unroadworthy vehicles; incompetent or reckless drivers; sexual harassment; car accidents and situations where sex workers are left waiting alone to be collected before or after appointments. The presence of drivers does not always translate into greater security for sex workers. Drivers, rather than being highly trained, are support staff and can be under pressure to earn their fees and may also be subject to police prosecution.

Research conducted in South Australia during 1995 concluded that a major health concern for women working in the sex industry was the psycho-social consequences of the stigmatisation and marginalisation that is attributable to the illegality of sex industry work.⁸ The author recommends that the sex industry be decriminalised. The report states;

"the illegal status of the sex industry in South Australia minimises the degree of choice available to sex workers over work-place preferences and working conditions. The illegal

⁷ The safety value of a mobile phone to an escort worker is highlighted by a situation which occurred in Adelaide on 3 November, 1995. Two female escort workers were held hostage in a suburban home by three men. One of the workers was reported to have rang for the police on her mobile phone and the two women escaped without injury. The incident was widely reported in the South Australian print and electronic media.

⁸ Fahy, N (1995) Female Sex Workers in South Australia and Their Health Needs. Report to the South Australian Health Commission, P.6

status of the industry marginalise sex-workers and may at times place their personal safety in jeopardy. Legislative change is imperative to address those work place issues".⁹

This study highlighted the implications of the illegal status of the sex industry on the health of female sex workers in several ways:

[1] The changing contexts from a brothel based to escort based sex industry and the resulting personal safety implications for sex workers whilst working as escorts. Rape and sexual assault are also an OHS issue for sex workers and this research confirmed that sex workers are reluctant to report perpetrators to the police because of the marginalisation, stigmatisation and illegality of sex industry work.

[2] The undermining of public health initiatives, such as the SIN program, by driving the sex industry underground and effectively reducing access to sex workers by health and peer educators.

[3] Marginalisation and stigmatisation can preclude sex workers from disclosing their occupation to health service providers thus affecting health outcomes in relation to occupational injuries and illness.¹⁰

Conclusions: What can be done?

The Occupational Health, Safety and Welfare Act (1986) is not designed for application to an illegal industry such as the sex industry and therefore, little attention has been paid to OHS issues for sex workers in South Australia. However, the access to safe sex 'tools of the trade' by sex workers and the information, education and support to use them, constitutes a basic human right to protect oneself from occupational hazards. Furthermore, any legal repercussions for the sex industry that result from presence of, or use of, safe sex materials remains an ongoing and serious OHS infringement with additional public health implications. In the short term, the South Australian Government must ensure that the police practise of the evidentiary use of safe sex materials is halted and more broadly, the State should be concerned with expediting progressive prostitution law reform that ensures the sex industry is a viable option for those people that choose to do sex work.

The sex industry has a myriad of unique OHS issues that need to be taken into consideration by any legislative proposals. SIN and SWAG recommend that sex workers and their organisations should be consulted and involved in the formulation of any 'Health and Safety' legislative provisions or 'Code of Practice' for sex industry businesses. Attention to OHS issues has occurred to varying degrees in other States which have had sex industry law reform in recent years, but unfortunately not always with sex worker consultation. Currently in Victoria where brothels and escort agencies have been legalised for some time, the Liquor, Hospitality and

⁹ ibid P 72

¹⁰ ibid

Miscellaneous workers Union has appointed a sex industry union organiser to facilitate the unionisation of Victorian sex workers. Already several unfair dismissal cases have been won in the Industrial Relations Commission and the Union can and does conduct OHS checks in the workplace. Although the brothels have been legal since 1984 in Victoria, the State Government has been remiss in ensuring legal brothels complied with existing OHS legislation. At present, a wages and conditions award is being drafted which will ultimately provide an avenue for sex industry specific OHS regulations to be implemented and enforced in Victorian sex industry businesses. Union coverage of sex workers also looks set to spread to the other Australian states where the sex industry has been legitimised.

South Australia has its own unique 'cottage style,' small scale sex industry which, ideally, should be preserved as opposed to the large scale, capital intensive 'mega' brothels which have flourished in Victoria since law reform in the early 1980's. Therefore, sex industry OHS and other business requirements should not be overly bureaucratic in their application, prohibitively expensive to implement and should take into account solo operator businesses. OHS requirements should ensure that sex workers are provided with a safe and healthy environment in which to work, compensation and rehabilitation if they become ill or injured in the course of their employment and the provision of the appropriate equipment and materials, information and education which enable sex workers to carry out their work in the safest manner possible.

The following are SIN and SWAG's preliminary recommendations for inclusion in an Occupational Health and Safety Code Of Practice for South Australian sex industry businesses.¹¹ OHS regulations should apply equally to brothels and escort agencies as they do to any other type of business. It would also be necessary to clarify the employee versus independent contractor status of sex workers, to ensure that sex industry business operators do not escape their employer obligations. Some of the following recommendations may not apply to escort agencies, as sex work does not occur on escort agency premises and may also not apply to sole operators who do not employ staff. SIN and SWAG urge that explicit OHS regulations such as a 'Health and Safety Code of Practice' should be contained within any proposed sex industry legislation to ensure compliance with it.

SIN and SWAG recommend;

Adherence to the Occupational, Health and Safety Act (1986) which regulates all workplaces in South Australia. Under this Act, employees' have the right to be consulted on OHS matters and have a duty to co-operate with employers in meeting their OHS obligations. Sex workers should have access to workers compensation (WorkCover) and a rehabilitation program. Individual workplace drug and alcohol policies should be based on harm reduction principles.

¹¹ These recommendations are largely based on a "Health and Safety Code of Practice For Brothels". This document was written in consultation with the Sex Workers Outreach Project (SWOP) and WorkCover (NSW).

Sex industry business operators must ensure the provision of an adequate supply of condoms, lubricants, dams, latex gloves and other safe sex 'tools of the trade'. This equipment should be handled, cleaned and stored according to predetermined guidelines and information and education about these procedures be provided to sex workers and management.

Current and accurate information about safer sex, STDs including HIV infection and Hepatitis B should be provided to sex workers in the workplace. This information should be provided in languages other than English if required. This information should also be made available in a written form to clients in a variety of languages other than English. Staff from SIN should be provided with reasonable access to facilitate or aid in ongoing education about safer sex work practises.

Working conditions must be reasonable (as required by the Department of Industrial Relations). Workplaces and work related equipment should be clean at all times with particular attention paid to the cleanliness of showers, baths, toilets, swimming pools and spas. Professional cleaning is recommended and where appropriate, ie; pools and spa pools, according to S.A. Health Commission or relevant authority's guidelines. The provision of adequate clean linen and towels and separate toilet facilities for staff is essential. Contaminated waste must be disposed of by Environment Protection Authority licensed waste collectors and kept in a suitable waste receptacle while on the premises. Workplaces should be able to be accessed by authorised representatives from Councils, WorkCover(SA), S.A. Health Commission, unions and SIN. It is desirable that sex workers receive sexual health assessment, counselling and education appropriate to their individual from a sexual health centre or a private doctor and as frequently as determined by the individual sex worker in consultation with his/her clinician. It is also recommended that sex workers be immunised against Hepatitis B. Evidence of attendance for sexual health testing must not be used as an alternative to safer sexual practices nor should they imply freedom from STDs.

Workplaces should be adequately ventilated and lit in accordance with Australian Standards and the relevant building and Council codes. Fire exits and the provision of fire extinguishers should comply with the relevant Council or other requirements.

Sex workers should be provided with adequate security. In the case of escort sex workers, the provision of a mobile telephone and a suitable personal alarm security device is essential. The provision of personal alarms should be made available to brothel sex workers.

Support staff such as receptionists, cleaners and drivers should receive specialised training and/or education as required. For example, drivers should receive accredited driver safety training and cleaners should be made aware of the provisions contained in a Code Of Practice that relate to their duties.

SIN is currently working on a 'Code Of Practice for Escort Agencies and Brothels' relevant to South Australian conditions. Furthermore, a nationally agreed set of guide lines about Occupational, Health and Safety for sex workers is currently being developed by Scarlet Alliance. This will facilitate the push by Australian sex worker rights organisations and sex

worker unions to win the right for sex workers to enjoy safe and supportive working conditions; a situation that most other Australian workers take for granted.

In the meantime SIN and SWAG will continue to decry the serious denial to South Australian sex workers of the most basic of OHS rights - that workers have the full support of society to protect themselves from the risks associated with their work. The war over the evidentiary use of condoms and other safe sex materials will continue.

References

Fahy, N (1995) Female Sex Workers in South Australia and Their Health Needs, Report to the South Australian Health Commission, Flinders University of South Australia.

Parliament of South Australia (August 1996) Inquiry Into Prostitution Final Report: Ninth Report of the Social Development Committee, S.A. Government Printers.

Perkins, R., Prestage, G, Sharp, R., Lovejoy, F.(eds) (1994) Sex Work and Sex Workers in Australia, University of New South Wales Press; Sydney.

Ransom, A. (1995) A Police Assessment Of: 1. Contemporary Prostitution In South Australia 2. Current Prostitution Laws, Strategic Development Branch, South Australian Police.

Sebastian, A. (1989) Guide to the Law in Relation to Prostitution in South Australia, Prostitutes Association of South Australia.

Sex Industry Network, (1996) Response To The Ninth Report Of The Social Development Committee, Inquiry Into Prostitution, Final Report. AIDS Council of South Australia.

The Final Report Of The Legal Working Party Of The Inter-Governmental Committee On AIDS, 1992, Department of Health, Housing and Community services.