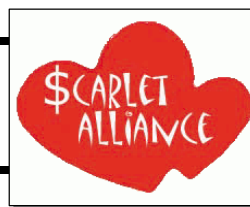


## **Australian Sex Workers Association Inc.**

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1<sup>st</sup> March, 2005

Racing Gaming and Licensing  
Northern Territory Treasury  
Darwin

RE: Northern Territory Prostitution Regulation Act 2005

To whom it may concern,

I am writing on behalf of the Scarlet Alliance, the Australian Sex Worker Association Inc. Formed in 1989 Scarlet Alliance represents sex workers and Australian State based sex worker community organizations and projects at a national level. Through its objectives, policies and programs Scarlet Alliance aims to achieve equality, social, legal, political, cultural, health and economic justice for past and present workers in the sex industry. It is within this context that we are providing a formal submission to seek input into proposed changes to the Northern Territory Prostitution Regulation Act.

We commend Racing Gaming and Licensing for acknowledging deficiencies with the current act. The act was designed to act as a regulatory and monitoring tool and does not recognise the importance of promoting the welfare and occupational health & safety of sex workers' through legislation. Making changes to the act provides the opportunity to introduce elements which give sex workers greater access to safe working conditions and greater privacy. We urge Racing Gaming and Licensing to review the elements of the act that create dangerous and impractical restrictions on sex workers.

We thank you for the opportunity to comment and look forward to a workable legislation which is in the best interest of sex workers and places their occupational health & safety needs as primary concern to any legislative reforms.

Yours sincerely,

Janelle Fawkes  
President,

*Scarlet Alliance submission on*

*Northern Territory Prostitution Regulation Act*

**March 2005**

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## SCARLET ALLIANCE OBJECTIVES

Scarlet Alliance objectives seek for sex workers to be self-determining agents, building their own alliances and choosing where and how they work within a legal framework which maximises their occupational health and safety.

These objectives include:

- To promote the civil rights of past and present sex workers and to work towards ending all forms of discrimination against them.
- To lobby for legal and administrative frameworks which do not discriminate against sex workers.
- To ensure that sex industry legislation seeks to maximise rather than minimise sex workers occupational health and safety;
- To challenge and lobby government when and where it implements legislation, regulations, rules, policies or law enforcement practices which are discriminatory and/or repressive to the rights and autonomy of sex workers.
- To actively promote the right of all sex workers to work in their chosen occupation and sector, including street, brothel, escort, private or opportunistic work.
- To actively work towards guaranteeing the right of all sex workers to optimum occupational health and safety provisions. This will promote conditions where safe sex and general health knowledge can be converted to safe work practices.
- To challenge any legislation, policy or process which does not so promote the rights of the worker.
- To strive to eradicate sex worker stereotypes and stigmatisation in the popular consciousness and to communicate the diversity of ideas, opinions and aspirations of past and present sex workers.
- To liaise with international sex worker rights groups in the development of regional and international networks, programs and objectives.
- To support sex workers and sex worker organisations to become more politically active.
- To gather and disseminate sex industry related information to its members.

## EXECUTIVE SUMMARY

The Northern Territory Prostitution Regulation Act was designed for purposes other than increasing occupational health and safety standards for sex workers. Nor were sex workers involved in its creation. Therefore the legislation that exists is an unworkable and impractical document which actually operates to the detriment of the health and safety of those working in the sex industry.

There is very low compliance to the Act. Both solo operators and licensed escort agencies either have great difficulty working within the bounds of the act or they are not aware of the extent of the act and so operate independently to it anyway. The lack of compliance with the Act and the governments disinterest in enforcing it, highlights its irrelevance and absurdity not only to sex workers but to the government departments and police who attempt to administer it.

Attempts to reform the legislation are applauded by Scarlet Alliance, however doing so without recognition of the implications of the entire act will only succeed in creating another irrelevant and unworkable set of laws.

Registration systems of sex workers have failed in every jurisdiction and lead to further discrimination against workers.

The involvement of police as the administrators of a registration system is extremely problematic and defies logic. In fact, the life-long registration and criminal history checks conducted on individual women working as sex workers in Northern Territory is archaic. There is no evidence to support the need for this level of surveillance of the individual employees of Escort Agencies. This system does not provide protection or safety to sex workers, in fact many sex workers have experienced extreme discrimination as a result of this process.

Police spokespersons acknowledge that this registration system is to protect the clients of sex workers and as such is flawed. Protecting sex workers from discrimination and promoting occupational health & safety to Northern Territory sex workers must be central to any policy or law.

Current sexually transmitted infection rates amongst Australian sex workers are very low. Laws which suggest there is a need to make sexual health screening mandatory in legislation, are based on myth and misconception. They also show a lack of understanding of the Australian national responses to HIV/AIDS outlined within the recommendations of the National Strategy and current extremely successful education campaigns. If there is one lesson which has been learned from the Australian HIV/AIDS experience it is that education, *not laws*, create safe sex practices.

The success of peer education organisations/projects in Australia has been recognised and acknowledged worldwide and is due to strategic service delivery, the involvement of affected communities in the delivery of prevention and education services and the implementation of a whole of government approach, where health outcomes are not seen as being the sole responsibility of the health department.

The Northern Territory Government has the capacity to make changes to protect sex workers and Scarlet Alliance and our member organisations will provide assistance in ensuring this outcome is achieved.

## INTRODUCTION

Scarlet Alliance was formed in 1989 following the first HIV & Sex Work Conference. Scarlet Alliance is Australia's national association for sex workers and sex worker organisations with membership made up of sex worker groups, networks, organisations and projects in the states and territories. Each year a National Forum and AGM is held at which time key policies are developed, an executive and spokespersons are elected, and workshops on issues for sex workers are conducted.

Scarlet Alliance currently plays an active role in Australia's response to HIV/AIDS and has produced a range of resources in collaboration with AFAO, including: *A Guide to Best Practice, Occupational Health and Safety in the Australian Sex Industry (2000)*, and *Principles for Model Sex Industry Legislation (2000)* (available at [www.scarletalliance.org.au](http://www.scarletalliance.org.au)). Scarlet Alliance is a leader when it comes to advocating for the health, safety and welfare of workers in Australia's sex industry

Australia has the lowest rate of HIV/AIDS amongst sex workers in the world, due to the work of community based sex worker organisations and projects who make up the membership of Scarlet Alliance along with the response by those working in the sex industry. Scarlet Alliance member organisations and projects have the highest level of contact with sex workers in Australia of any agency, government or non-government. Our projects have close to 100% access to sex industry workplaces in the major cities. Many of our sex worker organisations and projects within Australia also have CALD (Culturally and Linguistically Diverse) or NESB (Non English Speaking Background) Projects employing bi-lingual project workers.

Scarlet Alliance has played a critical role in informing Government at all levels, and informing the health sector, both in Australia and Internationally, on issues affecting sex workers in the Australian sex industry. In addition, Scarlet Alliance has been active in promoting to other countries the models of service delivery which have been most effective in minimising the transmission of HIV and STIs amongst sex workers and their clients.

Scarlet Alliance values direct experience of the sex industry, and constitutionally our member organisations are required to employ a majority of current or former sex workers. Peer Education, where people with knowledge of, or experiences in, the sex industry are employed, is the basis from which our successful service delivery is conducted. Each sex worker organisation/project provides an outreach service to sex industry workplaces, thus offering a high level of personal contact to sex workers and other sex industry staff.

Scarlet Alliance believes that the aim of sex industry legislation should be to incorporate those currently working in the sex industry within a framework that is workable and supportive of sex industry occupational health and safety.

Racing Gaming and Licensing's proposal to introduce changes to the Prostitution Regulation Act provides the opportunity to make significant changes that will positively impact upon the sex industry in the Northern Territory. Scarlet Alliance urges legislators to consider an inexpensive, workable minimalist structure (such as decriminalisation).

*Rather than*

- Registration of agency based workers,
- Criminalisation of many practical and economic methods of working for private workers and
- Disqualifying Offences which prevent sex workers from working at licensed escort agencies

*We suggest:*

- ensuring the safest possible working environments for sex workers in their chosen area of work.eg.
  - Removing registration systems that discriminate against workers,
  - multiple private workers working together or hiring a receptionist,
  - legal service delivery at private residences,

- a broadening of definitions and restrictions within the Act in order to make it easier for workers to operate within the provisions of the Act and therefore to help improve their occupational health and safety,
- Anti-discrimination legislation (based on choice of occupation) to address the current high level of discrimination faced by sex workers when applying for loans, attempting to rent property, etc.

Registration of sex workers has generally failed and merely results in the creation of a two tiered system of legal and illegal sex work as many sex workers refuse to comply, preferring to seek other options rather than submit to registration requirements as the greatest disincentive to a sex worker is the loss of ownership over who knows about their sex work.

### ***In Summary***

*Scarlet Alliance believes that any changes made to the Prostitution Regulation Act should focus on repairing the widespread deficiencies of the Act that prevent sex workers from operating safely and discretely. Virtually all Northern Territory sex workers operate, to varying degrees, outside the law further accentuating the stigma felt by workers. Furthermore, workers are less able to access support, legal and health services.*

Scarlet Alliance comments relating to:

**REGISTRATION OF SEX WORKERS**

(to be read in conjunction with Section Seven)

*Section 9. Prohibition on arranging provision of services by persons found guilty of violent or drug offences*

The current design and administration of the Prostitution Regulation Act (PRA) has resulted in a system of registration for agency based workers. This system is poorly enforced and operates with little understanding of its repercussions on the work practices of sex workers.

Escort agencies are not able to comply with the requirement 100% of the time and frequently employ staff whose registration is pending or whose period of employment is too short to warrant the administrative procedures.

Scarlet Alliance believes the requirement of sex workers to register is discriminatory. To single out the sex industry for such an invasion of privacy when a range of other industries are not treated in the same manner is unacceptable. According to the Scarlet Alliance resource document *Principles for Model Sex Industry Legislation* the need for licensed/registered sex workers is clearly unnecessary when sex work is compared to other forms of work, professions or other industries such as, hairdressers, doctors, plumbers, accountants, landscape gardeners etc.

*“Registration when it occurs within other industries tends to apply to professional associations with the purpose of ensuring that the people practicing in that field have the necessary skills. For example, doctors, hairdressers, dentists etc. are not controlled by specific government legislation but are members of their own professional bodies. When registration is applied to sex industry businesses or individual sex workers the intention is usually as a form of government surveillance.”<sup>11</sup>*

Scarlet Alliance fundamentally opposes the licensing or registration of individual sex workers under any circumstance. 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 description of objectives of the Sex Industry Regulation Bill 2004 includes ...'to safeguard public health". 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.<sup>12</sup> Furthermore, Australia leads the world in HIV education and prevention efforts with sex workers. To date there is no documented evidence of the transmission of HIV in an Australian sex industry context despite international trends of high prevalence of HIV among sex workers and their commercial sexual partners in many Asian and African countries.
2. Human Rights - The registration of individual sex workers is a violation of their human and civil rights. Sex workers have a 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<sup>10</sup>. Furthermore 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.

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<sup>11</sup> Banach L. (2000) *Principles for Model Sex Industry Legislation*. Sydney. Scarlet Alliance and AFAO (Metzenrath S. ed).

<sup>12</sup> STD Control Branch South Australian Health Commission (Epidemiological evidence submitted to the Social Development Committee of the Parliament of South Australia Inquiry into Prostitution)

<sup>10</sup> Banach, L. (1999) *Unjust and Counter Productive: The failure of Governments to Protect Sex Workers from Discrimination*, Sydney, Scarlet Alliance and AFAO. Edited by S Metzenrath.; Metzenrath S. (1997) "Prostitution law reform: Towards a human rights based model". *Prostitution Law Reform in Queensland: Forum*, Brisbane, SQWISI.



3. Privacy - It unnecessarily creates a barrier to individual sex workers working legally. Many Sex Workers fear their identity and profession being known from 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 to be secured, confidentiality, privacy and a range of other legal issues.
4. Over-regulation - The registration of sex workers is also unnecessary and counterproductive to the aims of controlling the activities of the sex workers and the sex industry. There are a range of other ways in which the professional standards of the sex industry can be maintained - through codes of practice, 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 & safety of sex workers.
5. Low Compliance - The outcome of attempts to register Private sex workers/sole operators/self-employed sex workers' has at best met with low compliance. Unfortunately the incentive to not register and avoid any possible or perceived discrimination associated with the currently high level of stigma attached to working as a sex worker will be greater than a threat of penalties.

Research demonstrates that registration systems for sex workers have the following negative impacts:

- The creation of a two tier system whereby a small number comply and have workplace rights however the majority fear being outed or discriminated against and therefore avoid registration. This larger group of sex workers operate outside of the law, 'underground', where access to health, support and other services is limited. As a result sex workers ability to freely access safe sex equipment would be compromised due to identification fears;
- People whose current livelihood becomes illegal will be susceptible to criminal charges and imprisonment.
- Sex Workers will be less safe. Some people deliberately target unlicensed/illegal sex workers knowing that illegal workers may have less recourse to the justice system.
- Illegal sex workers would be vulnerable to extortion, violence, discrimination, and harassment from sex industry business operators, clients, police and other people in positions of authority and power on the basis of their illegal status.

The impacts upon sex workers are considerable, however, there also exists a range of concerns and negative outcomes for the broader community. These include:

- The cost associated with the adoption of a registration system would be a considerable imposition upon community and government resources;
- Significant police resources would be devoted to policing an unworkable laws which make historical sex industry working practices illegal rather than focusing upon significant crimes such as rape and assault;
- Costs associated with the prosecution and incarceration of unlicensed sex workers would be significant; and
- Public health initiatives aimed at maximising sexual health among sex workers and their clients would be undermined by commercial sex being pushed further underground.

Recommendation: Scarlet Alliance strongly recommends the removal of the requirement for registration sex workers.

Scarlet Alliance does not support any other government department replacing the role of police in administering the registration of individual sex workers.

Scarlet Alliance comments relating to:  
**SOLO OPERATORS - Not able to employ others or work together.**

*Section 6. Operators and managers of escort agency businesses to be licensed*

- (4) *Subsection (1) does not require an individual who carries on an escort agency business to be licensed where -*
- (a) *the escort agency business arranges for the provision of prostitution services by that individual and no other*
  - (b) *the individual does not carry on the escort agency business in partnership or otherwise in association or conjunction with any other person; and*
  - (c) *the individual is the only person employed in the escort agency business.*

Current legislation for solo operators reduces their access to a safe working environment. As a result virtually all solo workers work illegally to work safely. The reality is that workers

- frequently share hotel rooms to cut costs,
- will ask a colleague to mind their mobile phone if they are busy or otherwise indisposed,
- will drive each other to jobs,
- will tell each where they are going on jobs, the details of the job and when they expect to return,
- deliver services together as a fantasy service,
- will debrief, share experiences, advice and work practices.

The practices listed above improve OH&S for workers by offering an element of security and support which is otherwise absent.

The current legislation prohibits peer support denying the healthy and important practice of sex workers skill sharing and communicating with each other over professional matters. It is through these processes that workers establish professional standards, learn about safer practices and overcome feelings of isolation and ostracism otherwise imposed upon them by the community.

If workers who do operate outside of the law by working together or sharing business costs are threatened or at risk they will be less likely seek support from police or other agencies. In fact research shows that workers who operate illegally experience higher rates of assault and lower standards of health.

Recommendation: Changes be made to the Northern Territory laws to allow sex workers to work with co-workers and for private workers to be permitted to employ other staff.
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Scarlet Alliance comments relating to:  
**SEX SERVICES AND PRIVATE RESIDENCES**

### *Section 3. Definitions*

*"In this Act, unless the contrary intention appears -*

*"brothel" means premises to which people resort for the purpose of prostitution, but does not include premises forming part of a hotel which are used for the purpose of providing prostitution services in cases only where the person providing the services does so as the result of an agreement or arrangement entered into or initiated elsewhere;*

*"hotel" means an establishment which provides, or is held out as providing, accommodation for members of the public as a commercial enterprise, but does not include an apartment house, guest-house, boarding-house, lodging-house or hostel".*

#### **Definition of Brothel**

This definition requires workers to negotiate services at a different place to that they use to deliver the service and that the place they deliver the service must be a hotel (not a private residence). In practice, sex workers tend to stay at the hotel room, their workplace, on the days that they are working.

The negotiation of a sex working service is a critically important element in which the sex worker will establish the terms and conditions of the booking, discuss boundaries and assess the potential customer.

In practice this law requires the sex worker to go into the lobby or onto the street in order to describe to the caller the details of the service and negotiate safer services. This act invades privacy, decreases the workers ability to negotiate a safer service and places the worker in an unnecessarily vulnerable situation.

This situation is further exasperated because of extreme restrictions on sex industry advertising in the Northern Territory which prevents a worker making some important elements of their service clear to potential clients. It could be compared to a person (Other states allow greater freedom in advertising which helps screen customers. For example if a worker provides massage and hand relief without full service (sex) she could put these details in the advert and avoid those customers who were wanting full service. Refer to page 16)

#### **Definition of Hotel**

Current legislation states that commercial sex services are to be delivered in hotels and no other accommodation. The common and accepted practice of the industry especially with in the licensed escort agencies is to visit clients in their own homes. This is a traditional element of escort services.

Many solo operators prefer to work from their own homes.

Hiring hotel rooms on a permanent basis is impractical for the following reasons

- Sex workers may prefer to do only one or two jobs a day in which case hiring a hotel room is not economical
- Hotels often discriminate against sex workers or try to benefit in underhand ways from workers
- If people are working when they need the money then they may be unable to afford a hotel room
- Many sex workers become set up permanently in a hotel room which leads to social isolation
- A sex worker is no more protected in a hotel room than at another premise
- In low season workers can end up working every day to only cover the cost of the hotel and advertising thus creating a cycle of dependence upon working

Sex workers may prefer to work from their own homes for the following reasons

- They do not have the overhead costs of hiring a room (usually \$70-\$100 per day with very few options of hiring them for reduced times ie less than overnight)
- They can maintain their own security systems eg having another person at home, being familiar with the layout of the building and therefore 'escape routes' etc
- At home people can keep occupied between jobs rather than wasting time at hotels or travelling to and from hotels.
- At home they can prepare their own meals, use their laundry and have immediate access to clean towels, bed sheets etc
- Home based businesses are increasing nationally. In cities where such a trend has been documented there is clearly a low level impact.
- To maintain maximum control over who knows about their choice of work ie in small cities reception and other hotel staff may 'out' sex workers to others within the community.
- Restricted access to transport to travel between jobs if people don't drive or don't have their own car
- Workers can decorate their work space in a way that best reflects their business practise

Workers choose to deliver services in clients homes for the following reasons -

- Clients request this service
- Visiting clients in their own homes is very discreet
- Removes the costly expense of hotel rooms
- Clients in the Northern Territory are familiar and comfortable with this practice
- This service has traditionally been offered by sex workers and requested by clients.

In light of the day to day realities of the sex industry where these practices are not exploitative or have any negative impact on the wider community it is recommended that this section of the act be altered to allow sex workers to operate from private residences.

<p>Recommendation: Change the Northern Territory legislation to allow sex workers to operate from private residences.</p>
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Scarlet Alliance comments relating to:  
**RESTRICTIONS ON SOLICITING**

*Section. (1) A person shall not, for the purposes of prostitution –*

*(a) solicit or accost any person in a public place; or*

*(b) loiter in a public place.*

*Penalty: \$2,000.*

*(2) A person shall not –*

*(a) in a public place, invite or solicit any person to prostitute himself or herself with the first-mentioned person or a third person; or*

*(b) loiter in or frequent a public place for the purpose of –*

*(i) inviting or soliciting any person to prostitute himself or herself with the first-mentioned person or a third person; or*

*(ii) being accosted by or on behalf of a prostitute.*

*Penalty: \$2,000.*

Scarlet Alliance recommends the removal of this section for the following reasons:

1. Criminalisation of Street based sex workers in other states has resulted in:
  - Workers forced to operate further away from the city in order to prevent detection by police. This has resulted in increased the risk of assault and theft, which street workers are less likely to report for fear of incriminating themselves.
  - Street based sex workers having reduced contact with service providers.
  - The result is street based sex workers are far less visible; have reduced access to support services; are working in far more isolated situations with greater risk of assault and theft; and without any peer support.
2. Penalties are not a deterrent and have failed in every jurisdiction world wide, even when legislation has been aimed at abolishing the sex industry. This criminalisation response is excessive and unwarranted and by criminalising sex workers it creates problems rather than creating resolutions.
3. Police should have no role in regulating the sex industry. There is no other industry regulated by police and we believe that it is not appropriate that an industry made up predominantly of women should be regulated by police in the way that the Northern Territory street based sector of the industry is. Police regulating the sex industry creates an unnecessary opportunity for police corruption. There is evidence in other States where police regulate sectors of the sex industry which the Northern Territory should learn from. ie Western Australia where a police officer was charged for forcing street based sex workers to trade services for the waiving of charges and in Queensland where the Fitzgerald Inquiry indicated high levels of police corruption in the treatment of sex industry.
4. Prohibition will not prevent a street based industry developing as is shown in all other Australian jurisdictions where street based sex work exists regardless of high levels of criminal disincentives. Currently the Northern Territory street based sex industry is extremely small as such the criminalisation of this sector seems particularly unnecessary.
5. Loitering charges are often used for purposes other than that intended by the legislation. It is Scarlet Alliances' experience that loitering charges can easily be used against other marginalised groups and should not be included. Eg. indigenous people and youth.

Currently in the Northern Territory there is very little street based sex industry. We would like offer the following information should there come a time when the street based sex industry is of a concern and of a size to warrant a specific response.

NSW has developed a model by where street soliciting is legal except in certain places. This has resulted in the creation of safe working areas where street based sex workers are allowed to operate. This has further been supported by the creation of safe houses which have had a major impact in minimising the impact of street-based sex work on the community. It should be noted that NSW (which has largely decriminalised sex work, allowing sex workers choice of area of work) has a far smaller street-based sex industry than Victoria (which has a restrictive licensing system many sex workers have difficulty complying with).

In fact after 8 years of an illegal street based sex work industry in Victoria the Government was faced with an increasing street based sex work sector. This led to an investigation of the issues by the Attorney-General's Street Prostitution Advisory Group made up of residents, traders, street sex workers, welfare agencies and the City of Port Phillip, in addition to key stakeholder groups such as the State Government and Victoria Police. AGSPAG recommendations included:

- Establishment of tolerance areas (otherwise known as safe working areas) in which police resources would not be targeted at persons loitering and soliciting for the purposes of prostitution;
- Establishment of street worker centres (otherwise known as safe houses or safe house brothels): That safe and secure venues be established in the City of Port Phillip for street sex workers to service clients;
- That a comprehensive educative and communications strategy be implemented including the appointment of a police liaison officer, a peer education program for street sex workers, the establishment of a support services coordination group, and the creation of a mechanism through which the community can provide feedback on local street sex issues; and
- That amenity, resource and welfare support services be expanded and enhanced for residents, traders and street sex workers. A comprehensive package of services should offer targeted street cleaning, improved access to public toilets, and a full range of support services (including access to exit and retraining programs) for street sex workers.<sup>1</sup>

The results in Victoria, the outcome of more than 8 years of legislation which criminalised the street based sex industry indicate the potential to create rather than solve problems. By comparison New South Wales, which has largely decriminalised the sex industry and creation of safe working areas and safe houses, has a much smaller street based sex industry than Victoria, with significantly lower social impact. The lessons are: that if a legal system does not make it easy for sex workers to work legally within the mainstream sex industry, an increase in street-based sex work is a consequence; and that prohibition has not reduced the size of the Industry.

Criminalizing street work locks vulnerable, marginalised individuals into a cycle of charges and fines often increasing the level of activity.

Scarlet Alliance comments relating to:  
**PROHIBITION ON UNDERAGE SEX WORKERS**

*Section 17. Prohibition on prostitution by infants  
An infant who offers to provide or who provides prostitution services is guilty of an offence. Penalty: imprisonments for 2 years.*

The Scarlet Alliance acknowledges that the issue of young people participating in sex for favours/opportunistically has become a growing concern in every state and territory in Australia. It should be borne in mind that the solutions will need a whole of government approach and be based on harm minimisation principles. Most state and territories in Australia prevent people under the age of 18 working in the regulated sex industry they tend to participate in the most marginal areas of the industry. Most young people who are involved in the industry do not see themselves as sex workers and only engage in the exchange of sex for favours (money, accommodation, food, etc.) on a spontaneous needs basis. The major identified risk factor for young people being involved in sex for favours is homelessness<sup>1</sup> and as a result policies should be implemented which are focused on prevention. Most young people who find themselves homeless are generally escaping from abusive home environments, therefore the initial point of prevention is to support families in distress. Greater support services should be available for young people including appropriate and variable accommodation.<sup>2</sup>

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<sup>1</sup> Botka, M and Lyle, M, 1993. *Opportunistic Prostitution on the Gold Coast*, YACCA Special Grants Report, Brisbane.

Elliott, L, 1988. *A Resource for Young Prostitutes? A study of the needs of Young People Working as prostitutes in inner city Perth and in particular their perceptions of a centre-based service*. Unpublished report prepared by SIERA (Support Information Education Referral Association), Perth.

Finn, J and Curran, M 1993. *Survival Sex: The Final Report on the Planning Phase of the YACCA Special Project at Youth and Family Service* Logan City, Brisbane

Hancock, L, 1993/4. *Young People involved in Prostitution in Victoria*. School of Australian and International Studies, Geelong.

Stewart, K, 1994. *Opportunistic Prostitution and young People in Cairns City and Mulgrave Shire*. YACCA Special Grants Project, Cairns.

Tschirren, R, Hammet, K and Saunders, P, 1996. *Sex for Favours: The On the Job Youth Project: The Definitive Report*. Second Story Youth Health Service, Sex Industry Network, Adelaide.

<sup>2</sup>

Scarlet Alliance comments relating to:  
**Regulations under the Prostitution Regulation Act**

4. *Advertisements in newspapers*

*(1) In this regulation, "newspaper" means a paper -*

*(a) that contains public news, reports of occurrences or remarks or observations on public news, occurrences or political matters; and*

*(b) that is printed for sale or gratuitous distribution and published periodically or in parts or numbers at intervals not exceeding 26 days between each publication.*

*(2) An advertisement for prostitution services published in a newspaper must only appear -*

*(a) in that part of the newspaper referred to as the "classifieds section"; and*

*(b) under the heading "Escort Services" or "Adult Entertainment".*

*(3) An advertisement for prostitution services published in a newspaper shall not -*

*(a) contain photographic or other pictorial representation of a person (whether real or symbolic) unless the photograph or picture is restricted to the head and shoulders of the person;*

*(b) refer to the race, colour or ethnic origin of the person offering prostitution services or refer to any of those matters in the name of an escort agency;*

*(c) refer to the age of the person offering prostitution services;*

*(d) refer to the physical attributes of the person offering prostitution services or refer to personal physical attributes in the name of an escort agency;*

*(e) refer to "massage" or "masseur" or other parts of speech or grammatical forms of those words unless preceded by the word "erotic"; or*

*f) be larger than 3.5 cm x 4.5 cm.*

The above restrictions on advertising prohibit sex workers from adequately describing their business. The reality is that it is useful for workers to describe their age, race and ethnic origin. This is particularly concerning when particular groups within our community who are affected by high levels of hate crimes/violence (eg transgender and gay men and women) can not be clear about their service and as such receive many calls from persons requiring a very different service.

By excessively limiting the adjectives that can be published in the newspaper, advertisements become generic, resulting in workers receiving many calls from clients wanting to find out basic information which should be accessible through their advertisement.

It has been reported to Scarlet Alliance by many current and recent sex workers in the Northern Territory that the restrictions by local newspapers are excessive (descriptive words like blonde, babe, etc are excluded) the rules change regularly without explanation and the staff often make recommendations which are accepted in frustration by individual workers only to find the following day when the advertisement appears that other people have the same or similar add - obviously also recommended by the staff.



Scarlet Alliance comments relating to:

**Mandatory sexual health screening**

Whilst it is recommended that all sex workers and their clients use prophylactics, as is current industry practice, statistics have endorsed the Scarlet Alliance position that support and funding of peer education services which promote self-regulation of sex workers own sexual health is the best practice model. It is current National policy to influence behaviour through education campaigns not through the use of criminal sanctions that have been demonstrated to be unworkable.

Australian sex industry currently has excellent standards in terms of safe sex practices. An example of this is the fact that protected oral sex is widespread within the sex industry, but seldom occurs outside it. Creating an offence related to non-compliance with this standard is unnecessarily punitive, and is unenforceable.

Mandatory sexual health screening is not a feature of the Australian National HIV/AIDS strategy<sup>3</sup> and not the basis of sex industry O H & S which works towards voluntary compliance. For example, WorkCover NSW guidelines do not endorse mandatory safe sex. Education, not law, has been the most effective way to promote safe practices the success of which is evidenced in current very low rates of Sexually Transmissible Infections and HIV/AIDS amongst Australian Sex Workers. These statistics suggest sex workers are actively promoting the use of condoms for commercial sexual services. Any law which inhibits the provision of education and the supply of safe sex products is counter-productive.

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<sup>3</sup> *National HIV/AIDS Strategy 1999-2000 to 2003-2004* Commonwealth Dept. of Health and Aged Care 2000

Comments relating to:

**POLICE - REGULATING SEX WORKERS**

Scarlet Alliance believes that Police should not regulate sex workers or the sex industry. There is no other industry regulated by Police and we have not been provided with any information or evidence of the need for the sex industry to be treated differently. Society as a whole and all businesses must operate within the guidelines of civil law and does not require singling out for extra surveillance. Scarlet Alliance believes police should not be provided with special powers specifically relating to the sex industry. Instead, we believe that law enforcement agencies should treat the sex industry as any other business. Non-sex industry specific police powers are adequate to address issues arising in the sex industry.

We believe the primary function of police in relation to the sex industry should be to protect sex workers from violence and respond to calls for assistance. This is unlikely to occur under a criminalized framework because sex workers are reluctant to access the services of police for fear of prosecution. Current relationships between sex workers and police in Northern Territory are less than desirable resulting in many sex workers considering police officers to be 'prosecutors' rather than 'protectors.' This has resulted in low levels of sex workers reporting crimes perpetrated against them. Providing police with greater punitive powers however is unlikely to change this situation. In light of evidence that Police Corruption has been a feature of Police regulating the Sex Industry<sup>19</sup>, legislation should attempt to remove any opportunity of police corruption in order to 'promote the welfare and occupational health & safety of sex workers.

Our own information from Northern Territory sex workers has raised the following concerns.

1. Police who do not work in the area of registration have access to files regarding a persons sex work status.
2. Sex workers report having their sex work status disclosed and referred to by police when making unrelated complaints. eg domestic violence.
3. Sex workers report off-duty police referring to their sex work status at social gatherings.
4. A Sex worker reported her past work history (provided by the NT police to a solicitor) used against her character in a family law hearing.
5. Sex workers have reported in unrelated court hearings police divulging sex work status as a matter of course, during the establishment of a persons character. This was reported in cases when the person is the accused but also when witness for the defence.
6. Sex workers are provided with misleading information regarding who can access their registration information.
7. A sex worker when denied registration experienced their criminal record released without their consent to a potential agency workplace.
8. Sex workers report having their sex work status referred to by supervising officers when they are held in detention awaiting court for unrelated offences. In overnight detention sex workers have been called "whore", "hussy" and asked "how much" by supervising officers.

Serious concerns have been raised with Scarlet Alliance regarding the way in which sex workers' information that is provided to police is used. Many sex workers report choosing to work outside the law rather than risk their information being misused by police. There are many complaints about sex workers information being used against them and their status being referred to in their each dealing with the police. This has had an impact on the sex worker community in Darwin and their lack of trust towards the police. Sex workers who have registered will avoid interacting with the police for fear of their past or present registration being disclosed to others who may be involved in a complaint or an offence.

Scarlet Alliance concludes that the registration of sex workers in Darwin has been worse than a failure. It has created an active barrier that stops legal sex workers from reporting crime or

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<sup>19</sup> Commission of Inquiry into Allegations of Police Corruption in the Queensland Police Department 1986-1989. (Fitzgerald Inquiry) 1990). Report Brisbane: Queensland Government Printer.

giving evidence. It has also prevented sex workers from working legally, for fear of their information being unprotected.

Scarlet Alliance has met with representatives of the Northern Territory Police; a Senior Police Officer and on another occasion with police working within the missing persons unit. The missing persons unit administers sex worker registrations. As a result of these meetings we have the following concerns:

1. Senior police are not aware of who has access to information and ways in which sex worker information should or should not be used.
2. Senior police provide inconsistent information regarding process:
  - a. In some instances it is described that personal information on sex workers is physically kept only in a file cabinet and not on a database. On another occasion a different police officer showed the Scarlet Alliance representative an electronic data base that included a sex workers information.
  - b. In some cases we were told that a warning or notification alert appears on the screen for a person registered as a sex worker conflicting with the information above describing the information only in a filing cabinet. On another occasion it was made clear that there was a process to have the alert removed (by statutory declaration) but no way to have the information removed from the database. Information from police on this matter is confusing and contradictory.
3. Police officers working directly with sex workers provide inconsistent information to sex workers about who has access to their information provided during registration.
4. Police have insufficient processes for the protection of a persons private information.
5. There appears to be no mechanism for a sex worker to remove themselves completely from the register. Considering there is no criminal charge and being a sex worker is not illegal this is inconsistent and discriminatory.
6. On occasion 'intelligence collecting' or 'protecting clients of sex workers' is cited for the reason sex workers are required to register. However Senior Police have cited the "protection of the community" but were unable to expand about exactly what the community was being protected from. This broad lack of consensus among law makers and law enforcers as to the purpose of the registration points to a major downfall in policy implementation in the Northern Territory. Instead of clear goals, guidelines and processes, sex workers are subject to arbitrary treatment at every interaction they have with the system.

We believe that the policy of all police having access to sex workers information is out of step with the purpose of the Prostitution Regulation Act. The Act clearly calls for certain information to be protected and indicates high ranking officers must give permission for information of a personal nature to be accessed. It is clear there were privacy concerns and those were taken into account at the time of drafting. However, current practice does not consider privacy concerns of individual sex workers

We believe a decriminalised industry would be more open to scrutiny as it is more easily accessible, police relationship with sex workers are improved and there is increased levels of reporting of crime. Police regulation of sex workers does not safeguard sex workers from violence or harassment but it does prevent sex workers reporting these crimes when they occur. The current legislative framework creates an underground illegal sex industry where sex workers are unlikely to report crimes of violence and are subject to potential police corruption.

**Scarlet Alliance recommends:**

1. The requirement for registration of individual sex workers be stopped immediately.
2. The removal of current and past sex worker history from Northern Territory police records immediately.
3. Private workers be permitted to work with co-workers.
4. Private workers be able to legally employ other persons for their safety.
5. Private sex workers be permitted to negotiate a booking at their place of work.
6. Private sex workers be permitted to operate from a residential address.
7. Changes be made to the definition of 'brothel' to acknowledge current and traditional sex work practices by legalising sex work in a private residence.
8. Soliciting offences be removed from the Prostitution Regulation Act
9. Police be removed from any role of regulating sex workers.
10. Criminal history checks for sex workers be stopped immediately.
11. An extensive investigation into Sex Industry Legislation in the Northern Territory be implemented and that sex workers as the key stakeholders be consulted at each stage of the process.
12. The development of a reference group made up of representatives from NT SWOP, Scarlet Alliance and private and escort sex workers to advise the investigation.
13. Formal training be regularly provided by NT SWOP to police on working with sex workers. (As provided to police in other states.)

Appendix one:

**Australian Sex Workers Association Inc.**

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22<sup>nd</sup> February, 2005

The Honourable Syd Sterling  
Minister for Racing, Gaming and Licensing  
Parliament House  
GPO Box 3146  
Darwin NT 0801

Dear Sir,

Scarlet Alliance is the Australian Sex Worker Association Inc. Our organisation formed in 1989 and represents sex workers and Australian state based sex worker community organisations and projects at a national level. Through its objectives, policies and programs Scarlet Alliance aims to achieve equality, social, legal, political, cultural, health and economic justice for past and present workers in the sex industry.

I write to you to table the Scarlet Alliance concerns that the Northern Territory Government, by holding a narrow inquiry, rather than an extensive investigation, has not prioritized the occupational health and safety of all Northern Territory sex workers. As such, it is our fear that changes that result from this inquiry will be helpful but only the tip of an iceberg. It is clear in our extensive contact with workers in the sex industry that there are major changes necessary to facilitate a workable model of sex industry legislation.

Our complaints regarding this inquiry are:

1. Consultation methods:

- Lack of clarity

In particular we are concerned that there has been no clear terms of reference for this inquiry. We are also concerned by the way in which this inquiry changed mid way into a very narrow inquiry.

- Random questions

The small number of sex workers who have been able to participate in this process have been asked random questions on a range of issues - this random collecting of information will not provide a clear picture of the issues affecting sex workers safety in the Northern Territory.

- Methods

The methods used to make contact with sex workers were not systematic or well timed. It was unclear as to the involvement of agency based workers. Meetings with Racing, Gaming and Licensing established a very clear partnership approach with NT SWOP (December 2004) this changed to a very unclear arrangement (January 2005).

2. Extent of inquiry:

It was explained to Scarlet Alliance representatives that the focus of this inquiry was to investigate the effects of the current sex industry legislation on sex workers in the Northern Territory.

At a mid way point it was explained that instead the inquiry would focus on only two smaller areas of the laws which impact on private sex workers. Scarlet Alliance believes this narrowing of focus has rendered the inquiry too shallow and therefore

will not address some of major factors which affect whether a sex worker works privately or with an agency ie registration. Instead of working in partnership with SWOP and using established networks between peer educators, the interview required sex workers to speak directly to a government representative - this created a barrier to participation by many sex workers.

3. Lack of transparency:

- Scarlet Alliance believes it is not best practice for a government department which plays a major role in regulating the sex industry to be conducting the inquiry into problems which affect the safety of workers in the industry.

- Scarlet Alliance became aware of this process at a public meeting organized by Scarlet Alliance and NT SWOP at which all stakeholders (Worksafe, Lawyers, Health professionals, and police) along with key stakeholders (sex workers) became aware of this inquiry for the first time. This inquiry was not announced as beginning soon but referred to by representatives of Racing, Gaming & Licensing as having already begun even though all attending the meeting raised concerns that sex workers, NT SWOP, Scarlet Alliance and other stakeholders had not been contacted.

4. Ideas formed prior to the investigation

- In discussions with Racing, Gaming and Licensing it was clear that particular models of regulation had been discussed and were held in view as preferred alternative options to the current police registration model. The alternative put forward was the shifting of registration to an alternative government body ie Racing, Gaming & Licensing. Scarlet Alliance believes it is not appropriate for a department who sees itself a preferable option to the current to be conducting the enquiry.

Scarlet Alliance believes it imperative that legislative changes are made to allow private workers greater control over their safety by allowing working in pairs along with drivers and receptionists. However, we further believe that it is necessary to hold extensive consultation with sex workers on the many other elements of this legislation which negatively impact on the occupational health & safety of Northern Territory sex workers. We would be happy to brief you if you are not aware of these factors.

Yours faithfully,

Janelle Fawkes,  
President

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