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1st April, 2005.

Crime and Misconduct Commission,
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RE: Queensland Prostitution Act 1999

I am writing on behalf of the Scarlet Alliance, the Australian National Forum for Sex Worker Projects/Organisations Inc. Formed in 1989 Scarlet Alliance represents Australian State based sex worker community based 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. It is within this context that we are providing a formal submission to seek input into the evaluation of the Queensland Prostitution Act.

The 2004 CMC report *Regulating Prostitution - An Evaluation of the Prostitution Act 1999*¹ failed to acknowledge serious negative impacts on the lives and work of sex workers as a result of current Queensland Sex Industry legislation. As such Scarlet Alliance does not support the findings of the report and does not believe the report provides the Queensland Government nor the Queensland community with a true impression of the Sex Industry in Queensland.

The majority of sex workers in the Queensland Sex Industry currently operate in the illegal sector of the industry. It is inappropriate that Government should consider its legislation successful in light of this situation.

The Queensland model of Sex Industry legislation has created a two tiered industry forcing many workers outside of the legal sector and deems sectors of the industry, which are legal in other states, illegal in Queensland. Current Laws are illogical and difficult for sex workers to adhere to without putting their safety at risk. The current legislation also forces private sex workers to choose between working legally and alone or illegally in pairs where peer support, increased safety and increased control over services they choose to offer and opportunities to share costs.

Although the Prostitution Act 1999 includes some measure to protect sex workers who operate in legal brothels from police corruption, the majority of Queensland sex workers, who are placed outside of the legal framework by the current legislation, are put at risk while police are the regulators of the sex industry. It is important to acknowledge that many of the factors which place a Queensland sex worker outside of the lawful sector are illogical and irrelevant to safety of sex workers or the community and are excessively punitive in nature.

Queensland has the opportunity to correct the intrinsic problems with sex industry law and introduce a decriminalisation model in order to realise best practice public health outcomes, promoting the health and safety of sex workers and the broader Queensland community.

Australia's National Strategy on HIV/AIDS recognises the important role sex worker organisations have played in health promotion and outlines the need for Governments to enhance the capacity of sex worker organisations to design, manage and participate in peer-based health promotion activities, and to participate in the broader partnership response to the epidemic. Australia makes a commitment to involving affected communities, of which sex

¹ CMC QLD, *Regulating Prostitution - An Evaluation of the Prostitution Act 1999 (QLD)* December 2004.

workers are identified, at every level including planning; delivery and evaluation of HIV programs and policies; the creation of an enabling legal and policy environment for HIV prevention, treatment and care programs; and promotion of voluntary and confidential testing services..

We thank you for the opportunity to comment and look forward to 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. Scarlet Alliance would be available to present evidence at a hearing should one be held.

Yours sincerely,

Maria McMahon,
Vice President.

Queensland Prostitution Act 1999, Escort
Submission to the Crime & Misconduct Commission

April, 2005

Submission submitted on behalf of Scarlet Alliance's membership.

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:

- (a) To promote the civil and human rights of past and present sex workers and to work toward ending all forms of discrimination against them;
- (b) To lobby for legal and administrative frameworks which do not discriminate against sex workers;
- (c) To challenge any government at any time 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;
- (d) To actively promote the right of all sex workers to work in whatever area of their chosen occupation, including street, brothel, escort, private and opportunistic work.
- (e) 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. Furthermore, challenge any legislation, policy or process which does not so promote the rights of the worker;
- (f) 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;
- (g) To liaise with international sex worker rights groups in the development of regional and international networks, programs and objectives;
- (h) To support sex workers and sex worker organisations to become more politically active.
- (i) To enhance the capacity of sex workers to participate in advancing their rights and build networks & organisations.
- (j) To gather and disseminate sex industry related information to members.

These objects are undertaken in order to advance sex worker rights.

EXECUTIVE SUMMARY

This submission includes feedback on the previous CMC report to greater inform the Governments understanding of the impact of this legislation. Particularly, we raise concern that the negative impact on the lives and working practices of sex workers in Queensland, as a result of current legislation, is not represented in the report and rather a moralistic agenda is evidenced by the focus on the funding of exit and retraining services for sex workers.

We refer to the Hansard record of the parliamentary introduction of the Queensland Prostitution Act 1999 to gain an understanding of the intention of the legislation.² In doing so we find that this legislation has not met its objectives and that the current policing of this legislation is in opposition to its original intent. Minister for Police, Tony Barton in his 2nd reading speech states: 'However, the most frequent concern expressed during the Government's period of public consultation related to the personal safety of single sex workers.' It is clear that the safety of sex workers was an objective of the legislation. Barton goes on to say 'The Government has acted on that concern by providing single sex workers with an option for employment which many will consider provides greater personal safety'.³ Scarlet Alliance will discuss evidence that suggests that sex workers in Queensland do not believe this legislation has provided safe working environments in fact many sex workers believe their safety is put at unnecessary risk. This is supported in recent Queensland research that suggests 'it may be that this legislation may have further isolated sex workers and unintentionally created a less safe work environment'.⁴

Scarlet Alliance believes the Queensland Prostitution Act 1999 is flawed sex industry regulation which has resulted in the majority of sex workers in Queensland operating outside of the legal framework (illegally). This is not because sex workers choose illegality over legality but because current Queensland legislation provides: too few legal options (many Queensland centres have no legal sex industry workplaces); forces individual sex workers to work either alone, with a licensed security officer, (which is unaffordable to all but a few private sex workers); OR to work illegally in pairs, providing each other with peer support, increased safety and greater autonomy over services provided and sharing of costs.

The PLA 2001-2002 Annual report says of this legislation 'By removing the prospect of illegality it seeks to minimise the incidence of official corruption which might otherwise support an illegal sex industry.'⁵ Furthermore, the endorsement by the Queensland Government of Police as the regulators of the largest sector of the sex industry (that deemed illegal by the *Queensland Prostitution Act 1999 but legal in other states of Australia*) **places individual sex workers at an unacceptable risk of exploitation and police corruption.**

The Selling Sex in Queensland Report states: 'Consistently, street-based sex workers reported higher rates of violence compared with the legal sectors of the sex industry.' Scarlet Alliance believes the criminalisation of street based sex workers has further marginalised this sector of the industry and that these individuals are further disadvantaged by criminal penalties.⁶ For these reasons Scarlet Alliance believes the Queensland Government has failed to protect this sector of the sex worker community and has instead attempted to address social issues with a criminal response.

In reference to the suggestion of registration of escort sex workers Scarlet Alliance warns that legislation which ignores the need for sex workers to maintain their privacy is likely to be boycotted for fear of discrimination. This is the case with any form of registration of individual sex workers.

² Hon TA Barton MLA, Minister for Police and Corrective Services, Second Reading Speech, *Queensland Parliamentary Debates*, 10 November.

³ Hon TA Barton MLA, Minister for Police and Corrective Services, Second Reading Speech, *Queensland Parliamentary Debates*, 10 November.

⁴ Prostitution Licensing Authority (PLA), *Selling Sex in Queensland- a study of prostitution in Queensland*, (www.pla.qld.gov.au) (2003)

⁵ Prostitution Licensing Authority (PLA), Annual Report 2001-2002, (www.pla.qld.gov.au) (2002)

⁶ Prostitution Licensing Authority (PLA), *Selling Sex in Queensland- a study of prostitution in Queensland*, (www.pla.qld.gov.au) (2003)

Individual sex workers in the sex industry should not be kept on a register or list. It is unclear to what registration would serve other than surveillance in which case it is unnecessary and is another example of singling out sex workers and over-regulation.

Current STI rates amongst Australian sex workers are very low. As such laws which suggest there is a need to create mandatory safe sex 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 peer education, *not laws*, create safe sex practices.

In 2003, Queensland Government passed amendments to legislation which disbanded the Prostitution Advisory Council (PAC). This change occurred without consultation with sex workers. It is unclear how the important roles that were to be met by the PAC including, some of a watchdog nature, are now to be met. The lack of any sex worker representative role which feeds into the board structures of this legislation is unacceptable. There is now no opportunity for direct input by sex workers into the Queensland Sex Industry legislation.

The roles of the PAC were: 'to monitor the operation of this legislation; to liaise with the authority, the police and other agencies with a view to enhancing interdepartmental coordination; to refer relevant matters for investigation to an agency of Government or any other entity for investigation; to coordinate the development of codes of practice, if appropriate; and to promote and coordinate programs—that promote sexual health care; that help sex workers leave prostitution; that divert minors and other vulnerable persons from prostitution; and that educate sex workers, magistrates, police, community workers and the community about issues relating to prostitution—through the dissemination of information outlining the dangers inherent in prostitution, and focusing on security measures to improve the personal safety of prostitutes.'⁷

The members of the council were to include — 'a person who represents sex workers in Queensland; a person with experience as a sexual health care doctor or social worker with experience working with prostitutes; a person with knowledge of the issues for marginalised or disadvantaged young people; a person who is representative of religious or community interests.'⁸ There was also the requirement for the council to have a gender balance.

Scarlet Alliance believes Escort Services in Queensland should be decriminalised. However, the current legislation does not support best practice Occupational Health & Safety for the majority of Queensland sex workers. Therefore Scarlet Alliance is concerned that simply adding another sector of the industry to an inefficient and discriminatory model of legislation, (licensing) will not improve conditions for sex workers in Queensland.

⁷ Hon TA Barton MLA, Minister for Police and Corrective Services, Second Reading Speech, *Queensland Parliamentary Debates*, 10 November.

⁸ Hon TA Barton MLA, Minister for Police and Corrective Services, Second Reading Speech, *Queensland Parliamentary Debates*, 10 November

INTRODUCTION

Scarlet Alliance was formed in 1989 following the first HIV & Sex Work Conference. Scarlet Alliance is Australia's national peak body representing community based sex worker organisations and projects and sex worker groups and networks. Each year a National Forum and AGM is held at which time key policies are developed, an executive and spokespersons are elected, presentations and workshops on issues affecting 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). 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 introduction of new legislation to regulate any industry must be conducted in such a manner as to ensure the smoothest possible transition and highest possible level of compliance in the transition from unregulated to regulated Industry. Legislation to regulate the sex industry should be no different. The aim 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.

The 2002 Annual General Meeting of Scarlet Alliance, attended by all its state member organisations/projects considered the issue of registration of individual sex workers. Those in attendance are experts in their field of sex worker occupational health and safety, sex industry legislative reform and an understanding of government and community concerns relating to the sex industry. As they have considerable experience across all Australian jurisdictions and a comprehensive understanding of the failure and success of various models of law reform applied in Australia over the previous twenty years their input into consideration of this matter was invaluable. The meeting unanimously concurred with existing Scarlet policy **that the licensing/registration of sex workers is contrary to the best interests of sex workers**, is unworkable and has failed in every jurisdiction it has been enacted.

In light of these arguments against the individual registration of sex workers, Scarlet Alliance urges legislators to consider an inexpensive, workable minimalist structure (such as decriminalisation).

Rather than

- Registration of individual private workers, which will act as a barrier to compliance and

- Criminalisation of the street based sex work industry, which has created new problems rather than addressed existing problems and further disadvantaged the most marginalised sex workers.

We suggest:

- ensuring the safest possible working environments for sex workers in their chosen area of work.eg.
 - two private workers working together or hiring a receptionist,
 - street based sex workers, decriminalised therefore allowing sex workers to report crime or threats without fear of retaliation, removing the unsafe notion that police are only the prosecutors and not the protectors for sex workers.
 - Anti-discrimination legislation available to all sex workers to address the current high level of discrimination faced by sex workers when applying for loans, attempting to rent property etc.

Registration of individual sex workers in Australia has generally failed and merely resulted in the creation of a two tiered system of legal and illegal sex work as many sex workers refuse to comply, preferring to work illegally rather than submit to registration requirements as the greatest disincentive to a sex worker is the loss of control over who knows about their sex work. This is detrimental to the very aims of law reform as the reason sex industry legislative reform was undertaken are undermined. People who are left to operate outside of the law are unregulated.

In Summary

Scarlet Alliance believes that Escort services should be decriminalised in Queensland. We acknowledge that Queensland sex workers are reporting major concerns with the current legislation and the pressure to overlook important occupational health and safety issues. These concerns are not being addressed by the Queensland Government and were not acknowledged in the previous CMC report.

For this reason Scarlet Alliance recommends the Queensland government address the current unsafe and unsatisfactory conditions for ALL Queensland sex workers.

PART 1

Scarlet Alliance comments relating to:

PREVIOUS CMC REPORT – *Regulating Prostitution (CMC 2004)*

The previous CMC report can not be seen to have evaluated the Queensland Sex Industry legislation as the majority of sex workers, those who are deemed illegal under the Prostitution Act 1999, were not actively included in the evaluation. It is sex workers who are forced to operate illegally which are most adversely affected and marginalised by this legislation.

The previous CMC report failed to acknowledge –

- That currently the majority of sex workers operate outside of the legal framework. Without the protection of antidiscrimination legislation, best practices workplace occupational health and safety measures and without the ability to report crime or harassment.
- It is the Prostitution Act 1999 that has created a sex industry legislation regime that has divided the Queensland Sex Industry into two sectors, Illegal and Legal. Other models of legislation seek to draw the majority of sex workers into the legal sector (more transparent) and ensure that the majority comply with best practice procedures.
- It is inevitable that the government endorsed police regulation of the majority of the industry (the illegal sector) will result in police corruption in association with individual sex workers, the majority of whom are women.
- Undefined and poor industrial rights/relations of sex workers working in Queensland's legal brothels.
- The ways in which criminalisation has further stigmatised and marginalised, resulting in negative health and safety outcomes, for sex workers who work in Queensland street based sex work industries
- The negative outcomes of legislation in Queensland which prevent sex workers from operating in pairs or in small cooperative settings with other sex workers.
- The negative impact on sex workers of entrapment and the inevitable police corruption associated with such practices.
- The enforcement of Amendments to legislation (2002) relating to mandatory use of Prophylactics which has resulted sex workers being charged but not clients.
- Although the report recommends *reconsideration* of the current excessive mandatory testing of sex workers it does not go far enough. There is no evidence to suggest that Queensland sex workers require mandatory sexual health testing in fact the epidemiological statistics suggest that sex workers have low rates of Sexually Transmissible Infections. Mandatory health checks rather than self regulated testing is clearly not evidence based and is discriminatory, endorsing a myth of sex workers as the vector of disease.

The CMC report shows a bias in its discussion of trafficking and migrant workers which only refers to materials written in the United Kingdom rather than current information providing evidence on the Australia situation provided by Scarlet Alliance and its member organisations to the Australian Parliamentary Joint Committee Inquiry into trafficking.

Scarlet Alliance believes there is an intrinsic bias in a report which fails to recognise those sectors of the industry which are most marginalised by the legislation it seeks to evaluate and having failed to acknowledge the major negative impacts on sex workers work (as outlined in this submission) then recommends the support for increased exit and retraining services, the necessity for which is not supported by evidence from sex workers.

PART 2

Scarlet Alliance comments relating to: CMC Discussion paper, '*Should escort or outcall prostitution services in Queensland be legalised?*'

Should Queensland legalise Escort Services?

The current model of Queensland Sex Industry Law has resulted in a two tiered industry whereby a small 'boutique' industry operates legally but the majority of the industry operates illegally. Scarlet Alliance believes that escort services should be decriminalised allowing such services to be provided. However, the current licensing framework has not been successful. As such, Scarlet Alliance believes the Queensland Government must address the serious problems that exist with current laws. Ignoring the existence of these problems will result in the escort industry similarly to the rest of the industry being affected by ineffective regulation.

- *The capacity for legal brothels to provide escort or outcall services?*

Currently, sex workers providing services in legal brothels in Queensland experience high level industrial relations concerns and ambiguity over their employment status (employee or subcontractor). Although this is anecdotal evidence, without some form of 'whistle blowers' legislation in place - an so few legal workplaces - it is unlikely that workers in Queensland legal brothels are likely to be empowered to make complaint for fear of being sacked and having few other legal workplace options. In the Prostitution Licensing Authority Annual Report 2001-2 it is shown that 46% of complaints received related to licensed brothels and that 42% of people making complaints were sex workers. This would seem to indicate an excessively high level of complaints from sex workers and that an equally high level of those complaints were about legal brothels.

Legal brothels exhibit a high level of control over sex workers which they employ, however, owners of these businesses avoid their responsibilities as employers by describing sex workers as subcontractors. There has not been a case taken to the industrial courts in Queensland because of the stigma and discrimination experienced by sex workers and the need for a sex worker to be 'out' in the process of making a complaint. A Western Australian precedent would seem to indicate the type of controls many brothel owners have over individual sex workers is consistent with an employer/employee relationship not business and subcontractor relationship.⁹ Allowing for the provision of escort services by legal brothels does not address this issue.

Best Practice for Escort Agencies and businesses providing Escort Services

For effective Escort services there is the necessity for drivers to transport sex workers too and from the booking. Best practice would ensure the driver waited outside during the booking and had mobile contact with the worker.

Escort workers must be provided with mobile phones (without outward call blocks). It should be the requirement of the escort business to provide the phone, ensure it is operating properly (has been tested before departure) has emergency numbers and agency numbers keyed into the phone, ensure the escort sex worker understands how to use the phone, understands safety procedures and has been provided with prophylactics and lubricants (these must be stored at the specified temperature at all times to prevent breakdown of latex).

The mobile must be provided to ensure escort sex workers are able to 'call in' to the escort agency indicating the worker is happy to take the booking and has received payment. The

⁹ Industrial Court of Australia, *PHILLIPA V CARMEL before RITTER*, (WI 2523) Perth, Western Australia, 10 September, 1996

escort sex worker after completion of the booking then 'calls out' within the allotted time frame to indicate the worker is leaving the booking. The driver is advised immediately and will ensure the sex worker leaves the booking immediately.

In some cases sex workers have been unhappy with security provided by operators when drivers have left the area and are not available when a sex worker decides to end the booking earlier than first agreed. This situation is unacceptable as the worker may be 'stranded' outside.

A cancellation fee must be charged to the prospective client, to be collected by the driver if the client decides not to continue with the booking. That fee must be paid to the sex worker for wasted time.¹⁰

- ***Independent escort or outcall prostitution agencies?***

Scarlet Alliance believes that escort services provided by independent escorts and escort agencies in Queensland should be decriminalised. The Queensland Government would be showing an extreme bias if it was to only allow escort services from legal brothels.

Escort services have historically been part of those services provided by sex workers. Scarlet Alliance believes these services should never have been made illegal as part of the Prostitution Act. Clearly legislators at the time did not have the best interests of sex workers at heart.

In many other states and territories in Australia escort services are legal. Escort services are a traditional service provided by sex workers and negotiated between the client and the worker. The benefits of being able to provide escort services include

- Discretion for the sex worker and the client
- Reduced overhead costs of establishing business premises
- Flexibility for transient and temporary sex workers

If you agree with brothels doing escort

- ***Do you think the number of sex workers providing services for a brothel at any one time should be limited – how should this be done?***

Scarlet Alliance does not support the over regulation of the sex industry. Over regulating the industry encourages the illegal sector which is unable to comply with the regulations. An illegal sector heightens opportunities for breaches in occupational health and safety requirements. Restricting the number of sex workers working at brothel at anyone time does not equate to sensible business practices. The over-regulation of the Queensland sex industry renders this option as complex.

- ***Do you believe that sex workers providing escort services for legal brothels should be monitored to ensure compliance with the Prostitution Act (eg health safety reasons, limitations to the number of workers allowed to provide services at any one time? If so, how should this be done?)***

Scarlet Alliance does not believe that sex workers should be 'monitored to ensure compliance with the Prostitution Act'. In respect to legal brothels, it is not the responsibility of the individual sex workers to maintain the legal practices of the brothel.

Instead Scarlet Alliance believes the pertinent question is, 'Do you think legal brothels should be monitored to ensure they have in place effective measures to ensure the occupational health and safety of their employees, that is, sex workers.'

The need to monitor compliance Queensland's current requirements with regard to health checks for sex workers are out of step with both the epidemiological statistics in Queensland which show sex workers to have low rates of STI – this includes illegal sex workers. These statistics have remained within a similar range since prior to the Prostitution Act.

¹⁰ Based on a fact sheet from Scarlet Alliance & Australian Federation of AIDS Organisations (2000) A guide to best practice Occupational Health & Safety in the Australian sex industry.

These statistics are an outcome of sex workers adopting use of condoms in their workplaces and providing a high level of safe sex education to clients on a daily basis. It is recommended that all sex workers and their clients use prophylactics, and this is current industry practice, it is unnecessary to make this a law or mandatory. It is current National policy to influence behaviour through peer 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 singles out sexual contact within the industry as inherently more risky than other sexual contact.

Mandatory safer sex is not a feature of the Australian National HIV/AIDS strategy¹¹ 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.

- ***Do you have a view on the potential roles of various agencies such as the PLA QPS in the monitoring of escort services provided by legal brothels? What kind of info would need to be collected and reviewed? How could their current compliance functions be applied and/or modified.***

There are serious problems with the current regulation of the Sex Industry in Queensland. Scarlet Alliance receives regular anecdotal evidence from sex workers which would indicate discrimination against sex workers by both Police and the PLA. For the reasons outlined below we would not support police regulating sex workers.

Queensland Police Service

Scarlet Alliance believes laws in Queensland which allow entrapment in relation to individual sex workers put sex workers, mainly women in an unnecessarily vulnerable situation where police corruption could occur. The Fitzgerald Inquiry uncovered endemic police corruption in relation to the sex industry and Scarlet Alliance warns that it is inevitable that police corruption will exist when police are the regulators of women (who are forced to work alone by the law) in the case of private workers and in the case of street based sex workers who are marginalized as a result of Queensland laws which deem them to be operating illegally.

The current policing of the Prostitution Act 1999 is a contradiction to the intent of the legislation as articulated in the 2nd reading speech. Clearly legislators correctly identified the reality of police corruption when police have a role regulating the sex industry and introduced measures to attempt to prevent its occurrence.

The following clause shows the intention to ensure this legislation should reduce opportunities for police corruption and for an external body to track police contact with the sex industry.

Police will be permitted to enter and inspect a licensed brothel at any time when the brothel is open for business but subject to certain conditions. These are that:

- 1) Only police above the rank of Inspector, or those with the written permission of an Inspector or higher ranking officer, will be able to exercise this power; and*
- 2) The PLA will keep a register of any police entry into licensed brothel of which the police are required to inform them.¹²*

However, only police of the rank of inspector or above may enter, or authorise an entry, to a licensed

¹¹ Commonwealth Dept. of Health and Aged Care, *National HIV/AIDS Strategy* 1999-2000 to 2003-2004.

¹² Kelly-Anne Collins, Research Publications and Resources Section, Queensland Parliamentary Library, 1999 QUEENSLAND PARLIAMENTARY LIBRARY *Research Note No 6/99*, Research Publications and Resources Section- (December 1999) ISSN 1440-5490

*brothel when it is open for business. Police officers who wish to inspect, copy or take possession of documents or things must seek prior written authorisation from the PLA. Details about police entry of licensed brothels must be reported to the PLA.*¹³

However, this recognition of the risk of police corruption and the attempt to put in place measures to prevent its occurrence has not been afforded to the entire sex industry. It only protects sex workers who operate in legal brothels. Private sex workers, (legal workers), are not afforded this same protection.

Private sex workers in Queensland are in fact under surveillance by a section of the police department, Prostitution Enforcement Task Force (PETF), who regulates the private sex worker sector whilst the street based sector is largely targeted by local area police. This places police as the regulators of these sectors of the industry.

Scarlet Alliance believes the Police primary function 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 when sex workers are reluctant to access the services of the police for fear of prosecution. Current relationships between sex workers and Police in Queensland are less than desirable resulting in many sex workers considering Police officers to be 'prosecutors' rather than 'protectors' this has resulted in a low levels of sex workers reporting crimes perpetrated against them. By providing police with greater punitive powers it is unlikely that this situation will change. In light of evidence that Police Corruption has been a feature of Police regulating the Sex Industry¹⁴ Government should attempt to remove any opportunity of police corruption in order to 'promote the welfare and Occupational Health & Safety of sex workers.

Instead we believe a decriminalised industry is 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. Increasing police powers will not improve the situation of violence against sex workers, particularly under a legislative framework which is likely to result in large underground illegal sex industry where sex workers are unlikely to report crimes of violence and are subject to potential police corruption and control.

Prostitution Licensing Authority

Scarlet Alliance has received anecdotal complaints from is aware of complaints made to the PLA which have received courteous but little response.

Anecdotal information from Queensland Sex Workers as part of a recent Scarlet Alliance teleconference included many statements by sex workers indicating they were unhappy with contact with the PLA. Scarlet Alliance has been contacted by sex workers with complaints regarding: issues of confidentiality breaches by PLA compliance officers (reported to the PLA), lack of sensitivity to sex workers privacy concerns, lack of assistance when providing information regarding poor work place standards and practices, lack of processes to capture complaints of an anonymous nature, concern that complaints are not followed up, lack of interest in concerns ranging from unwanted camera surveillance in staff change areas, ineffective security systems and cameras, breaches of policy regarding security, sex workers being threatened with fines, implementation of daily 'shift fee' or 'amenity fee' charges by brothels deducted from the workers earnings and bonds (of workers earnings) held until end of 'shift' or work period and lack of provision of condoms and lubricant, or sale of condoms and lubricant to staff by brothels (should be free).

Many sex workers comment that they are unable to make complaint to the PLA for fear of retribution or loss of employment. There is a need for a complaints process which is anonymous or whistle blower legislation which protects sex workers from identification.

¹³Prostitution Licensing Authority, *Queensland Laws- Prostitution and the law in Queensland*, www.pla.qld.gov.au (2003)

¹⁴ Commission of Inquiry into Allegations of Police Corruption in the Queensland Police Department 1986-1989. (Fitzgerald Inquiry) 1990). Report Brisbane: Queensland Government Printer.

Advertising

PLA has a role in authorising advertisements by sex workers. Sex workers in Queensland have described difficulties with understanding their commitments and legal rights in relation to advertising in Queensland, Sex workers have stated that words which are acceptable to the PLA and those that are unacceptable are often illogical and some workers have experienced an advertisement being censored without any clear reason.

Do you think sex workers providing escort services for brothels should be registered? If so how could this be done.

Scarlet Alliance believes that any proposal to require 'self-employed 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.”¹⁵

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 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.¹⁶ 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 other 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.¹⁷ 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.
3. Privacy - It 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 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

¹⁵ Banach L. (2000) *Principles for Model Sex Industry Legislation*. Sydney. Scarlet Alliance and AFAO (Metzenrath S. ed).

¹⁶ STD Control Branch South Australian Health Commission (Epidemiological evidence submitted to the Social Development Committee of the Parliament of South Australia Inquiry into Prostitution).

¹⁷ 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.

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 individual 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 is greater than a threat of penalties. Criminal Penalties will not stop people working but rather add a criminal record to those who, in other Australian states, would be considered legitimate private sex workers and who may have worked as such for many years without negative impact to themselves, their families or the community. Scarlet Alliance believes the licensing framework has essentially split Queensland sex workers into two categories: legal sex workers and illegal sex workers and has had 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 livelihood became illegal were susceptible to criminal charges and imprisonment.
- Sex Workers are less safe. Some criminals deliberately target unlicensed/illegal sex workers knowing that illegal workers may have less recourse to the justice system.
- Illegal sex workers are vulnerable to extortion, violence, discrimination, and harassment from sex industry operators, clients, police on the basis of their illegal status.

The PLA 2002 report states ‘By removing the prospect of illegality it [regulation] seeks to minimise the incidence of official corruption which might otherwise support an illegal sex industry.’ In Queensland where the majority of sex workers operate illegally, through little choice, it is clear that ‘regulation’ is not successful and corruption is inevitable in this current environment.

- 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 are devoted to policing 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.

If you believe that independent escort services should be legalised:

- ***Do you think the number of sex workers providing services for an independent escort agency at any one time should be limited? If so, why do you hold this opinion?***

Scarlet Alliance does not support the over-regulation of sex industry businesses so would not agree to the number of staff employed by an independent escort agency. As the work of sex workers does not occur on the premises of the Escort Agency business there is no reason to limit the number of staff.

However, it is recommended that the Queensland Government recognises the role of employer and employee within any changes to legislation to prevent businesses from attempting to sidestep their industrial responsibilities by calling the escort sex workers sub contractors.

PART THREE

Scarlet Alliance comments relating to: STREET BASED SEX WORKERS

Scarlet Alliance recommends the removal of laws which criminalise street based sex workers 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 an increased 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. As such this criminalisation response is excessive and unwarranted and will create problems rather than solve any.
3. Prohibition has similarly proven ineffective resulting only in the further marginalisation and stigmatisation of this small but most visible sector of the sex industry.
4. Police should have no role in regulating the sex industry. This section will unnecessarily create an opportunity for police corruption. 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.
5. It is unnecessary to create legislation for loitering within a Sex Industry Bill. There are currently sufficient laws in place to deal with issues that relate to nuisance, criminal behaviour. None of these are specific to the sex industry and should not be placed in sex industry legislation.

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).

The results in Victoria, the outcome of more than 9 years of legislation which criminalises the street based sex industry similar to that in place in Queensland, 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 lesson is 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 Industry.

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

Scarlet Alliance believes the same inevitable risk of police corruption (as described in other areas of this document) is also likely in relation to street based sex workers.

Currently, entrapment, where a police officer pretends to be a client, is used extensively to gain convictions against women working as street based sex workers. Scarlet Alliance questions the validity of a Government decision to prioritise the resourcing of strategies aimed at criminalisation of a very small group of women.

This criminal response to a social issue is not successful, expensive and has increasingly marginalised and endangered this group of women.

Recommendations:

Recommendation 1

Scarlet Alliance recommends any future evaluation of Queensland Sex Industry legislation should acknowledge the entire sex industry as within the scope of the evaluation. Scarlet Alliance recommends the Queensland government address the current unsafe and unsatisfactory conditions for ALL Queensland sex workers.

Recommendation 2

Scarlet Alliance believes that Escort services provided by individuals, brothels and escort agencies in Queensland should be decriminalised. The Queensland Government would be showing an extreme bias if it were to only allow escort services from legal brothels. Escort services are a traditional service provided by sex workers and negotiated between the client and the worker. The benefits of being able to provide escort services include

- Discretion for the sex worker and the client
- Reduced overhead costs of establishing business premises
- Flexibility for transient and temporary sex workers
- Increased control over the services to be offered

Recommendation 3

Scarlet Alliance recommends the reinstatement of the PAC in order for sex workers of Queensland to have representation in the regulation of sex work in Queensland and to achieve the important roles of the PAC.

A sex worker role that is able to feed into consultative processes and the monitoring of impacts of legislation needs to be created. It is unclear how the important roles that were to be met by the PAC including, some of a watchdog nature, are now to be met. The lack of any sex worker representative role that feeds into the board structures of this legislation is unacceptable. There is now no opportunity for direct input by sex workers into the Queensland Sex Industry legislation.

Recommendation 4

Scarlet Alliance strongly recommends that the Queensland Government does not introduce registration or licensing of sex workers in any circumstances.

The greatest disincentive to a sex worker is the loss of control over who knows about their sex work. Registration or licensing of individual sex workers in Australia has generally failed and merely resulted in the creation of a two tiered system of legal and illegal sex work, because many sex workers refuse to comply, preferring to work illegally rather than submit to registration requirements. The licensing or registration of sex workers is contrary to the best interests of sex workers, is unworkable and has failed in every jurisdiction it has been enacted. In Queensland where the majority of sex workers operate illegally, through limited choice, it is clear that 'regulation' is not successful and corruption is inevitable in this current environment.

Moreover, Scarlet Alliance believes that any proposal to require 'self-employed sex workers to register is discriminatory. It is unacceptable 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.

Recommendation 5

Scarlet Alliance urges the Queensland Government to remove legislation which criminalises street based sex workers as we can see no gain for sex workers or the general community in this criminal response to what is essentially a social issue.

Recommendation 6

Anti-discrimination legislation is required to obtain optimum benefits for sex workers and the wider community in relation to sex industry law reform. Without the protection of anti-discrimination legislation, best practices workplace occupational health and safety measures and the ability to report crime or harassment is diminished. In addition sex workers experience discrimination in a range of settings due to their occupation.

Recommendation 7

Mandatory safer sex is not a feature of the Australian National HIV/AIDS strategy 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 that inhibits the provision of education and the supply of safe sex products is counter-productive.

Recommendation 8

Scarlet Alliance recommends police should be removed from regulating the work of sex workers as a measure to ensure Queensland sex workers are protected from Police corruption. Scarlet Alliance believes primary function of the 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 criminalised framework when sex workers are reluctant to access the services of the police for fear of prosecution.