Australian Sex Workers Association

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Friday, 23 July 2010

Honourable Lara Giddings
Attorney General's Department,
Executive Building Level 10
15 Murray Street
HOBART TAS 7000

Dear Minister Giddings,

Scarlet Alliance, the Australian Sex Workers Association, is the national peak sex worker organisation with a membership of individual sex workers, state and territory funded sex worker projects and groups and unfunded sex worker networks. Scarlet Alliance supports individual members in Tasmania and maintains strong networks amongst the sex worker communities across Tasmania. Scarlet Alliance currently receives a small amount of funding to maintain interim services to sex workers and a one-off grant to assist in addressing the social exclusion of sex workers.

Recent media releases have indicated that you are considering changes to the Sex Industry Offences Act in light of the 2009 Review of The Sex Industry Offences Bill. We are writing to provide further back-ground information and greater detail on the impact of the Sex Industry Offences Act and to make recommendations about how the sex industry legislation could be improved in Tasmania to have better outcomes for sex workers' occupational health and safety. We would also like to bring to your attention some recently released research of relevance to Sex Industry Regulation.

In previous discussion, you indicated an intention to gauge input from a range of stakeholders into the debate about Sex Industry Law Reform in Tasmania.

Whilst we recognise the importance of government undertaking effective community consultation, we are concerned that the portrayal of sex workers opinion on legislation and that of religious groups have been referred to as the two polarised positions on this debate. Scarlet Alliance believes that there are three factors worthy of your consideration in relation to the process for development of a new model for regulating the sex industry in Tasmania.

1. Aim of legislation – improve O H & S of sex workers

Firstly, it is Scarlet Alliance's experience of informing sex industry legislation processes in different states and territories that the most important factor to successful law reform is that the aim of the legislation is to improve the Occupational Health and Safety of sex workers. If this aim is maintained at the core of the reason for law reform and other regulatory changes, the legislation is far more likely to be successful and will maximise participation, as the incentive to work within the regulated sector is increased.

2. Sex workers are the KEY stakeholders

Scarlet Alliance requests that you recognise that not all stakeholders are impacted equally by legislation and that input from those who will be most impacted, the key stakeholders, is of the highest importance. In this case the key stakeholders in this process are sex workers themselves.

For this reason, whilst a range of stakeholders should be consulted, it is important to recognise that sex workers hold the key to improving the Occupational Health and Safety of sex workers and that this input should be weighted appropriately.

3. Public Debate

We are concerned about the Government's plan to stimulate public debate about sex industry law reform in Tasmania, when previous media and public comment on this issue has increased the social exclusion of sex workers from the community.

Unfortunately, previous debate on this issue has not been based on evidence and best practice, but on moral and religious agendas, misconceptions and false claims. The outcome of these debates has further marginalised sex workers in Tasmania, who are already experiencing a very high level of social stigmatisation.

It is our fear that media driven debate has not resulted in better sex industry law reform, but policy that aims to address unreal or perceived concerns rather than factual issues.

Through the review conducted by the Justice Department last year, the broader community were able to share their opinions through an open submission process.

If public debate is to be promoted on this issue, it is important that the level of knowledge of government, the community and the media is improved. This level of improved community awareness would need to involve a mainstream education campaign that could be combined with promotion of sex workers as protected by anti-discrimination protection in Tasmania.

In the following report we explain deficiencies in the current Sex Industry Offences Act and provide recommendations to make the Act more practical for sex workers and less discriminatory. The report also addresses common issues and arguments that typically arise during debate about sex industry laws. (It is acknowledged that the Tasmanian Government does not necessary have these viewpoints; the information is being given to inform the Government on the variety of opinions that may arise during law reform debate.)

In recent months the results of a three state research project, LASH, have shown that health outcomes for sex workers are strong within a decriminalised industry. The project compared health outcomes for sex workers working within three differently regulated industries. In light of this finding we believe Tasmania is well placed to consider decriminalisation as the model of sex industry regulation with the strongest outcomes for the state, community and for sex workers.

We thank you for the opportunity to provide further comment on the possible changes to the Sex Industry Offences Act 2005 and we look forward to meeting with you on August 27th 2010. If our assistance is required prior to our meeting please do not hesitate to contact us.

Yours Sincerely

Janelle Fawkes,
Chief Executive Officer

Jade Barker
Tasmanian Project Officer

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INTRODUCTION

Scarlet Alliance recommends the decriminalisation of sex work; a model which has positive outcomes for sex workers, the community and regulators alike. Decriminalisation allows sex workers access to justice and protection of the law and enables sex industry businesses to operate openly and transparently, increasing professionalism and improving workplace standards. Decriminalisation brings sex industry businesses under the same regulation as all other businesses. Decriminalisation will be a significant demonstration of political leadership in Tasmania, asserting to the general community that sex workers deserve the same rights as all Tasmanians.

The basic principle of sex industry law reform should be to legitimise sex work as an occupation and address the marginalisation of sex workers, both in a workplace setting and in their everyday lives. Legislation should seek to recognise and uphold the human and civil rights of people working in the sex industry – including industrial rights, anti-discrimination protection and equal access to justice. The *6th National HIV /AIDS Strategy* states, '*In relation to sex workers, there are data suggesting that sex workers in a decriminalised and deregulated legislative framework have increased control over their work and that sex workers can achieve similar or better health outcomes without the expense and invasiveness of mandatory screening.*[1] *The priority is to ensure legislation, police practices and models of regulatory oversight support health promotion, so that sex workers are able to effectively implement safer sex practices and the sex industry will provide a more supportive environment for HIV prevention and health promotion."*[2].

The Government cannot hope to effectively regulate an industry if it has no working knowledge of that industry. Conversely, the Government cannot expect compliance with new laws without education strategies put in place to explain the laws to the people directly affected by them.

The Department of Community and Health Services 1998 report, *A Study into the Sex Industry Tasmania*[3], recommends that, "Sex workers be formally involved in the process of legal reform of the sex industry in Tasmania".

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[1]

[2] Commonwealth of Australia, *6th National HIV/AIDS Strategy*, 2010, p20

[3] Glenn Curran, Julie Nahmani, Robin Gamlin; A Study into the Sex Industry In Tasmania, Tasmanian Department of Health and Community Services, 1997, p51

RECOMMENDATIONS

1. **That current laws pertaining to private sex workers be preserved to allow for self regulation and work place choices.**

2. **That section 4, criminalising operators of brothels be repealed.**

3. **That section 5, criminalising clients of sexual services be repealed.**

4. **That section 8, criminalising soliciting and accosting be repealed.**

5. **That sexual offences against sex worker be dealt with under the Criminal Code Act and incur the same penalty as if the incident had occurred outside of a work setting.**

6. **That Section 13 and 15 which give additional powers to police be repealed.**

7. **Anti-discrimination laws, community development programs and affirmative action policies that support sex workers to be empowered and proactive in their workplaces should be instigated by the Tasmanian Government immediately.**

8. **Any changes to the Act must be accompanied by a process of rolling out new laws so that people working in the sex industry are well informed about their rights and responsibilities under the Act.**

9. **That the Government recognises that not all stakeholders are impacted equally by legislation and that input from those who will be most impacted, the key stakeholders, is of the highest importance. In this case, the key stakeholders are sex workers themselves.**

10. **That the aim of sex industry law reform is to improve the Occupational Health and Safety of sex workers. If this aim is maintained at the core of the reason for law reform and other regulatory changes, the legislation is far more likely to be successful and will maximise participation as the incentive to work within the regulated sector is increased.**

11. **There is not necessity for sex industry specific laws in relation to health and safety in the sex industry. It is more appropriate for sex workers to be incorporated within existing Occupational Health and Safety laws.**

Part 1 –2008-09 Review of the Sex Industry Offences Act

TERMS OF REFERENCE OF THE REVIEW

The current review of the Sex Industry Offences Act 2005 will not give an accurate picture of how successful the Act has been in achieving its goal of protecting children and sex workers from exploitation in the sex industry and safeguarding public health, for the following reasons;

1. There has been no research conducted that documents the levels (if any) of exploitation within the sex industry before or after the introduction of the Act. Similarly, there are no collated statistics on the impact of the Sex Industry Offences Act on public health.

2. The Act has never been properly implemented or adequately explained to the sex industry. There has been no point of contact for queries about the Act, therefore interpretation of the Act has been left up to lay people and information passed on through word of mouth.

3. Question1 of the Terms of Reference - Has the Act restricted/prevented the operation of commercial sexual services businesses? The Act has restricted the operation of commercial sexual service business. Premises that previously operated as brothels have continued to running under the Sex Industry Offences Act, although there have been marked changes in the way the businesses operate. Most of the premises across Tasmania have reduced the number of sex workers on the premises at any time, to two. There has also been a reduction in the role of the manager/operator in compliance with Section 4 of the Act. However, these changes have not necessarily had positive outcomes for sex workers. More than ever, sex workers who are based in shared work places feel stigmatised and isolated. There is uncertainty about sex workers rights and responsibilities and a lack of transparency in the operation of the business.

4. The quick turn-around between the Terms of Reference being publicised and the deadline for submissions did not allow for adequate consultation with sex workers across Tasmania.

5. The inclusion of anti sex work lobby groups in the review process reduces the importance that needs to be given to sex worker input and consultation into the review. Successful legislation in relation to workplace practices must include direct input from the members of the workplace that is being affected. Giving equal weight to anti brothel lobbyists takes away from the focus on the rights of sex workers, including access to Occupational Health and Safety standards.

DISCUSSION AND RECOMMENDATIONS

Section 3. "self-employed sex worker"

Foremost it needs to be acknowledged that the Sex Industry Offences Act 2005 provides private (or solo) sex workers with a very satisfactory model for operating. Under the Act, private workers are afforded self regulation, control over their workplace and choices on where to work and with whom to work. Private sex workers are able to maintain high standards of Occupational Health and Safety as they are able to develop their own practices and systems and implement their own safely mechanisms. This model is well liked by sex workers in Tasmania.

Recommendation 1. That current laws pertaining to private sex workers be preserved to allow for self regulation and work place choices.

Section 4. A person must not be a commercial operator of a sexual services business

This section refers directly to the prohibition of brothels which occurs by criminalising brothel owners/ managers. Criminalising brothels does not stop shared work places, nor prevent one person taking the responsibility of running a shared workplace. As two sex workers are permitted to work together under the law, it is natural that one person may have greater responsibility than the other for the day to day running of the business (for example, paying rent, placing ads, holding keys).

This section makes working conditions in shared situations stressful. The likelihood of inadvertently contravening the law at any point in time is high, for example, if one worker or an employed receptionist takes responsibility for banking, the keys and coordinating access to work rooms, then they cross over the line and are working outside the law. Sex workers at shared work places feel criminalised even when they are not working illegally and are unclear of their rights.

Attempting to eliminate brothels does not protect children and sex workers from exploitation in the sex industry, nor safeguard public health. The most appropriate way of ensuring that sex workers have access to good work conditions, is to allow sex industry workplaces to be regulated by the same methods as other businesses. Allowing for accountable and transparent workplaces would permit sex workers to access complaint mechanisms, enable workers to change workplaces if they were dissatisfied and put pressure on owners and operators to meet workplace standards in accordance with state occupational and health and safety laws.

Recommendation 2. That section 4, criminalising operators of brothels be repealed.

Section 5. Persons not to receive commercial sexual services

This section criminalises clients who visit sex workers in shared workplaces. Criminalising clients doesn't protect sex workers from exploitation, nor does it stop clients from visiting shared sex work premises. It does, however, give the message to clients that parts of the sex industry are criminalised and to potential perpetrators of crime that the people working in the industry are more vulnerable to manipulation. Criminalised clients also feel the effects of stigmatisation and this is carried into the sex service. Instead of sex work workplaces being open and clearly defined, the relationship between the client and the sex worker, as well as the context of the service, becomes uncertain. Sex workers have described this change since the introduction of the Sex Industry Offences Act. Laws and services that promote empowerment of sex workers who are aware of their rights and responsibilities have far greater impact on decreasing vulnerability to exploitation than criminalising the client. Laws based on criminalisation of either party in the consensual sex work transaction (the sex worker or the client) endorse discrimination and force the activity underground and away from services and regulation.

Recommendation 3. That section 5, criminalising clients of sexual services be repealed

Section 8. Soliciting and Accosting

This section of the Act criminalises street based and outdoor sex work.

Tasmania does not have an outdoor sector of the sex industry. This law would only affect people at risk, who are working sporadically or opportunistically. Therefore this law penalises the more vulnerable members of the community, which is unnecessary and out of date. The inclusion of such an unnecessary law creates the potential for its misuse in relation to other street present communities.

Recommendation 4. That section 8, criminalising soliciting and accosting be repealed

Section 12. (2) A person, while providing or receiving, in a sexual services business, sexual services that involve sexual intercourse, or any other activity with a similar or greater risk of acquiring or transmitting a sexually transmissible infection, must not –

(a) discourage the use of prophylactics; or

(b) misuse, damage or interfere with the efficacy of any prophylactic used; or

(c) continue to use a prophylactic that he or she knows, or could reasonably be expected to know, is damaged.

Penalty: Fine not exceeding 500 penalty units.

This section minimises the experience of a client interfering with condoms during a negotiated service. Should a client damage or interfere with a prophylactic and continue with the service, then the activity is no longer consented to and should be dealt with accordingly by the law.

The penalty is not reflective of the severity of the behaviour, which should be dealt with under the Criminal Code Act and considered indecent assault.

Recommendation 5. That sexual offences against sex workers be dealt with under the Criminal Code Act and incur the same penalty as if the incident had occurred outside of a work setting.

Section 13. Power to arrest without warrant AND Section 15. Entry by Police officers

Police should not be entitled to greater powers in dealing with sex industry businesses as opposed to other businesses.

The threat of police interference jeopardises safe working environments, intimidates sex workers and perpetuates the myth that sex workers are a threat to the community.

Recommendation 6. That Section 13 and 15 which give additional powers to police be repealed.

Further Recommendations

7. **Anti-discrimination laws, community development programs and affirmative action policies that support sex workers to be empowered and proactive in their workplaces should be instigated by the Tasmanian Government immediately.**
8. **Any changes to the Act must be accompanied by a process of rolling out new laws so that people working in the sex industry are well informed about their rights and responsibilities under the Act.**
9. **That the Government recognises that not all stakeholders are impacted equally by legislation and that input from those who will be most impacted, the *key* stakeholders, is of the highest importance. In this case, the key stakeholders are sex workers themselves.**
10. **That the aim of sex industry law reform is to improve the Occupational Health and Safety of sex workers. If this aim is maintained at the core of the reason for law reform and other regulation changes, the legislation is far more likely to be successful and will maximise participation as the incentive to work within the regulated sector is increased.**
11. **There is no necessity for sex industry specific laws in relation to health and safety in the sex industry. It is more appropriate for sex workers to be incorporated within existing Occupational Health and Safety laws.**

Part 2 –Sex Industry, Tasmanian

PROFILE OF THE TASMANIAN SEX INDUSTRY

Previous to the introduction of the Sex Industry Offences Act 2005, private/solo work and escort agencies were unlegislated. Living off the earnings (wholly or in part) of prostitution, keeping a bawdy house or managing a brothel were criminalised under the Police Offences Act 1935.

> *The legal anomaly is that a person can be a sex worker but cannot work with a house of ill-repute, yet Local Government by-laws and regulations register such businesses on a yearly basis….The contradiction is that a brothels operate under local and state government law but not within the confines or protection of the law.*[4]

Under the current Act, private/solo work is decriminalised, brothels and street work are criminalised and so are the clients of brothels.

There have been a few notable changes in the structure and practice of the Tasmanian sex industry since the introduction of the Sex Industry Offences Act 2005;

1. Two well established brothels in Hobart's CBD closed down completely and all established premises changed their practices to adhere to the new laws, by minimising the number of workers onsite to two and reducing the role of the operator to a landlord.
2. There was a notable increase in the number of sex workers advertising in the adult services section of the newspaper.
3. Sex workers became more isolated from each other.
4. Sex workers report an increase in stigma and a great sense of criminalisation.

The increase in the number of a private workers advertising in the paper is simply explained by the fact that many sex workers who previously worked at brothels entered the private sector and therefore advertise independently in the newspaper. There is nothing to suggest that there was an influx in the number of sex workers; only a redistribution of sex workers from brothels to solo work. Whilst working in the private sector does suit some sex workers it has in Tasmania had the effect of further isolating sex workers from each other and reducing the sharing of knowledge and information.

There have not been any escort agencies (businesses providing off site services only) in Tasmania before or after 2005 (although the shared premises and some private workers offer escort services). There has been no notable street or outdoor industry in any of the major centres in Tasmania, before or after 2005.

Each of the three major cities and the regional areas of Tasmania support slightly different cultures around sex work practices.

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[4] Glenn Curran, Julie Nahmani, Robin Gamlin; A Study into the Sex Industry In Tasmania, Tasmanian Department of Health and Community Services, 1997, p39

Hobart - the sex industry in Hobart is predominantly made up of private sex workers. Private workers may be Tasmanian residents who work anything from full time hours to very occasionally. Most sex workers work the equivalent of part time hours with regular periods away from work. Other private workers travel from interstate to work in Tasmania. Many do so on a regular basis (for example once every 4 months) and typically work for one week in Hobart and one week in Launceston before returning to the mainland.

There is one shared premise in Hobart CBD that operates as a massage parlour (not full service). This premise is leased from a former brothel owner, adheres to section 4 of the Act and limits the number of erotic masseurs on the premises to a maximum of two.

Another shared premise, based in Hobart's Northern Suburbs, existed prior to the introduction of the 2005 Act and is also leased from a former brothel owner, who now lives interstate.

Launceston- supports two shared premises. Both businesses operated as brothels before the new Act was introduced and both attempt to conform to the new laws.

Similar to Hobart, the sex industry is predominantly made up of private workers, both local and interstate.

Devonport: - supports one shared premise that existed as a brothel before the 2005 laws, but now operates as a cooperative.

Private workers in Devonport are mostly transient, with only a few local residents working in the sex industry.

Other Tasmania

Burnie - a small number of sex workers regularly travel to Burnie (mostly from interstate, Devonport or Launceston) and there are a small number of local sex workers who work occasionally.

North West Coast - Some private workers, both local and interstate, travel through the North West Coast and may be based for short periods of time at Queenstown and Rosebery.

Transitory and occasional sex workers tend to operate from a selection of sex worker friendly hotels and more regular workers operate from private residences or rented apartments.

STIGMA

Significant to the sex industry in Tasmania is the high levels of stigma attached to the industry. The extraordinary levels of stigma are due to;

- Partial criminalisation of the industry

- Recent high frequency of misinformed public debate
- The size of Tasmania and its impact on privacy and opportunities for anonymity
- Misrepresentation in the media
- Politically influential Christian based lobby and popularity of anti-sex work discourses
- Non transient Tasmanian population means that many people (sex workers and clients) have established positions in the community, families living locally and local connections.

In 1993 a report from the Tasmanian AIDS Council, *Sex Worker Research Project*, stated that

> "Most sex workers in Tasmania carry out their work in almost total secrecy and isolation. This is primarily due to the illegal nature of the sex industry and the social stigma attached to sex work….Discouraging networking amongst workers has a detrimental effect on HIV peer education, and doesn't allow for shared experiences about dangerous clients or health issues. A recently contacted Burnie sex worker did not know any other sex workers. This illustrates her and other workers' social and geographical isolation – an isolation shared by many other workers in the industry"[5].

Unfortunately this remains a very common situation for many sex workers in Tasmania. Stigma and discrimination at this level create the social exclusion of sex workers from the community.

Part 3 – Issues rising from sex industry law debate

DECRIMINALISATION VS LEGALISATION

Scarlet Alliance seeks to clarify the difference between decriminalisation, which we are lobbying for, and legalisation, which we do not advocate for[6].

Decriminalisation refers to the removal of all criminal laws relating to sex work and the operation of the sex industry. Rather than a decriminalised sex industry being an unregulated industry, it falls under existing laws and sex industry businesses are regulated in the same way as other businesses. Existing business, industrial, planning, health and criminal laws are sufficient to regulate the sex industry. Occupational health and safety and other workplace issues can be supported through existing industrial laws and regulations that apply to any lawful work places. If the sex industry in Tasmania was fully decriminalised, it would be more open to scrutiny, as it would be more accessible to service providers and regulatory bodies. It would also provide more choices for sex workers and be more accountable to sex workers. Decriminalisation also has a direct impact on marginalisation, social exclusion and discrimination by sending a clear, direct message to the community that sex workers are not separate from the community, but part of the community and are not a special case needing to be protected from society, nor have society protected from them. This helps to breakdown untrue stereotypes and myths that burden sex workers in Tasmania and have been the basis for problematic policy in the past.

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[5] Tasmanian AIDS Council, Sex Worker Research Project, 1993, p21

[6] For more information - http://www.scarletalliance.org.au/library/model-principles

Legalisation refers to the use of criminal laws to regulate or control the sex industry by determining the legal conditions under which the sex industry can operate. Legalisation can be highly regulatory or merely define the operation of the various sectors of the sex industry. It can vary between rigid controls under legalised state controlled systems, to privatising the sex industry within a legally defined framework. The Australian experience shows that there is a tendency for governments to over-regulate sex industry businesses when 'legalising', resulting in low compliance. The outcome is that the industry is not legalised, but rather a part of the industry, determined randomly, is legal and the remainder of the industry operates underground and unregulated. It is often accompanied by strict criminal penalties for sex industry businesses that operate outside the legal framework. In both Queensland and Victoria, the model of legalisation is heavily based on the licensing of sex industry businesses – known as a licensing framework. This approach promotes the development of a two tiered industry, as there are a smaller percentage of sex industry businesses that can meet the licensing requirements and a larger percentage that are unable to gain a license and continue to operate illegally. A licensing framework provides minimal incentive to participate in the legal sector as the cost is often prohibitive and the process of licensing very time-consuming and invasive of applicants personal history and lives. The model is also extremely costly as it requires the development of a new bureaucracy, or for the licensing activities to be taken up by an existing government department. In Queensland, the regulatory body required an approx. $800,000/per year top up grant from government in 2004 and by 2007-8, still required approx. $5-600,000 government funds to operate the regulatory body[7]. Similarly, when the regulatory model in Victoria was reviewed, the significant cost of operating the regulatory body was cited as reason to increase licensing fees. It was initially considered that the Queensland and Victorian models would effectively self-fund through licensing fees. As both models have been in place for eight or more years, there is clearly no evidence to support this.

SEX WORKERS ARE MARGINALISED

Sex workers are recognised in the *5th National HIV/AIDS Strategy* as a marginalised population that need inclusive and realistic public health strategies. Sex workers in Tasmania are marginalised for a number of reasons;

- Extraordinary levels of stigma attributed to the sex industry.
- Community misinformation about the sex industry perpetuates negative and untrue stereotypes.
- A long history of public debate based on morals and values as opposed to real experience or evidence based research.
- Sex workers are isolated from each other by laws that criminalise group workplaces.
- Discrimination in family court.
- Disempowered by a recent history of archaic laws.
- Restrictive workplace choices because brothels are illegal.
- Reduced access to protective services and justice.
- Institutionalised discrimination in sex industry legislation that assumes sex workers need special protection from harm and exploitation.

[7] Queensland Prostitution Licensing Authority Annual Reports
http://www.pla.qld.gov.au/reportsPublications/annualReport/2005.htm

For these reasons, Scarlet Alliance lobbies for anti-discrimination laws, community development programs and affirmative action policies that support sex workers to be empowered and proactive in their workplaces. Informed and supported sex workers are generally able to maintain greater occupational health and safety standards where safe sex and general health knowledge can be converted to safe work practices.

NOTABLE MODELS OF SEX INDUSTRY LEGISLATION

Looking at other models of sex industry legislation can be a valuable process of research and review. *New Zealand's Prostitution Reform Act 2003*[8] has incorporated a focus on Occupational Health and Safety for sex workers. It has proved to be very successful.

On June 23, 2005 the Prostitution Reform Act decriminalised sex work and the ownership/operation of brothels. This progressive Act was designed to safeguard the human rights of sex workers and protect them from exploitation. According to a report from the Prostitution Law Review Committee[9], the number of sex workers in New Zealand has not increased, as is often the feared consequence of a decriminalised sex industry. Other notable facts arising from the report are;

- 93% of sex workers cited money as the reason for getting into and staying in the sex trade.
- Fewer than 17 per cent said they are working to support drug or alcohol use
- More than 60% felt that they were more able to refuse to provide commercial sexual services to a particular client since the enactment of the law.
- A significant majority felt that there had been improvements in the incidence of violence occurring in their profession.
- More than 90% feel they have legal rights under the Act.

The committee found that the most significant barriers to exiting the sex industry are

- loss of income,
- reluctance to lose the flexible working hours, and
- the "camaraderie and sense of belonging" of their profession.

Overall the committee concluded that in the five years since the Act has come into force, there have been some improvements.

THE SWEDISH MODEL FAILS SEX WORKERS

The Swedish model of sex industry legislation criminalises the clients of sex workers but decriminalises sex workers themselves. This model is popular within schools of thought that understand sex workers as victims and clients as exploiters. This perspective is naïve in that it is based on an untrue assumption and

[8] New Zealand's Prostitution Reform Act 2003 available at www.legislation.govt.nz/act/public/2003/0028/latest/DLM197815.html

[9] Report available at http://justice.org.nz/prostitution-law-review-committee/index.html

oversimplifies the sex industry as a whole. It should be noted that this is not how sex workers describe or represent the consensual contractual agreement between themselves and their clients. It is an uninformed over-generalisation to view all sex workers as poor helpless victims and all clients as perpetrators of crime.

Not all clients are men and not all sex workers are women. People from all classes and backgrounds, as well as couples, disabled people and the elderly, use the services of sex workers of both genders and many straight-identifying men use the services of male sex workers. Conversely, people from all classes and backgrounds as well as couples, disabled people and older people, also work in the sex industry.

Banning the buying of sex demonises clients and denies the fact that clients see sex workers for many different and legitimate reasons. Company, therapy and to explore their sexuality in a safe environment are some of the reasons clients give for visiting sex workers. Clients are family members, employees, sportspeople; in fact, the idea that clients of sex workers are somehow 'fringe' citizens is proven false by the amount of money needed to visit a sex worker.

Importantly the impact of the 'Swedish model' on the sex industry does not stop or reduce the industry rather it has the impact of changing the culture of where and how sex work occurs. The impact in Sweden is that clients, in order to avoid detection, will not agree to visit sex workers at their workplace in doors. Instead they make bookings with sex workers who agree to meet them in a public location (E.g. bar or park) so that the client feels detection by police is less likely. This has resulted changed the indoor private setting culture of sex work that existed where sex workers would negotiate a service and payment in a location they had purposefully set up to maximise their safety and protect their anonymity. The impact of the Swedish model results in clients determining locations suited to protecting themselves rather than sex workers determining work locations based on their needs.

The law has no right to impose a moral agenda on sexual issues in a multicultural, multi-religious, modern society, or to criminalise consensual sex between adults. Sex workers do not support this model.

Individual sex workers are capable of deciding for themselves what the risks and benefits are of becoming involved in sex work, and whether becoming involved in sex work is the right thing for them. It isn't the role of the government, feminists, churches, or the law to make that decision for sex workers. To imply that most sex workers are being coerced into doing sex work is simply false and not reflected in the experience of sex workers in Tasmania.

MANDATORY TESTING AND PUBLIC HEALTH

Sex workers and sex worker organisations have been at the forefront of the response to HIV and STIs in Australia and are recognised in the National HIV and STI Strategies as playing an important role in HIV and STI prevention. Despite some 22,000 diagnoses of HIV infection in Australia, Australia has never recorded a single case of HIV transmission from sex worker to client or client to sex worker[10].

[10] Australian Government, National HIV/AIDS Strategy – Revitalising Australia's response 2005-2008, Commonwealth of Australia 2005, p 19

Effective prevention education through funded sex worker organisations, access to free and anonymous, voluntary testing and the strong uptake of condom use by sex workers, are identified as key factors in what is an example of successful engagement of the sex work communities in HIV prevention.

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

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

- Are in opposition to best practice models of voluntary testing and self regulation of sexual health amongst sex workers;[11]
- Are not evidenced by current epidemiology in Australia;[12]
- Endorse a false sense of security in the form of a 'certificate,' which confirms only that a person has attended for a sexual health check;
- Create an expensive, unnecessary cost burden on public health funds;
- Overload sexual health services, denying access to sex workers with symptoms or who have experienced a condom breakage and need to access sexual health services quickly;[13]
- Result in reduced quality of sexual health services to sex workers;[14]
- Leads to sex workers hiding their profession from medical experts or avoiding the health system altogether;
- Have the unintentional consequence of endorsing stigma and the misconception that sex workers are 'vectors of disease';.

Discrimination can increase a sex worker's vulnerability to sexually transmissible infection. Given that sex workers enjoy lower rates of STIs and HIV and higher rates of condom use, laws or policies that unfairly target sex workers' sexual behaviour can only be understood as discriminatory and not based on epidemiological fact. Many policies in Australia have been introduced to regulate the sexual health of sex workers (eg. mandatory testing) that actually have had a negative impact on public health, with sex workers foregoing testing that they once undertook voluntarily and clients demanding unsafe sex practices in the belief that those workers are disease-free. Discriminatory practices (such as enforced or mandatory testing) treat sex workers as a homogenous group and risk losing the proven successes of

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[11] Australian Government, National HIV/AIDS Strategy – Revitalising Australia's response 2005-2008, Australian Government, Canberra, 2005.

[12] National Centre in HIV Epidemiology and Clinical Research (NCHECR), HIV/AIDS, viral hepatitis and sexually transmissible infections in Australia, Annual Surveillance Report, 2006

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

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

peer education delivered by sex worker organisations, access to free and confidential sexual health care and self regulation.

Excessive testing frequency is one of the concerns with Mandatory screening. It is often the case that sex workers are required to test more frequently than necessary. This impacts on the individual sex worker but also impacts on sexual health service resources. A recent Melbourne study suggested that men who have sex with men were unable to access services when needed as appointments were filled by sex workers who were only attending a sexual health screening to meet a legislative requirement. Sex workers in Victoria have reported to Scarlet Alliance frustration with having to have such regular tests when practicing safe sex and during periods of not having encountered a condom breakage.

Mandatory testing of female sex workers at current testing frequencies as prescribed in Victoria were found to be not cost-effective for the prevention of disease in their male clients. Screening intervals for sex workers should be based on local STI epidemiology and not locked by legislation[15].

Work place safety is a significant issue for sex workers in Tasmania and covers a broad range of work practices. Safety refers to the immediate workplace surroundings in terms of adequate lighting, comfort of furnishings, access to showers and a supportive environment free from exploitation. Safety also includes safer sex practices which extend from the proper use of occupational protective equipment (condoms, lubricant, dams and gloves) knowledge of their use to reduce the risk of condom breakage or slippage and client interference, to conducting STI (sexually transmissible infections) checks on clients prior to providing services. Safety also refers to personal safety and includes the negotiation of services, self defence techniques and confidence, sharing information with other sex workers about aggressive or unmanageable clients as well as access to protective and justice services.

All of these factors need to be taken into consideration by sex workers but are hindered by criminalised workplaces and the lack of peer services that promote safety and information sharing.

THE ROLE OF THE POLICE

Current laws that see sex workers treated differently to other workers are discriminatory. Decriminalisation of sex industry businesses encourages open and accountable operations.

Giving the police extra powers to arrest without a warrant, force entry to suspected brothels and demand access to information is needless, places undue stress on sex workers and is an unrealistic expectation on the role of the police.

Scarlet advocates that;

- In the best interest of both the sex industry and the Tasmania Police Service, police should have no extraordinary involvement in the Tasmanian sex industry.

[15] Wilson, D., Heymer, KJ., Anderson, J., O'Connor, J., Harcourt, C., Donovan, B. (2009) Sex workers can be screened too often: a cost-effectiveness analysis in Victoria, Australia. *Sexually Transmitted Infections*.

- There should be no allowance for 'discretionary' powers which create the potential for inappropriate behaviour and corruption.
- An improved relationship between police and the sex industry empowers sex workers to contact police in emergencies and report crimes.
- The Criminal Code and other existing legislation contains adequate provisions to allow police access to sex industry premises when commission of a crime is suspected, without the need for sex industry specific powers.
- Decriminalisation of the sex industry allows sex workers equal access to justice and enables victims of exploitation to report crimes perpetrated against them, to police.

ORGANISED CRIME

There is no evidence of any current 'organised crime' involvement in Tasmanian sex industry businesses. An argument often used against the decriminalisation of brothels is the presumed threat of organised crime entering the sex industry in Tasmania and taking advantage of the business opportunities rising from legal brothels. There are no grounds to support this claim.

As it stands, the introduction of the Sex Industry Offences Act 2005 gave way to a number of business opportunities within the sex industry that have not been filled. In other states/territories in Australia where brothels are totally criminalised (NT) or over regulated (Vic and Qld), escort agencies (where sex workers perform outcalls to clients in hotels and private residences only) have prospered. There have been no escort agencies established in Tasmania, despite there not being a law to prohibit them (sex workers at escort agencies are generally considered sub contractors and owner/managers of escort agencies would not fall under Section 4).

The current practice of sex workers renting rooms at premises has been one of the ways the sex industry has adapted to the 2005 laws. Two existing premises, former brothels, have closed since the introduction of the Act in Hobart CBD .Yet despite there currently being no venue for fully inclusive sex services in Hobart CBD, no other business has started up that provides accommodation or workspace to sex workers.

If there is an organised crime element waiting to capitalise on the sex industry in Tasmania, they have had ample opportunity for it to occur; yet three years after the introduction of the new laws, these business opportunities have still not been taken advantage of.

Criminalisation is a factor in creating the environment for organised crime involvement. Sex workers are reluctant to report illegal activity to police for fear of prosecution, particularly when the sex industry is often automatically assumed to be party to the crime being reported, rather than the victim. Decriminalisation, by removing criminal sanctions, removes the major barrier to sex industry operations becoming open and accountable and gives sex workers and business owners equal access to justice and police protection.

SEX WORKER REGISTRATION

The registration of individual sex workers is an unnecessary and discriminatory practice. Unlike, for example, registered nurses, sex workers are not registered to recognise professional qualifications,

specialist training or skills. Registers of sex workers are in fact criminal databases, created as a means to monitor sex workers' activities in much the same way as the Sex Offender Register.

Registered sex workers in other states have suffered great injustices and violations of their civil rights due to their registration, including rejections of visa applications for countries where sex work is illegal, inability to secure rental properties, discrimination in custody disputes and dismissals from non-sex industry employment.

Equally problematic are models of registration that create a new bureaucracy in order to handle the administration of costly registration models. In both Queensland and Victoria, where licensing and/or registration is handled by a Government department, the costs have far outweighed the amount collected in fees, resulting in public funds supporting another Government body.

"LIVING OFF THE EARNINGS"

There has been a shift toward understanding sex work in an industrial framework. In line with this it is recognised that a person's expenditure of earnings is their private affair. In other lawful occupations the government does not attempt to dictate how taxable income should be spent.

Outdated living off the earnings laws have not protected sex workers but have consistently been used against the partners of sex workers. Whilst there intention may have been thought valid it is the belief of Scarlet Alliance that this law is used for purposes other than the initial intention. In Australia anecdotal evidence describing the misuse of these laws far outweighs any evidence of this type of law being used to protect sex workers. Some workers may choose to support their partners with their earnings; however this is a very different scenario to a 'pimp'. Pimps are not a feature of the Australian sex industry. As a result legislation that seeks to prevent the sexual exploitation of sex workers (eg. living off the earnings offences) only further marginalises and isolates sex workers, whose male partners can be threatened with 'pimping' charges.

As is the case for members of any other profession, sex workers cease to be conducting sex work when they leave their workplace. Sex industry legislation that natively impacts on sex workers personal lives - including impeding their ability to form and maintain personal relationships, restricting their movements; governing their private sex lives - is a violation of their human and civil rights as Australian citizens and promotes social exclusion. The most effective way to reduce discrimination, stigma and prejudice against sex workers is to extend to sex workers the same laws, regulations, human rights and civil liberties enjoyed by all Tasmanians. Anything short of this will further entrench the marginalisation of Tasmanian sex workers.

PROTECTION OF CHILDREN

The incidence of sex workers under the age of 18 in the Tasmanian sex industry is negligible. On the rare occasion that a young person engages in sex work, it is generally a case of an informal transaction of sex in exchange for goods or services, also known as 'survival sex'. Therefore, 'child prostitution' when it occurs, is more likely to be a case of opportunistic sex by teenagers faced with issues such as

homelessness and poverty. This generally takes place in informal settings (eg. on the streets or in pubs) and is not an example of 'sex industry exploitation', but rather a symptom of socio-economic factors.

Consequently, there is no need for additional legislation to protect children in the sex industry. The Tasmanian Criminal Code contains adequate provisions for the prosecution of persons involved in the sexual and industrial exploitation of children.

ZONING

Decriminalising brothels introduces the issue of zoning sex industry businesses. A lot of work has been done in this area and NSW has recently developed the *Sex Services Premises Planning Guidelines*[16] – an extensive document which outlines policy and procedure around local government powers in relation to zoning for sex industry businesses.

Local Government should not be responsible for the approval of the location of one to two sex workers however within a decriminalised model of sex industry regulation the local government does play an important role in regulating sex industry businesses. It is important that state government provides clear guidance to local government on this matter.

An important factor in providing this guidance is ensuring local government makes zoning decisions based on the same factors on which it considers other businesses - amenity impact.

Regulation of sex industry businesses in other states has shown a number of problematic approaches by council including:

- Lack of willingness to regulate the industry - banning sex industry business from the local area.
- Discrimination – assessing development applications on moral grounds rather than amenity impact and ignoring the recommendations of council staff resulting in land and environment court cases which are expensive and often result in approval.
- Susceptibility to political grandstanding – using sex industry business decisions as a perceived 'vote winner' at election time.
- Unproductive and unsafe zoning regulation – allowing sex industry businesses to only operate in industrial areas away from amenities and where they are usually the only business operating in the evening. This leaves staff (sex workers) vulnerable to robbery.

A New South Wales academic Penny Crofts (UTS, Faculty of Law) has documented the behaviour of council to regulating the sex industry when unsupported by state government guidelines.[17]

[16] The guidelines are available at - www.scarletalliance.org.au/library/ssppg_04/view

[17] http://datasearch2.uts.edu.au/ccs/members/detail.cfm?StaffID=1764

LICENSING

The licensing of sex industry businesses is often a misguided attempt to discourage organised crime involvement. In fact, licensing processes which are unnecessarily harsh or discriminatory actually encourage organised crime involvement and often exclude more appropriate business operators, particularly in cases where a license is denied on the basis of unrelated criminal convictions. Basing licensing on an operator's criminal history, rather than their ability to run a professional sex industry business, encourages potential operators to employ 'fronts', as it has in other states, providing opportunities for corruption and organised crime involvement. Charging exorbitant fees for licenses has a similar effect.

Those business owners without the necessary 'connections' or with limited finances, may be forced to operate illegally. This creates a two-tiered sex industry, which is disadvantageous to both the legal and illegal sectors.

If licensing of sex industry businesses is to occur, the process must be transparent and non-discriminatory and procedures should resemble those used in the licensing of similar personal service or adult-oriented industries (eg. beauticians and body piercing salons, or hotels). Licensing of businesses must not include the licensing of individual staff, as is the case in hotels where the publican holds a license, but bar staff do not.

EXIT STRATEGIES

Legislators and well-meaning service providers often focus on a perceived need for sex workers to be offered special programs to assist them to leave the sex industry. This attitude is based on the premise that many sex workers are in the industry because they are unable to find work elsewhere.

It is our experience that sex workers mostly enter the industry for economic reasons, but stay in the industry for the flexible hours, lifestyle and freedom to maintain other responsibilities (family or study).

If a sex worker decides to leave the sex industry, there are many services available (including Australian Government Employment services and Career Information Centres) to support individuals to job search or re-skill.

PEER SUPPORT

Two Tasmanian reports in *A study into the Sex Industry in Tasmania*[18] and *Sex Worker Research Project*[19] have identified the need for a state funded sex worker project in Tasmania. This need was also

[18] Glenn Curran, Julie Nahmani, Robin Gamlin; A Study into the Sex Industry In Tasmania, Tasmanian Department of Health and Community Services, 1997, p39

[19] Tasmanian AIDS Council, Sex Worker Research Project, 1993

identified in the evaluation of the Tasmanian component of the Scarlet Alliance Chlamydia prevention pilot project funded by the Commonwealth Government. Scarlet Alliance has publicly, and in submissions to Government, raised this issue since 2000 when it held a national sex worker conference in Hobart.

Scarlet Alliance seeks to establish a continuous and sustained sex work project in Tasmania that will include:

- Health promotion and harm reduction are two public health strategies proven to be beneficial in increasing the health and wellbeing of sex workers. A sex worker project can facilitate opportunities for sex workers to:
    - support individuals within the sex work community to successfully negotiate safer sex practices and self regulate their own health by sharing skills and strategies related to implementing and negotiating safe sex, addressing elements impacting upon safe work places and spaces;
    - develop links and supportive peer networks;
    - facilitating an opportunity for sex workers working together to address stigma and discrimination;
    - engage with HIV/AIDS and STI information over sustained periods by contextualising the information to a sex work setting, and within broader topics relevant to sex workers.
- Community development, which seeks to empower individuals and groups of people or communities with skills they need to advocate on their own behalf and increase their access to resources.
- Building community partnerships between the sex industry, Health, Police and Justice.
- Community education to reduce stigma and discrimination against sex workers.
- Lobbying and advocacy to promote the rights of sex workers in their workplace as well as in the other areas of their lives.
- Ensuring the effective engagement of Tasmanian workers with mainstream policy and welfare processes in Tasmania.

A state-funded sex work project that will work to promote awareness of sex workers' rights and responsibilities under existing laws is an essential component in supporting the sex industries transition from illegal to decriminalised. A funded project will represent sex worker issues to government, provide evidence-based information and reports, and support the implementation of changes to sex industry legislation.