



**Australian
Sex Workers
Association**

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20 November 2008

Emma Gunn
Sex Industry Act Review
Department of Justice
GPO Box 825
Hobart TAS 7001
legislation.development@justice.tas.gov.au

Dear Ms Gunn,

Please find following the Scarlet Alliance, Australian Sex Workers Association, submission addressing the terms of reference of the review of the Sex Industry Offences Act 2005.

After receiving your letter dated 27 October 2008 Scarlet Alliance conducted a brief questionnaire with sex workers to get direct feedback about the Act and its impact on sex workers (see Appendix 1). Sex workers were selected to include representation from all the major regional areas across the state. A total of 10 sex workers were interviewed in-person or over the phone. The views expressed in the questionnaires have been incorporated into this submission.

This submission also incorporates anecdotal evidence contributed by sex workers over the course of the two year Scarlet Alliance Chlamydia Awareness for Sex Workers Health (CASH) project which drew to a close recently. The final phase of the project included a sex worker only forum and a separate community forum where local sex workers raised their concerns and described a number of key issues impacting on their lives, which are also touched on within this report.

Please do not hesitate to contact me if you would like more information.

Yours Sincerely

Janelle Fawkes
Chief Executive Officer

Executive Summary

Scarlet Alliance:

1. Supports the decriminalisation of all aspects of the sex industry including brothels and street based sex work. A decriminalised sex industry is more transparent, more easily accessible and enables sex workers to better negotiate workplace standards and practices.
2. Demands that discrimination and stigma be addressed as this has a direct and immediate impact on the well being of sex workers and their ability to insist on safe work places and practices. A significant strategy to reducing discrimination and stigma is to decriminalise the sex industry
3. Supports legislation that promotes occupational health and safety measures for all sex workers.
4. Supports legislation which allows private sex workers to retain control over their work practices.

Introduction

Scarlet Alliance has maintained a presence in Tasmania since before the introduction of the Sex Industry Offences Act 2005. Scarlet Alliance has recently completed a health promotion project in Tasmania spanning a period of two years, which provided services to sex workers, built networks and responded to the needs and issues of sex workers. Over this time Scarlet Alliance has collected anecdotal and statistical evidence about the current working environment for sex workers in Tasmania. Scarlet Alliance recently held a forum in Hobart that was attended by sex workers from across Tasmania to raise issues to the Scarlet Alliance Executive Committee. Scarlet Alliance is also informed by our Tasmanian membership on issues affecting sex workers, trends and changes to the sex industry.

Many sex workers in Tasmania are uncertain of their rights and responsibilities under the Sex Industry Offences Act. Since its introduction, there have been no mechanisms in place to explain the Act to people employed in the sex industry nor have there been services or individuals resourced to provide information to sex workers regarding the Act. Consequently, interpretation and application of the Act has been left up to sex workers themselves and shared through word of mouth within sex industry work places. The result is that there is an unnecessary sense of criminalisation in workplaces where more than one sex worker operates. Stigma also impacts heavily on all sex workers in Tasmania and these two experiences create a complex and marginalised sex industry.

Misinformation is common and sex workers report feeling frustrated and bewildered as:

- The law criminalises clients and traditional workplaces
- There is no referral point for questions about how that Act should be interpreted

- Services for sex workers are of a poor quality (Sexual Health) or completely non-existent (there are few Police sex industry liaison staff and only in certain districts)
- Should a sex worker want to make a complaint under the Sex Industry Offences Act or about workplace conditions there are neither clear mechanisms nor information about how to do it.

Sex workers do not see that the role of the law is to protect the general public from them. What sex workers need is to be included in legislation that supports a transparent sex industry, is accountable to mainstream criminal and industrial laws and allows sex workers to report crimes knowing that they will be treated with respect and dignity.

A reduction in the marginalisation of sex workers will require:

- The decriminalisation of all sex industry work places
- Recognition of sex work as a legitimate work choice
- Recognition that sex work workplaces require industrial and safety guidelines in the same way as all industries in Australia
- More advocacy services for sex workers
- More community education about the realities of the sex industry, sex worker rights and sex industry laws
- Increased awareness of sex worker issues among relevant services including Police and Sexual Health.

Scarlet Alliance supports the decriminalisation of the sex industry in Tasmania.

Decriminalisation refers to the removal of all criminal laws relating to sex work and the operation of the sex industry. Occupational health and safety, industrial rights and other workplace issues can be supported through existing industrial laws and regulations that apply to any legal workplace. Scarlet Alliance does not support legalisation that uses criminal laws to regulate or control the sex industry by determining the legal conditions under which the sex industry can operate.

Terms of Reference

1. **Has the Act restricted/prevented the operation of commercial sexual services businesses?**

Brothels are a traditional part of the sex industry in many parts of the world and Tasmania has a solid history of brothels operating in the cities and major towns across the island. Brothels can be a safe and convenient way for sex workers to operate and offer sex workers:

- Company and companionship at work
- Mentoring and skill sharing
- A stable and affordable environment to work from
- Reception staff to field calls and screen clients
- Security staff
- Advertising and established clientele

- A network of information about the wider industry, clients and the local environment.

Brothels play an important role for new workers entering the sex industry with opportunities to learn skills and knowledge to perform their job safely and economically. Brothels also play an important role for sex workers only wanting to work for a short period of time and not wanting to set up the necessary infrastructure to be a sole operator. Working privately can be expensive and require the investment of business skills and time that is not always available to all sex workers. In addition, brothels offer sex workers who are also parents, options for separating their work from home life, and part-time shift work that is not possible when running a business as a sole operator.

Sex worker comment – “I went to an appointment at a hotel the client was behaving really strangely and when he went to the bathroom I noticed a video camera hidden in a bag, sitting on top of the television. It was switched on. When he came out of the bathroom I asked, “What’s this?” he just shrugged his shoulders and said “Well, who are *you* going to call?”

Clients who are familiar with the law know that sex workers should not be working with a brothel and are therefore less likely to have a system for calling in to let someone know that they have arrived at the booking and that everything is alright.

Sex worker comment – “Clients now know that it is illegal to manage workers and so you can’t pretend to ring in to your ‘boss’ - it makes it more difficult to call anyone. Clients are aware that we are more vulnerable”.

Previous to the introduction of the Sex Industry Offences Act a small number of illegal brothels operated in Tasmania employing on average between 6 and 12 sex workers (most sex workers do not work full time and many work one shift a week or less). The introduction of the Act has enabled each of the premises to keep running with two restrictions. The first is that only two sex workers are permitted to be working at the premises at any one time and secondly, the traditional role of the operator is criminalised so the tasks of coordinating shifts, collecting and paying rent, paying electricity and phone bills etc have been picked up by a “senior” receptionist or “senior” sex worker.

Sex worker comment – “According to the law there can be two sex workers, one receptionist, one cleaner, one driver working together. In this situation it is inevitable that someone is going to end up managing something and then in the eyes of the law that person becomes a ‘criminal”.

What the Act has done is make sex workers and receptionists in collective situations (anyone who is not a sole operator) very unclear about their legal status. The resulting feeling of criminalisation has had a strong impact on individuals in the sex industry and the clients who seek their services. This experience further removes sex industry businesses from the mainstream, increasing the marginalisation of sex workers and leading to disempowered and vulnerable workers. Sex workers report that clients who are aware of the details of the Sex Industry Offences Act are feeling less comfortable about visiting sex workers. They are aware that if the premises they visit should be considered a commercial sex services business then they could be fined or imprisoned.

The criminalisation of brothels has negatively affected the wellbeing of sex workers because it has made them reluctant to access any services which require them to disclose their sex worker status. Sex workers who choose to work from established premises have noticed a lack of stability in their workplaces and individuals are cautious of ‘outsiders’, and are concerned about having their workplace structure revealed.

As “commercial sex industry businesses” refer to brothels where more than two sex workers are operating from premises at any one time, all businesses that operated previously to the introduction of the Sex Industry Offences Act have attempted to limit the number of workers on the premises at any one time to two. The role of the operator or manager has mostly dissolved and former operators now only function as landlords and caretakers.

Scarlet Alliance calls for the decriminalisation of all sex work workplaces, including brothels.

2. Has the Act protected children from exploitation in the sex industry?

There is no record or evidence of exploitation of children occurring before or after the introduction of the Sex Industry Offences Act.

3. Has the Act protected sex workers from exploitation in the sex industry?

The criminalisation of brothels in Tasmania means that all workers who are based at established premises or work with another sex worker operate in uncertainty about their legal status. Decriminalisation facilitates the breakdown of stereotypes and myths about sex work and sex workers which in turn reduces the stigmatisation and associated impacts.

Policy makers are frequently concerned about wanting to protect sex workers from heavy handed sex business operators who make unreasonable demands on sex workers or restrict their access to information and services. However, what Scarlet Alliance has seen across Australia is that decriminalised brothels operate more openly and more transparently. Further, if a sex worker is unhappy with one business s/he can choose to work at another. Providing choices empowers sex workers and requires the operators to be fair and reasonable otherwise they will not retain workers.

Although not necessarily in the form of labour exploitation, sex workers have reported increased mistreatment by media and the wider community since the introduction of the Sex Industry Offences Act. Sex workers noted an increase in media attention (usually misinformed), an increase in the public profile of the sex industry and an increase in the level of discrimination experienced by sex workers.

Sex worker comment – “Exploitation? Our house has been put in the paper as an ‘alleged sex venue’. My children get teased at school; my parents have to deal with comments down the street. What have my children got to do with me being a sex worker? It is really unfair. Exploitation makes me feel like a scum bucket”.

Criminalising the sex industry only supports the stereotype that sex work is inherently wrong and that the public needs to be protected from sex workers. Although this model of legislation is

designed to protect sex workers it in fact makes sex workers more vulnerable by targeting them as victims who need protection. A much more effective way to reduce the exploitation of sex workers is to have a decriminalised industry, in tandem with anti-discrimination protections that allows sex workers to work on their own terms, empowering them to access mainstream justice and industrial rights services.

4. Has the Act safeguarded the health of sex workers and the public?

All sex workers experience the direct effect of stigma and discrimination. For sex workers in Tasmania it means increased marginalisation and reduced access to information and services. Many private workers work in complete isolation from any other worker. For sex workers who work collectively it means increased need for secrecy and discretion.

For sex workers in Tasmania to be able to access services that maintain their health and well being sex workers need:

- Appropriate services with trained staff who are sensitive and non judgmental towards sex workers
- Service providers who strictly adhere to confidentiality requirements and protect the identity of sex workers
- Access to anonymous health care services
- Accessible mechanisms for making complaints, reporting crimes and seeking legal information
- Information about sex workers rights under the law and what to do if their rights are not being met
- Decriminalisation of the sex industry to reduce the negative impact of criminalised work places on the mental health and well being of sex workers.

Section 12 of the Act (Sex Workers and clients to adopt safe sex practices) mandates the use of condoms and other prophylactics by sex workers and their clients. This section would have been intended to ensure condom use in all sex services, however its effectiveness is reduced as there is no mechanism to make a complaint or report a client who resists condom use. Sex workers would also expect that if a client interfered with a condom during the course of a booking then this would be considered sexual assault and incur far more serious penalties than described in the Act.

Sex workers in Tasmania report low levels of satisfaction with the Sexual Health Services. Sex workers are concerned about confidentiality and the appropriateness of staff. Sexual Health openly do not support the use of sponges (sex workers use vaginal sponges to keep working when they have their period) which has become a common professional practice among sex workers across Australia. Discouraging sex workers from using sponges positions Sexual Health as being out of touch and irrelevant when responding to sexual health needs in the workplace.

Sex worker comment – “I have check-ups every six months and I don’t take any risks. I go to GPs, a different one each time. I would never go to the sexual health clinic; I wouldn’t want to be that exposed.”
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As sex workers will choose not to disclose their work to GPs and clinics, they may not be getting the service that they need. Some people who are operating in the sex industry or in less formal

transactions (for example sex in exchange for goods or favours) may not identify as sex workers. This highlights the importance of sensitivity training for sexual health providers so they can maximise the opportunities for appropriate service delivery.

The Australian Government¹, sexual health professionals² and non-government organisations³, including Scarlet Alliance⁴, acknowledge that voluntary testing is the optimum approach to sexual health testing for sex workers in Australia.

Even though mandatory testing⁵ has not been a feature of successful prevention strategies in Australia, it is frequently suggested during law reform processes as a method of ‘controlling HIV and STIs amongst sex workers’, often to allay community fears around public health. Calls for the implementation of mandatory testing are 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 workers⁶
- Are not evidenced by current epidemiology in Australia⁷
- 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 quickly⁸
- Result in reduced quality of sexual health services to sex workers⁹
- Leads to sex workers hiding their profession from medical experts or avoiding the health system altogether

¹ Australian Government, *National HIV/AIDS Strategy – Revitalising Australia’s response 2005-2008*, Australian Government, Canberra, 2005.

² Basil Donovan and Christine Harcourt, ‘Sex Workers’, *Sexual Health Medicine*, (Fairley, Russell, Bradford ed), IP Communications, Melbourne, 2005.

³ Metzenrath and Banach, “Public Health and Mandatory Testing *Model Principles for Sex Industry Law Reform*, Scarlet Alliance and AFAO, 2000

⁴ Basil Donovan and Christine Harcourt, ‘Sex Workers’, *Sexual Health Medicine*, (Fairley, Russell, Bradford ed), IP Communications, Melbourne, 2005

⁵ Mandatory testing refers to legislation which mandates the undertaking of sexual screenings or laws which create an environment where sex workers are forced to provide certificates to demonstrate testing to their employers as a means to demonstrate care has been taken to ensure an employee does not have an STI.

⁶ Australian Government, *National HIV/AIDS Strategy – Revitalising Australia’s response 2005-2008*, Australian Government, Canberra, 2005.

⁷ NCHECR, HIV/AIDS, viral hepatitis and sexually transmissible infections in Australia, Annual Surveillance Report, 2006

⁸ 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

⁹ Basil Donovan and Christine Harcourt, ‘Sex Workers’, *Sexual Health Medicine*, (Fairley, Russell, Bradford ed), IP Communications, Melbourne, 2005.

- And has the unintentional consequence of endorsing stigma and the misconception that sex workers are 'vectors of disease'.

Generally, sex workers have very high standards of sexual health. Most sex workers in Australia enjoy better sexual health than the general population, due to information, education, voluntary health monitoring and high levels of condom use. The best way to continue this is to empower sex workers in their workplaces by encouraging safe and accountable work choices.

Conclusion

Prior to the introduction of the Sex Industry Offences Act 2005, Tasmanian sex workers and workplaces were generally operating in discrete settings, with little attention from the Police, as enforcement of the 'old' laws was not a priority. The partial criminalisation of the sex industry in Tasmania with the introduction of the 2005 legislation has had a negative impact on the entire industry. It has created an environment where sex workers and clients feel anxious and unclear how the legislation affects them. This does not provide the environment needed for sex workers to assertively negotiate services safely, nor to address their industrial rights.

On a whole, sex workers report that they do not have a good understanding of the Sex Industry Offences Act. This means many sex workers are not aware of their rights and responsibilities, nor of the scope of the Act and how that relates to their workplaces and work practices. It is therefore difficult to accurately analyse how the Act has changed the Tasmanian Sex Industry because in many ways it has never been fully implemented in workplace settings. The culture of uncertainty that currently exists for individual sex workers combined with the criminalisation of workplaces, and high levels of stigma, has resulted in the social exclusion of sex workers in Tasmania, which does not promote positive Occupational Health and Safety outcomes for individual workers..

The two significant influences on sex workers in Tasmania are the selective criminalisation of workplaces and the high levels of stigmatisation of sex work. Both of these factors are interlinked and evidence from other states in Australia demonstrates that a decriminalisation of the sex industry would address the issue of stigma while also providing appropriately regulated workplaces.

Appendix 1 - Questionnaire

Sex Industry Offences Act 2005 Review (Nov 2008)

Terms of Reference

These are the questions that the Justice Department are asking as the core questions of the review;

1. Has the Act restricted/prevented the operation of commercial sexual services businesses?
2. Has the Act protected children from exploitation in the sex industry?
3. Has the Act protected sex workers from exploitation in the sex industry?
4. Has the Act safeguarded the health of sex workers and the public?

Questions for sex workers:

These questions, Scarlet Alliance has written to get feedback from the sex industry. The answers will be used by Scarlet Alliance in a submission to the Justice Department.

1. How well do you think you understand the laws about sex workers in Tasmania?

1 2 3 4 5
not at all a small amount ok but I could know more well very well

(It is illegal for more than 2 sex workers to work from a place at the same time. It is also illegal for one person (whether they be a sex worker or not) to manage a sex worker.)

2. How does the law affect the way you work/operate?

3. What changes to the sex industry have you noticed/have you heard of since the introduction of the law 3 years ago?

4. What new changes would you like to see to the law?

5. What concerns do you have (if any) from this review or further changes to the law?

6. Are there any occupational health and safety problems in your workplace?

(Security, lighting, access to condoms etc, access to information, clean towels, sharing info about clients...)

7. What do you do to look after your sexual health?

(STI checks on clients, visit doctor, use condoms/dams etc, find out about STI transmission/prevention...)

8. What do you think needs to change to address the level of stigma and discrimination against sex workers?

9. Have you experienced exploitation or been aware of exploitation in your workplace (before or after the new law)?

10. Have you been aware of or experienced children being exploited in your workplace (before or after the new law)?