
# Response to:
# *Western Australian Government's Prostitution Control Bill 2002*

**February 2003**

**Scarlet Alliance membership comprises:**

- **SQWISI – Queensland**
- **RhED – Victoria**
- **Phoenix – Western Australia**
- **SWOPWA – Western Australia**
- **NT SWOP – Northern Territory**
- **SA SIN – South Australia**
- **SWOP – New South Wales**
- **ACT SWOP – Australian Capital Territory**

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# SCARLET ALLIANCE OBJECTIVES

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

**These objectives include:**

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

**Summary**

- Scarlet Alliance oppose the Prostitution Control Bill 2002 and recommend instead that a decriminalisation model be adopted to regulate the Western Australian sex industry.

- We believe that the problems with this draft could have been avoided if a community consultation approached had been followed. Including consultation with sex workers, sex worker organisations and Scarlet Alliance.

- It has been extremely difficult to comment on a bill which is as complex and written in language not accessible to the majority of people.

- It appears that the goal of the legislation is not to maximise sex workers occupational health and safety but to over regulate the industry in a manner that has been tried in other jurisdictions in the world and failed;

- This draft is over regulatory which means that compliance will be difficult and will create a two-tiered system of legal and illegal workers;

- We believe the policing and other resources that will have to be applied will be a great burden on the community for a victimless crime;

- The goal of legislation should be to support an industry that has previously operated illegally and assist them to operate legally;

- The scope and powers of the Board are too broad and this model can not be supported;

- The penalties are out of proportion with other legislation;

- This model is unworkable and only large businesses will be able to operate – hence pushing out smaller operators;

## Prostitution Control Bill 2002

***"An Act to regulate and control prostitution..."***

We seek specific clarification of the length of the title of the draft Bill as it is confusing and may be interpreted in a range of ways. For example:

- Does it include the aim of abolishing sex work?
- Does it mean acknowledgment of sex work as legitimate work and therefore seek to decriminalizing it and associated activities?
- The long title does not include the aim of abolishment, which becomes a factor for consideration in further sections of the bill, e.g. Part 2, Div 2 Clause 14(c).

**RECOMMENDATION 1**

*That the long title be amended to read:*

*An Act to decriminalise the sex industry;*
*alternatively*
*An Act to regulate sex work businesses and sex workers, and improve the working conditions and accessibility of certain agencies for sex workers and sex work businesses, to Repeal the Prostitution Act 2000 and amend certain other Acts, and for related purposes.*

**"Reasons for enacting this act ...** ***The parliament considers it inappropriate for the control of persons involved in prostitution to be subject to the normal principles of Administrative Law".***

Scarlet Alliance is alarmed that the proposed legislation seeks to exclude sex worker and Sex Industry employees from access to administrative law as this is a basic principal and right governing all other workplaces. The government must clearly articulate its case for excluding sex workers from administrative law processes, as we are unable to determine upon which basis such a decision has been made. We have a number of concerns regarding the exclusion of sex workers from accessing administrative law processes which include:

- It contravenes a person's democratic right through constitutional law;
- It further marginalizes sex workers;
- Removing the right of persons to seek legal remedies through the principles of administrative law is discriminatory. Further it introduces and reinforces the notion of second class citizenship thus allowing sex workers to be denied rights available to all other Australian citizens;
- Removing this right reverses the basis upon which Australian law is determined – that is that a person is innocent until proven guilty.
- Every citizen in a democratic society has the right to a fair and unbiased hearing;

- The government should seek to represent all members of the community rather than denying the rights of its citizens to seek legal avenues of redress;
- It is unlikely that an attempt to exclude sex workers from administrative law will be upheld by the Court upon appeal. *(e.g. Annetts –v- McCann (1990) 170 CLR 596; Upham –v- Grand hotel (SA) Pty Ltd, {1999} SASC 414; Fisher –v-Keane (1879) 1 Ch D 353.)* To highlight the outcome from one of these cases the presiding judge stated that:

> *According to the ordinary rules by which justice should be administered by committees if clubs, or by any other body of persons who decide upon the conduct of others, [they ought not], to blast a man's reputation for ever – perhaps to ruin his prospects for life without giving him an opportunity of either defending or palliating his conduct….*

**RECOMMENDATION 2**

*That the bill be amended to delete the following provision in the draft bill - "The Parliament considers it inappropriate for the control of persons involved in prostitution to be subject to the normal principles of administrative law".*

**RECOMMENDATION 3**

*That all persons involved or working in the Sex Industry be afforded the same legal rights available to all other Western Australian citizens (including those in goal) and continue to be afforded protection and access to administrative law remedies.*

# Part One - PRELIMINARY

## Clause 4. Prostitution

***"…and it is irrelevant whether payment is in money or any other form".***

We believe that as prostitution is work that any legislation making reference to it be referred to as sex work otherwise sex workers personal activities may be affected. Further, we question the continued use of the term prostitution and the intention and meaning behind the definition of prostitution. We also believe that this may lead to an abuse of power under such a definition. Therefore we seek clarification and amendment of the definition as provided under Clause four for the following reasons:

- Is it an offence for a sex worker to have sex with a private or personal partner with no exchange of money or goods? This is particularly relevant where a sex workers normal place of work is where s/he resides;
- The definition does not acknowledge that sex workers have private lives and clarify when they are working or otherwise involved in other (including family and relationship) activities;
- That sex workers should be able to spend their money on anyone they wish, engage in sexual activities without the exchange of money outside of work

- That such a clause allows the opportunity for police harassment of partners and friends of sex workers.
- That such a definition represents an undue government invasion into sex workers private sexual arrangements.

**RECOMMENDATION 4**

*That the definition be amended to recognise a clear distinction between personal and private sexual relations.*

**RECOMMENDATION 5**

*That sex work be recognised as a legitimate form of work and consequently a distinction be made between work and private activities.*

## Clause 5. Main Objectives of the Act

We consider that the objectives of the Act are not in accordance with best practice occupational health and safety[1]. There is no reference to a concern for sex workers occupational health and safety but rather reflects stereotypical and incorrect views of sex workers as vectors of disease, the need to overregulate the sex industry and, to appease community concerns (which research indicates is not in line with government views – which relate to safety for sex workers and a concern with police corruption). Further, it has been widely demonstrated in Australia and throughout other Australian jurisdictions that the objectives outlined in clause five have failed resulting in subsequent amendments to legislation and in some cases a worsening of problems that the initial legislation aimed to correct[2]. We oppose the subsections of this clause for a range of reasons as follows:

### (a) Public Health

It is well documented that "sex workers are more aware of sexual health and safer sex practices than the rest of the community", therefore it is unnecessary to make any special provisions for public health safety[3]. Discussion follows later.

### (c) To protect and control

Over regulation has been a consistent mistake taken with legislators. Sex industry businesses are commercial enterprises and should be integrated into local communities subject to the same regulations as other commercial enterprises. They should not be

[1] Scarlet Alliance. (1999) Best Practice of Occupational Health and Safety in the Australian Sex Industry. Sydney. Australian Federation of AIDS Organisations.; South Sydney City Council. (1996) Brothels Policy. Sydney: South Sydney City Council; Prostitution Licensing Authority. (2001) Interim Code of Practice for Licensed Brothels. Brisbane.

[2] Police and Corrective Services. (1998) Review of Prostitution Laws in Queensland: Discussion Paper. Queensland.

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

subject to special provisions that set them apart from other businesses[4]. A full discussion of this issue appears later in the submission.

*Recommendations relating to these issues follow later in the document in reference to those sections of the draft Bill.*

# Part 2 - PROSTITUTION CONTROL BOARD

## Division 1 — Establishment of Board

### Clause 7. Board established

Scarlet Alliance does not support the model as proposed under the Act. These issues are adequately discussed later in the document. Our position in relation to this issue is articulated in the document *Principles for Model Sex Industry Legislation* of which a copy is attached for your consideration.

The position that Scarlet Alliance and its members take is that the sex industry, sex workers and broader community are best served by a system of decriminalisation and the treatment of sex industry businesses and their employees as those in similar service industries. It is recognised that given such a radical shift from current control and regulation through criminalistion of the sex industry that an interim measure of legalisation/decriminalisation may be appropriate to assist the industry meet standards and be provided with assistance in operating under a positive legislative framework. Our recommendation is as follows:

**RECOMMENDATION 6**

*That no control board be established and that the sex industry be regulated according to the principles articulated in the document Principles for Model Sex Industry Legislation.*

### Clause 7. Membership of Board (incorporating elements of clauses to 13)

If a Board is to be established it is completely inappropriate to have the work of the Board lack the experience of a sex worker either currently working or having previously worked as a sex worker. It is unlikely that a board would be able to effectively operate without an understanding of the issues confronting sex workers and unlikely that sex workers would regard the work of the board as relevant. The inclusion of a sex worker as representative of the sex industry is imperative and is consistent with the standards established in other jurisdictions such as Queensland[5]. Further, under clause 11 it is unlikely given the range

[4] Banach, L. ibid; Harcourt. (1991) "Whose Morality? Brothel Planning Policy in South Sydney". Social Alternatives. 18(3): 32-37.
[5] Prostitution Act (2000) Qld

of discrimination that sex workers face in WA that the requirement to advertise for such a position would be well regarded[6].

In addressing the range of issues relating to the Board Membership in sections 7 to 13 it is useful to consider the Cameron Bill of SA[7] which acknowledges the following elements for establishing a representative Board.

> *(1) The Minister must establish a board to be called the Prostitution Advisory Board.*
> *(2) The Board will consist of 6 persons appointed by the Minister of whom–*
> *a) 1 must be a legal practitioner*
> *b) 1 must be nominated by the Minister for the Status of Women;*
> *c) 2 must be persons who are or who have been prostitutes, selected by the Minister from nominees of organizations that, in the opinion of the Minister, represents the interests of prostitutes;*
> *d) 1 must be a person who, in the opinion of the Minister, represents the interests of operators of registered brothels and escort agencies.*
> *e) 1 must be nominated by the Trades and Labour Council.*
> *(3) At least 4 members of the board must be women.*

A range of other issues relevant to sections 7 to 13 are as follows:

- Lack of the formal acknowledgement of the need for representation by a sex worker on the Prostitution Control Board. For example, if an application for a community representative is received from a sex worker will they be given fair consideration and how will they be chosen?
- How effective can a control board be with only three people to represent a vast industry and upon what basis have the people listed been selected?
- Who is responsible for the appointment of the people? This is particularly relevant with respect to the appointment of a Medical Practitioner when the Police Minister may be given responsibility;
- How is the independence of the Board to be assured?

**RECOMMENDATION 7**

*Scarlet Alliance rejects the formation of a board. However, if a Board is established a specific sex industry person(s) be appointed and their appointment guaranteed under the legislation. That the appointees reflect the diversity of the sex industry and cover representatives from all sectors of the sex industry with expertise in issues relating to gender, ethnicity, and sexuality.*

**RECOMMENDATION 8**

*Scarlet Alliance rejects the formation of a board, However we believe that a clear set of guidelines governing ethics and other issues would need to be determined prior to the establishment of any board.*

[6] 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.
[7] Cameron Bill 1998 SA. Prostitution Bill 1998 (South Australia) introduced by the Hon Terry Cameron

## Division 2 — Functions of Board

### Clause 14. Functions

The proposed 'functions of the board' are opposed because they are overly authoritarian and appear to represent a misuse of power without any appropriate safeguards.

**Clause 14(c). "to develop strategies to deter persons from becoming prostitutes, and to advise prostitutes wishing to cease prostitution;**

We believe that this clause is unnecessary as it infers that sex work is not appropriate work. Given that the aim of the legislation is to regulate sex work it would appear that it is inappropriate that the legislation seek to abolish or deter people from working within the industry.

It is not clear how people would be deterred from working in the industry or what programs would be put in place to assist sex workers who seek to leave the sex industry and what type of programs this may entail. Further, who would provide the advice is unclear.

Research has demonstrated that such approaches have failed and that a focus should be upon supporting sex workers within the sex industry to achieve their goals within the industry such as moving into management etc[8]. This is particularly relevant where sex workers are advised to enter programs that are inappropriate to their skill levels or interest (such as hairdressing etc rather than more academically based courses) and that many sex workers currently have the skills to enter alternative occupations but prefer to work within the sex industry for a range of reasons.

**RECOMMENDATION 9**

*That the function relating to deterring people from entering the sex industry and assisting sex workers leave the sex industry be abolished until it is articulated how such a goal is to be met.*

### Clause 15. Education and information

Scarlet Alliance questions how a Board without Sex Industry representation could effectively provide education and information to sex workers? Research demonstrates that the most effective education and information is peer based and the success of the state based sex worker organizations and the independent government auditing of those programs also supports this approach. Individuals and organizations with limited understanding of the industry or how to implement education and information to sex workers have been particularly unsuccessful, hence Australia has adopted a peer-based approach at a National level[9].

[8] Banach L. (1995) Final Report on Prostitution Health and Social Measures – Exit and Retraining Program. Brisbane. Queensland Health.
[9] National HIV/AIDS Strategy. (1989) Canberra: Australian Government Printing Service.

**Clause 16. General power of the Board**

We are concerned that this section of the proposed bill as it appears to provide wide-ranging powers to the Board without any mechanisms to audit the decisions taken. It leaves its members open to possible abuses of power by not defining the functions that the Board can or cannot undertake. Serious consideration needs to be given to defining the functions of the Board as is the case in every other Australian jurisdiction which has such a mechanism of sex industry control.

**Clause 17-20. Delegation by Board and Direction by Minister…**

Again concerns arise in these sections due to the amount of power the board (without safe-guards) and Minister can exercise in relation the sex industry. The proposed powers are overly regulatory, particularly compared to other similar industry government legislated boards. It is of concern that control of the sex industry appears to be merely passing from police control to a Board whose powers are far-reaching and badly defined. A clearer direction and articulation within the legislation is required to protect Board members and workers in the sex industry.

Our recommendations in relation to these clauses are limited as we do not believe that the establishment of a board is the correct approach to take.

**RECOMMENDATION 10**

*That the functions of the board be clearly articulated and include advising the appropriate Minister on best practice in relation to occupational health and safety.*

**RECOMMENDATION 11**

*That the board take a peer based approach that takes its direction directly from the sex industry to ensure maximum compliance.*

## Division 3 – Registrar and Staff

**Clause 21. Registrar and Staff**

Again, we recommended that people appointed to the board be predominantly industry based established within a peer based model. Further, other expertise be determined within a peer-based model and expertise required be determined by peers and appointments made on this basis.

## Division 4: Financial provisions and reporting

**Clause 24. Funds of the Board**

Scarlet Alliance questions the interpretation of Clause 24(d) "*the funds of the board consist of other money lawfully received) other money lawfully received by the Board in connection with the performance of its functions".* Ambiguity arises because of the failure within the Bill to determine what approach to regulating the sex industry the government is taking as this is not clear within the 'long title'. That is wether the government aim is to decriminalise or legalise the sex industry or to place unworkable restrictions and controls upon the industry so that it effectively remains criminalized.

The issue relating to funding the board is that if the sex industry remains illegal then any funds received through the sex industry by the Board may be at law determined as illegal funds. Further, investigation also is required into the expense of funding a Board purely through the sex industry as this has proved unworkable in Queensland and the Prostitution Control Board has not been reconvened due to the associated expenses. Our recommendation remains the same as at number one and six but with the following recommendation added as Scarlet Alliances preferred model of regulation as this will clarify any funding issues.

**RECOMMENDATION 12**

*That the Prostitution Control Act 2002 decriminalize the sex industry therefore eliminating the possibility of receiving illegal funds.*

# Part 3 - WHEN LICENSE REQUIRED

### Clause 29. Licence needed to act as prostitute

Scarlet Alliance is vehemently opposed to the licensing of individual sex workers. These broad principles apply:

- Individual workers in other licensed businesses, such as bar staff working in licensed premises, are not required to hold a license. Only the owner of the establishment must apply for a license.
- In cases where individual workers *are* required to hold a license or registration, for example in the case of real estate sales reps or nurses, licensing occurs as a result of attaining professional qualifications. Persons holding 'professional' licenses reap positive benefits such as respect from peers, increased earning capacity and improved social status. Sex work is 'unskilled' work, in that sex workers do not have to obtain professional qualifications in order to be employed in the industry. As such, the ideology behind the Government issuing sex workers with licenses is obviously not to officially recognise their 'qualifications'.
- When the actual licensing process is taken into consideration – including fingerprinting, palm printing, photographs and probity checks of applicants – it is obvious that this Bill in fact seeks to create a **criminal register** of sex workers. If the intention of this Bill is to acknowledge the WA sex industry as a legal and legitimate occupation, there is *no conceivable rea*son why legal sex workers should be listed on a criminal register.
- Some of the negative aspects of individual licensing include:

- Visa applications being denied by countries where prostitution is illegal;
- Discrimination in housing, financial institutions, health insurance, Family Court disputes and future employment opportunities;
- 'Leaking' of personal information (by the Board or it's representatives), which could result in stalking, blackmail and extortion;
- Harassment by police and other authorities; and
- Exposure to family and friends, which can result in family breakdown and social isolation.
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- Due to the very real fears stated above, large number of sex workers will not be willing to take the risk of applying for a license. Strict requirements including probity checks and STI regulations, (as well as, in some cases, an inability to provide contact details due to homelessness or an inability to submit requests in writing due to illiteracy), will also *exclude* many people from participating in the legal system – even those who *would* be willing to apply for a license. This will force a majority of the sex industry to work illegally and, as has been witnessed in Victoria, cause an explosion in the numbers of street-based sex workers.

**RECOMMENDATION 13**

*That the Bill and all references to individual licensing of sex workers be deleted.*

**Clause 30. Licence needed to carry on business involving provision of prostitution**

We oppose the licensing of sex industry business owners as outlined in the Bill. While Scarlet Alliance acknowledges that other adult industries are also subject to licensing, we believe that the licensing process suggested for sex industry businesses is far too restrictive in comparison. Aside from being discriminatory and unnecessary, such strict requirements will simply encourage non-compliance by sex industry operators.

Rather that discouraging 'organised crime' involvement in the industry, legalisation and licensing in other States has proven to have exactly the opposite effect. A key consideration is that the only people who can pass the stringent 'tests' applied to license applicants, are those with a great deal of money, power and 'connections'. People who have worked in what has been a criminal sex industry for a number of years – those who have a real understanding of industry culture and best practice – are often excluded because of associations they may have had in the past. The increased number of illegal brothels that exist in a legalised system provides organised crime further opportunity to infiltrate the sex industry.

'Organised crime' does not play a significant part in the WA sex industry. Although there may occasionally be associations made between known criminals and the sex industry, it is certainly not a prominent feature – especially within the metropolitan area. Thus, the proposed licensing system has the potential to *introduce*, rather than decrease, organised criminal involvement.

We recommend that this clause be deleted on the basis that it is discriminatory, unnecessary, and may in fact prove counter-productive to the aims of the legislation. If a licensing system is to be brought in for sex industry business operators, we ask that it be comparable to the licensing processes instituted for other adult businesses. There is already legislation available to halt the activities of organised criminals, that is not sex industry specific. The police should deal with any evidence of criminal activity within the sex industry, in the same manner as they would in any other place of business.

**RECOMMENDATION 14**

*That the Bill and all references to licensing of sex industry businesses be deleted.*

**Clause 31. Licence needed to act as prostitution manager**

Scarlet Alliance is opposed to clause 31 for the following reasons:

- Although some sex industry businesses have 'managers', the majority of them do not. In most cases, the Bill's definition of 'prostitution manager' describes what is usually a brothel/agency receptionist. This is an unskilled position and although they may be considered 'in charge' in the absence of the owner, they are in no way related to the 'running' of the business. In no other business does a receptionist need to hold a license;
- Deeming a receptionist to be a 'prostitution manager' gives them an unacceptable amount of power and control over sex workers – and at the same time gives them an onerous degree of responsibility that should not rest with a receptionist, but with an owner;
- It excludes sex workers, who are unable to obtain any license other than a 'prostitutes license', from earning extra income as a receptionist, or 'easing themselves out' of the industry by gradually doing more hours on reception and less as a sex worker; and
- Smaller businesses will not be able to afford to employ the number of staff necessary to ensure that a licensed manager is on the premises at all times.

**RECOMMENDATION 15**

*That the Bill delete all references to prostitution managers and instead use the definitions and provisions contained within the Occupational Health and Safety legislation that describe the responsibilities of a 'manager', including undergoing appropriate training. Further, there are already provisions under Assessing the 'character' of the manager should be the responsibility of the employer, as it is in any other business.*

**Clause 32. Licence needed to act as prostitution driver**

We oppose this clause for the following reason:

- It excludes sex workers, who are unable to obtain any license other than a 'prostitutes license', from earning extra income as a driver, or 'easing themselves out' of the industry by gradually doing more hours driving and less as a sex worker;
- Anyone transporting a sex worker to an escort booking, or even to her place of work (where 'acts of prostitution' will take place), could be found guilty of driving without a prostitution driver's license. This would include partners, friends, other working girls, taxi drivers and bus drivers.;
- Smaller businesses may not be able to afford to hire licensed drivers. As owners will not be allowed to ask sex workers to drive each other around, this may encourage some operators to force girls to drive themselves; and
- Assessing the 'character' and suitability of a driver should be the responsibility of the employer, as it is in any other business.

**RECOMMENDATION 16**

*That all references to prostitution drivers are deleted as they are unnecessary.*

## Part 4 – LICENSING PROVISIONS

**Division 1 – General licensing provisions: Clauses 33-53**
**Division 2 – Licensing Prostitutes: Clauses 54-56**
**Division 3 – Licensing brothel operators: Clauses 57-61**
**Division 4 – Licensing prostitution Agents: Clauses 62-66**
**Division 5 – Licensing prostitution managers: Clauses 67-68**
**Division 6 – Licensing Prostitution Drivers: Clauses 69-72**

The above clauses are dealt with together (and should be read together with part 3 – when license required) which are of greatest concern if a licensing system is to proceed in Western Australia. Those clauses, which are not specifically referred to in the sub-heading, are referred to in relation to the comments provided as follows.

We formally re-state out position that Scarlet Alliance fundamentally opposes the licensing or registration of sex workers or sex worker businesses under any circumstance. Our comments are related to the draft Bill and intended to demonstrate why the Scarlet Alliance takes such a position in relation to the Licensing and Registration of sex workers and their businesses.

The 2002 Annual General Meeting of Scarlet Alliance, attended by all its state member organizations including Western Australian representatives, considered the WA Labour Government's proposals for the legalisation of some aspects of sex work. This included a discussion related to the licensing of 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. The following comments and recommendations are offered in support of our position.

The licensing/registration of 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[10]. A sex worker license will compromise the very rights that other Australian citizens take for granted. Further, they reinforce the stigma associated with sex work. A license places a sex worker's identity on the public record and their identity as a sex worker onto a card that may easily be lost or stolen thus exposing sex workers to the potential for violence, extortion, coercion, family breakdown, discrimination, harassment etc. It raises serious concerns over who has access to the information, how to be removed from a licensing system, confidentiality, privacy and a range of other legal issues.

The licensing/registration of sex workers is also unnecessary and counterproductive to the aims of controlling the activities of the sex workers and the sex industry. There are a range of other ways in which the professional standards of the sex industry can be maintained – through codes of practice, general criminal laws if required, and other statutory laws. It is unnecessary 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. 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.*[11]

Concerns about public health are often cited as a reason for laws aimed at increasing control and surveillance of sex workers and the sex industry and indeed the first objective of the Prostitution Control Bill 2002 is …'to safeguard public health and well-being against adverse effects of prostitution". 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 the general community.[12] Furthermore, Australia leads the world in HIV education and prevention efforts with sex workers. To date there is no documented evidence of the transmission of HIV in an Australian sex industry context despite international trends of high prevalence of HIV among sex workers and their commercial sexual partners in many Asian and African countries.

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[10] Banach, L. (1999) Unjust and Counter Productive: The failure of Governments to Protect Sex Workers from Discrimination, Sydney, Scarlet Alliance and AFAO. Edited by S Metzenrath.; Metzenrath S. (1997) "Prostitution law reform: Towards a human rights based model". Prostitution Law Reform in Queensland: Forum, Brisbane, SQWISI.
[11] Banach L. (2000) Principles for Model Sex Industry Legislation. Sydney. Scarlet Alliance and AFAO (Metzenrath S. ed).
[12] STD Control Branch South Australian Health Commission (Epidemiological evidence submitted to the Social Development Committee of the Parliament of South Australia Inquiry into Prostitution)

Licensing of sex workers 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 the licensing requirements of public records, finger printing and a sex worker identity card[13]. This is detrimental to the very aims of law reform as it means that the very reasons for why sex industry legislative reform was undertaken are undermined. It is estimated that up to 80% of the businesses in Victoria are illegal due to the difficulties associated with obtaining a business license.

Research demonstrates that the following negative impacts for unlicensed sex workers include:

- The creation of a two tier system that would force sex workers underground where access to health, support and other services would be limited. As a result sex workers ability to freely access safe sex equipment would be compromised due to identification fears;
- Some people may deliberately target unlicensed/illegal workers for unprotected commercial sex knowing that illegal workers may have less recourse to the justice system. The same situation would occur for safety reasons; and
- Working conditions in illegal brothels would not have to comply with the conditions set out for legal brothels. Therefore, sex workers would not have access to Occupational Health and Safety, industrial protection and would be vulnerable to extortion, violence, discrimination, and harassment from sex industry business operators, clients, police and other people in positions of authority and power on the basis of their illegal status.

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

- The cost associated with the adoption of a licensing system would be a considerable imposition upon the community and government resources;
- Significant police resources would be devoted to policing an unworkable system rather than focusing upon significant crimes such as rape and murder;
- 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 by harsh laws and policing strategies.

We believe that all clauses relating to the licensing of sex workers should be removed from the Bill before its introduction to Parliament.

The Scarlet Alliance does not support the concept of licensing for sex industry businesses or for any individuals employed within the Australian sex industry. Experience has shown that licensing regimes imposed upon the sex industry with the aim of controlling the sex industry and thereby limit the legal avenues available to participate in the provision of commercial sexual activities simply do not work. Experience gained during the last 17 years since specific sex industry legislation in Victoria (*Prostitution Regulation Act 1986, Prostitution Control Act 1994*) was first passed requiring that sex industry businesses be licensed has demonstrated low levels of compliance. Currently it is estimated that nearly

[13] Banach L. 2002) The Impact of Legislative Change on Sex Workers Occupational Health and Safety, PHD Thesis, Queensland.

80% of Victorian sex industry businesses operate outside of the legal framework[15]. Clearly any legislation that fails to achieve a high level of compliance does not meet its objectives and can therefore be regarded as unsuccessful.

Furthermore, the onerous and expensive licensing processes have meant that the vast majority of legal sex industry businesses are concentrated in the hands of a relatively few individuals. The Victorian experience has demonstrated that licensing systems generally benefit the larger operators, leaving many small and self-employed sex workers in an illegal sector of the industry. This is because small operators who are often sex workers and self-employed workers are less likely to expose themselves to scrutiny by any Licensing Boards or to allow their details to be included on a public record. Recent local research has shown that sex workers in Victoria have not benefited in any meaningful way since the legalisation of brothels in 1986.[16]

Despite the widely accepted failure of the Victorian license based model of sex industry legislation, Queensland has adopted a similar approach to sex industry legislation with a requirement for licensed brothels incorporating licensed and approved brothel owners/managers since the passage of *Prostitution Act 1999*. At the time of writing there are only 10 licensed brothels in Queensland, escort agencies and street sex work remain illegal and sole operator sex workers are able to operate legally from a private home providing they do so completely alone. A professional, licensed security person is the only person permitted to be on premises with a sole sex worker which is unaffordable for the majority of small operators, and inaccessible for those located in rural areas. Given the failure of the Queensland Government to grant licenses, the expense associated with obtaining a licence, the legislative requirement of exemption for those people previously convicted for sex industry offences and the narrow and limited legal framework for legal work the majority of sex workers continue to operate illegally.

Similarly to Queensland, *the Western Australian The Prostitution Control Bill 2002* anticipates an illegal sector of the sex industry and makes provision for strong criminal sanctions with a view to suppressing its growth. Scarlet Alliance believes that it would require considerable government resources to administer the legislative framework proposed in the Bill and similarly to Queensland and Victoria would not succeed in effective Government control of the Western Australian sex industry. 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 stated above, licensing and the accompanying probity checks can exclude many sex workers from ownership and/or participation in sex industry businesses due to past sex industry related charges. Additionally, the expense of applying for licenses for sex industry businesses is usually prohibitive and individuals and small operations are often unable to afford application/licensing fees. Regulations, such as planning permits, other permits, land use approval, local government approvals, and landlord approval are some of the administrative and legislative requirements needed to comply with a licensing regime. The

[15] At the time of writing there are currently 120 licensed Victorian sex industry businesses (85 brothels and 35 escort agencies). On 1 June 2002 The Age newspaper reported that Victorian police sources estimated that there were about 400 illegal brothels operating in Victoria

[16] Alison Arnot (2002*) Legalisation of the sex industry in the State of Victoria. The impact of prostitution law reform on the working and private lives of women in the legal Victorian sex industry*. Masters Thesis (Criminology) University of Melbourne.

myriad of regulations is often complex and costly and has proven to be a major barrier to all but the few well-educated and resourced individuals/corporate partnerships. Regulatory mechanisms may also apply to small operators or private workers who are unable to comply with detailed approval processes that usually involve disclosure and public records. The result of onerous regulatory requirements is the creation of a legal and illegal industry operating alongside each other.

The Scarlet Alliance believes that the aim of sex industry legislation should be to incorporate as many people currently involved in the sex industry within a framework that is workable and supportive of sex industry occupational health and safety rather than create a two-tiered illegal and legal industry. Scarlet Alliance urges legislators to consider an inexpensive, workable minimalist structure (such as decriminalisation) and consult with sex workers, the sex industry and their advocates to achieve a workable framework.

Whilst there are a range of other comments and recommendations that could be made with respect to this section, as The Scarlet Alliance is opposed to the licensing and registration of sex workers and sex industry businesses and supports a model of decriminalisation we have refrained from further comment in relation to the detail of licensing provisions.

## Part 5 – OTHER OBLIGATIONS AND OFFENCES

**Division 1. Persons generally.**
**Division 2. Prostitutes generally.**
**Division 3. Licensed persons generally.**
**Division 4 – Licensed prostitutes.**
**Licensed brothel operator, prostitution agent, or prostitution manager.**
**Division 6. Licensed prostitution drivers.**

These sections are dealt with together in table format in sequential order as all divisions require direct comment. Scarlet Alliance has used the table format in an attempt to clarify and reduce a complex and often illogical section of the Bill to an easily understood format that will highlight our objections to the section.

As stated previously Scarlet Alliance does not support the Bill in its current form and instead supports the decriminalization of sex work, including street-based sex work, as the most workable solution to sex industry law reform. As this section has been treated differently the recommendations appear within the table and not at the conclusion in the section of recommendations. These recommendations should not be taken as an endorsement of the Bill or Division 5 but to highlight the duplication and problems associated with the Bill.

| **Division 1 — Persons generally** | |
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| 73. Inviting services of prostitute prohibited from acting | Scarlet Alliance is opposed to this clause and seeks that it be removed as an offence. Further, jail for 1 year is it is too severe a penalty. The imposition of a penalty relies on whether the client knows or could reasonably be expected to know that the prostitute did not have or was barred from having a licence. To comply with this section, a client will have to see the sex worker's licence before any transaction takes place. Expecting clients to 'police' sex workers by asking to see proof of licence is inappropriate, not able to be policed and dangerously tips |

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| | the balance of power between worker and client. Further, extreme penalties merely result in sex workers having to continue to work illegally in order to make payment and failure to do so can result in subsequent fines with the ultimate option of jailing which is an unnecessary use of police and other community resources.<br><br>***Recommendation: That all penalties in Part 5 be significantly reduced and consideration be given to alternative methods of reducing any 'harms' associated with street based work.***<br><br>***Recommendation: Remove as an offence.*** |
| 74. Seeking prostitute in or in view or within hearing of public place | Scarlet Alliance is surprised at the ambiguity of this section. Prior clauses of the Bill have allowed sex workers a license to work under specific guidelines but this appears invalid according to the various interpretations of clause 74. For example, a person can not seek a sex worker in a public place or frequent a place seeking the services of a sex worker if s/he is in view or within hearing of a public place", which can be defined liberally. Although it is likely this is intended for street workers legislation should be clear as to its intention and specifically define the intention. This ambiguity is across the totality of the Bill. For example, if clause 74 is read together with clause 75 it appears that a client cannot seek the services of a sex worker by making a phone call in a public place. It is unclear how the Board would intend to enforce this.<br><br>Scarlet Alliance recommends the decriminalisation of street-based sex work, and the removal of offences relating to street-based sex workers and their clients. It is unnecessary to create specific sex worker related offences as there are currently sufficient legislation to deal with issues that relate to nuisance, criminal behaviour (such as drug sale, violence etc). None of these are specific to the sex industry and should not be placed in sex industry legislation.<br><br>Policing of this offence under the *Prostitution Act 2000* has not removed the demand from clients for street-based sex workers. It has simply dispersed workers and their clients throughout the metropolitan area.<br><br>Residents have expressed concern about public nuisance caused by clients seeking sex workers. Scarlet Alliance supports the creation of safe working areas and safe houses where street based sex workers can take their clients. Such areas and facilities should be located in well-lit areas conducive to the safety of workers, and should allow for 'traffic loops'[i] to contain traffic generated by clients. The location of these areas should be a result of consultation with street based sex workers, service providers, and residents.<br><br>Note: s186 means that anyone can be charged with this offence as intention is presumed.<br><br>***Recommendation: Set up safe working areas and safe houses in consultation with street based sex workers, service providers, and residents. Remove all offences pertaining to 'soliciting'.***<br><br>***Recommendation: Remove as an offence.*** |
| 75. Seeking client in | Scarlet Alliance does not support this clause and believes that there should be no penalties in relation to street-based sex workers or their clients for the following |

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| or in view or within hearing of public place | reasons:<br><br>The policing of this offence under the *Prostitution Act 2000* has resulted in:<br><br>Street based workers operating further from the city in order to prevent detection by police. They are fearful of entering the inner city area due to heavy police presence and if they are known to police are targeted even if not at work. This has resulted in working in isolation and increased the risk of assault and theft, which street workers are less likely to report for fear of incriminating themselves. The peer support (including warnings about 'ugly mugs'), which was obvious when work areas such as Palmerston or Stirling Streets existed, has now completely eroded.<br><br>Street-based sex workers are being forced to take unnecessary risks to avoid police detection. A street based worker leaning in the window of a car is discussing with the potential client what service is provided, establishing whether the service required is one they provide and under what conditions as well as how much that service would cost. Boundaries are set (such as the use of condoms for all services) in an environment where the worker was relatively safe and able to assess risk determining whether they would feel comfortable with the client. This point of negotiation, risk assessment and setting of boundaries has been removed by the current criminalisation of the industry. This type of negotiation now occurs inside a moving vehicle in an attempt to avoid detection by police. The worker is much less empowered when making negotiations in this new situation. Street workers may also take greater risks in their work because jobs are harder to get, or they wish to limit time spent on the streets potentially in view of police. They might see clients they feel threatened by, succumb to pressure not to use condoms, and be reluctant to carry condoms in case this is seen as evidence of their intention to commit an offence. Also services may occur in more isolated or "out of sight" places, with the obvious risks to safety.<br><br>Street based sex workers having reduced contact with service providers. A range of service providers, which historically have had contact with street based sex workers, have identified a drop in contact with long-term regular clients. They are aware that these people are still working but are no long coming into inner city services. This is demonstrated by workers not visiting services for several weeks only presenting when at crisis point. This is particularly the case when workers are known to police or have received several move on notices and are aware the next time they are sighted they may be charged so they avoid traditional street sex work areas for fear of being identified as workers. Unfortunately many inner city health services are within the mapped out area which street based sex workers are told not to re-enter when they are given a move on notice. As a result sex workers have told service providers they are unable to visit services which are based in this area. Therefore, *the Prostitution Act 2000* in fact creates a barrier to street based sex workers accessing health checks and medical support including drug rehabilitation agencies.<br><br>This demonstrates that the legislation has resulted in a change of work patterns amongst street based sex workers not a reduction in the number. Instead it appears that the number of street-based sex workers has increased. 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.<br><br>An alternative approach is provided by NSW 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 without police interference or being charged. This has further been supported by the creation of safe houses which have had a major impact in minimising the impact of street-based sex work on the community. It should be noted that NSW (which has largely decriminalised sex work, allowing sex workers choice of area of work) has a far smaller street-based sex industry than Victoria (which has a restrictive licensing system many sex workers have difficulty complying with).

In fact after 8 years of a restrictive licensing system and criminalised street based sex work in Victoria it was clear that the situation was at breaking point, with a large street-based sex industry which had a considerable impact on others in the community. This led to an investigation of the issues by the Attorney-General's Street Prostitution Advisory Group made up of residents, traders, street sex workers, welfare agencies and the City of Port Phillip, in addition to key stakeholder groups such as the State Government and Victoria Police. AGSPAG recommendations included:

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

The Victorian example demonstrates that the path Western Australia has embarked on since the introduction of the *Prostitution Act 2000* I has failed and the new proposals will only exacerbate the situation. By comparison New South Wales, which has largely decriminalised the sex industry and created 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.

Note: s186 means that anyone can be charged with this offence as intention is presumed.

***Recommendation: Establish safe working areas and safe houses in consultation with street based sex workers, service providers, and residents. Recommendation: Remove all offences pertaining to 'soliciting'.***

***Recommendation: Remove as an offence,***

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| 76. Providing place for prostitution | It is anticipated that the excessive restrictions on sex businesses under this Bill would result in a proliferation of unlicensed premises. Rather than placing heavy penalties on those who operate outside the licensing system (in this case imprisonment for three years) there should be incentives for people to operate lawfully.<br><br>A solution is to follow the example of South Sydney and provide 'safe houses' where in exchange for a fee a room can be rented for a short period. This has been found to greatly improve the safety of street-based sex workers and reduce the impact on residents. Street based sex workers accessing safe houses are easily reached by support services and have access to prophylactics and safe injecting equipment.[iii]<br><br>***Recommendation: Decriminalise the WA sex industry and establish safe houses where street based sex workers can take their clients.*** |
| 77. Causing, permitting, or seeking to induce child to act as prostitute | Scarlet Alliance and other sex worker organizations do not under any context condone or endorse child prostitution. We believe this is situational sex work whereby children, for a variety of complex reasons (such as homelessness, pressure etc.) will exchange sex in return for various things.<br><br>This section is largely redundant as this offence is already covered under the Child Welfare Act 1947, Part 7, s108 "Restrictions on employment of children for indecent purposes". Further, clauses within the Criminal Code may also apply.<br><br>Due to the seriousness of the matter if such a section is to remain in Bill then the seriousness of the matter should be reflected in the penalties attached to agents seeking children to act as prostitutes. Under no circumstances should a penalty be directed at a child but purely at the procurer and the penalties attached to it should be greater than those in the rest of the Bill (which are generally out of proportion to the 'crime' to which they are attached. Whilst in the first instance we recommend:<br><br>***Recommendation: Delete this section with reference to the relevant legislation and penalties or alternative greater penalties attached to the crime.*** |
| 78. Obtaining payment for prostitution by a child | This section includes receiving payment where a child has been a client of a sex worker. There should be no crime for a 'child' to be a client of sex worker, or for a sex worker to take payment from a child. Existing age-of-consent laws are adequate to address the issue of engaging in sexual relations with someone under the age-of-consent as a client. A sex worker who provides a service to a client who is a child faces a penalty of 14 years imprisonment which is unjustifiably excessive.<br><br>Scarlet Alliance believes the sex industry is an adult industry and thus workers in the sex industry should be 18 years and over. People who employ workers under the age of 18 should face sanctions. However, 14 years imprisonment is excessive. Further, there should be mitigating circumstances for age of consent (age 16) minors where it is proven that the minor entered into sex work of choice rather than inducement. |

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| | This section is redundant due to the Child Welfare Act 1947, Part 7, s108 "Restrictions on employment of children for indecent purposes".<br><br>***Recommendation: Delete this section and instead provide resources to support young people engaged in sex work.*** |
| 79. Agreement for prostitution by a child | For comments see 77 and 78<br><br>For the purposes of consistency, consideration should be given to lowering the age of adult to 16 in line with age of consent laws.<br><br>***Recommendation: Delete this section.*** |
| 80. Child not to seek services of prostitute | There should be no crime for a 'child' to be a client of sex worker. Under this section a child could face a penalty of $6000. This penalty is excessive and unreasonably punishes children who are often engaged in situational sex work due to homelessness or to escape violence at home. This offence includes 'loiters in or frequents a place for the purpose of, or with the intention of (i) inviting or requesting another person to act as a prostitute' and conceivably be levelled at young people simply for being in certain public places.<br><br>***Recommendation: That more resources be provided to address issues facing young people.***<br><br>***Recommendation: Delete clause 80.*** |
| 81. No prostitution where child present | Subsection (2) is very broad and open to interpretation as it includes - 'the place extends as far as (persons) can exercise control over who is allowed to be there'. This means that even if there was a separate space on a block or within a building, and a child was supervised by someone and had no contact with clients an offence may still have occurred.<br><br>This provision is particularly relevant for home-based workers. Concerns arise in relation to private workers operating from home and consideration should be given to mitigating factors such as the age of the child and whether the sex worker can demonstrate that proper and appropriate care was taken when a client was present.<br><br>***Recommendation: That further consideration be given to clause 81 taking into consideration factors such as adequate supervision, whether the child was present during work-hours, the age of the child.***<br><br>***Recommendation: That a defence be allowed within the legislation by the sex worker to allow for factors unforseen in the legislation with respect to clause 81.*** |
| 82. Allowing child to be at place where prostitution involved | As in subsection (2) "Place" is defined very broadly and therefore open to interpretation and discretionary powers to be applied. A 'place' would refer to an address (i.e. a whole house, for instance). A sole prostitute with children who works from home would commit an offence. Presently, the *Police Act* and the *Criminal Code* does not penalise prostitutes who work from home.<br><br>This provision discriminates against women who work from home and would |

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| | require that a home-based worker have two residents.<br><br>***Recommendation is the same as clause 81.*** |
| 83. Seeking to induce person to act as prostitute | The methods listed to 'induce someone to become a prostitute' are covered under other laws.<br><br>Scarlet believes the best way to ensure people enter the sex industry by choice is through an open and above board sex industry (achieved through decriminalisation), education about legal rights of people entering sex work, and programmes which address broader social or economic factors. Those person who do not enter by choice are effectively being kidnapped, rapped, held against their will, forced to provide sexual acts against their will and strong punishment (which currently exist under other legislation exists to address such issues.<br><br>In addition, anyone who advertises for a sex worker (sections relating to advertising are discussed later and are also opposed) could be considered guilty of inducing a person to act as a prostitute.<br><br>Examples of provisions in other Acts:<br><br>(a) Assault or threaten to assault: Criminal Code s313 Common assault (penalty 18 months jail or $6000), Criminal Code s317 Assault occasioning bodily harm (2 years or $8000 - summary; 5 years),<br><br>(b) Intimidate: Criminal Code s192(1) (2 years misdemeanour)<br><br>(c) Supply or offer to supply prohibited drug: Misuse of drugs Act s6(1)<br><br>(d) Make false representation: Criminal Code s192(2) 2 years (misdemeanour)<br><br>***Recommendation: Decriminalise the WA sex industry and apply other laws to address issues relating to inducement.***<br><br>***Recommendation: Provide resources for programmes which promote the legal rights of people engaged in sex work.***<br><br>***Recommendation: Delete as an offence*** |
| 84. Living on earnings of prohibited prostitute | Scarlet Alliance is opposed to this section and any offence for 'living off the earnings'.<br><br>Although the rationale for 'living off the earnings' provisions is the prevention of pimping in actuality pimping is not a characteristic of the WA sex industry. Such provisions place improper restrictions on how sex workers can spend their earnings.<br><br>This provision contributes to the criminalisation of unlicensed sex workers and their associates.<br><br>'Laws (statutory and common law) criminalising sex industry work in brothels, escort agencies and on the street should be repealed. Laws applying to those associated with the sex industry such as living off the earnings of prostitution, except for offences relating to violence or coercion and exploitation of minors, should be repealed.'[iv]<br><br>***Recommendations: Remove all offences pertaining to 'living off the earnings'.*** |

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| 85. Persons with certain health conditions not to use prostitutes | The following section is unclear as to whether it means that clients with health conditions are to not to engage the services of a sex worker or whether an employer of a sex worker who engages a client with a health issue is also in breach. It is recommended that clarification be given on this issue<br><br>However, assuming that the clause refers to clients with certain health conditions who knowingly engage the services of a sex worker, we oppose the clause for the following reasons:<br><br>▪ WA health currently has public health and criminal laws that cover unacceptable behaviour by all citizens in relation to public health. In relation to sexually transmissible infections (STIs) they include provisions on "knowingly transmitting an STI", notifying a sexual partner of an infection prior to sex, quarantining people and sanctions for recalcitrant behaviour;<br>▪ The emphasis should be on educating and empowering sex workers to check clients for symptoms of STIs, and to be able to refuse to provide a service. Examination of clients should be included in occupational health and safety training;<br>▪ That sex workers and their clients should not be dealt with differently than other members of the community;<br>▪ That the focus should be upon prophylactic use rather than specific offences directed at clients of sex workers (see comments in next section);<br>▪ It is impossible to enforce as sex workers are not in a position to provide extensive medical or other screening for clients. However, during the pre-service inspection if a sex worker determines a client has an STI it is practice to terminate the booking or adjust the service accordingly then make referral to a practitioner<br>▪ It is not clear whether this Bill seeks to encourage sex workers to report clients to the authorities, rather than educate them on sexual health issues.<br>▪ It is not clear what constitutes "reasonably expected to know". For example, will clients be expected to keep records of clinic attendances?<br>▪ The penalty is vastly disproportionate to the activity and not in line with penalties or practices outline in the Health Act (imprisonment for 2 years.<br><br>***Recommendation: Develop comprehensive occupational health and safety guidelines and training for the sex industry.***<br><br>***Recommendation: That occupational health and safety guidelines must be based on best practice and developed through reference to the document, A guide to best practice: Occupational Health and Safety in the Australian Sex Industry'.***[v]<br><br>***Recommendation: That clarification be given to this section so that proper comment can be made.***<br><br>***Recommendation: That no specific clause be made in relation to client health and appropriate public health or criminal laws apply where relevant.***<br><br>***Recommendation: That clients be encouraged through public sexual health campaigns, the provision of sexual health literature and through sex worker education to take responsibility for their own sexual health the proposal for a legislative requirement for the licensing or*** |

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| | ***registration of sex workers and sex worker businesses and other employees be abandoned.*** |
| 86. Prophylactic to be used | Whilst it is recommended that all sex workers and their clients use prophylactics, as is current industry practice it is unnecessary to make it an offence. It is current National policy to influence behaviour through education campaigns not through the use of criminal sanctions that have been demonstrated to be unworkable. Therefore, we oppose clause 86 for being unnecessary and unenforceable for the following reasons:<br><br>▪ If this bill is enacted those sex workers operating within a legal framework will have a "duty of care" to their clients. Failure by a sex worker to take all necessary health and safety precautions could result in prosecution under Occupational Health and Safety legislation.<br>▪ It is unenforceable (by police), as the only witnesses to this offence will be the people who participated in its commission;<br>▪ This clause is also rendered irrelevant by the broad nature of the definition of prostitution. Under the current definition contained in the bill is it expected that strippers, erotic masseuse, lap dancer, etc. who are considered to be "taking part in an act of prostitution", however by the nature of their work do not allow for the "transmission of bodily fluid" to wear prophylactics;<br>▪ Education, not law, has been the most effective way to ensure safe practices. Any law which inhibits the provision of education and the supply of safe sex products is counter-productive. Creating a criminal offence for this section could further marginalise the very small numbers of sex workers who may provide sexual services without the use of prophylactics.<br>▪ This section could unfairly target sex workers who are the more readily identifiable of the two participants.<br><br>Phoenix is engaged on a daily basis in promoting the skilled use of prophylactics, and strategies to negotiate the use of them with clients.<br><br>The WA 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<br><br>*Example from NSW/ACT: 'Condoms were used by 98 per cent of the 1990-91 sample in sexual contacts with their clients. The survey found 95 per cent of prostitutes used them on every occasion regardless of the type of sexual activity or the familiarity of the clients.*[vi]<br><br>These high levels of condom use, and those currently existing in the WA sex industry, occurred without penalties for non-use. Sex workers routinely use prophylactics to protect their own sexual health, and convince their often begrudging clients to do the same. Despite persistent demands by clients for sexual services without condoms sex workers negotiate safer practices.<br><br>***Recommendation: That clarification be given to this Clause 86 so that proper comment can be made.*** |

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| | ***Recommendation: That public health concerns regarding prophylactic use be met through removing criminal sanctions, so that sex workers can their clients can confidentially access health services and promote safe sex practices as an industry standard.*** |
| 87. Advertising prostitution | The current system of advertising sex work has been in place for several years. There is no evidence that this is objectionable to the general community[vii].<br><br>(1) Restricting advertising in the ways proposed will needlessly make the process of finding an appropriate service (from the client's perspective) time consuming and difficult. 'Both private operators and escort agency managers report that a single advertisement may result in 150 to 300 phone calls. Actual encounters resulting however may be only 5-20% of the number of phone calls'[viii]. The amount of phone calls will increase if advertisements do not contain information on sexual services or even sexual preference.<br><br>For sole operators unable to employ receptionists this could affect the viability of their business. This approach is likely to benefit larger more established premises and disadvantage smaller operators.<br><br>The ability to be clear about services to be provided is an important part of negotiation between a worker and client. The inability to state the kind of service to be provided, or even the sexual preference or other characteristics (such as transgender) could have a serious negative impact on the safety of sex workers.<br><br>(2) This will give newspapers a monopoly. Newspapers already exploit the sex industry by charging considerably more for personals adverts than general classifieds. Further, electronic versions of daily papers are readily available. If the proposed Board does not allow electronic advertising will this then eliminate the accessibility of print media viability electronically.<br><br>(4) (a) Restrictions on internet advertising seem unjustified. It could be assumed that internet advertising would be viewed by people who expressly wish to view it. Software can be installed to block children's access to sexually explicit material. Electronic advertising is in many ways more exclusive than print media in that the user has control over the access and who has control through programs such as 'net nanny' and blocking calls to 1900 numbers. It is also less visible and therefore desirable for the government politically. Electronic advertising is a growing medium for all business advertising and government or its agencies can not expect to be able to control who and what is advertised o accessed as a recent Federal Case determined (ow Jones –v-Gutnick, HC of Australia, 19/12/2002)<br><br>(4) (b) Potential to prevent advertising through tourism or hotel publications, which could result in a loss of revenue for the WA community from inter-state and overseas visitors.<br><br>Under these provisions legal businesses would be unable to advertise their products or services, and be unable to advertise for staff. This is a discriminatory limitation on legitimate businesses.<br><br>We believe that there should be truth in advertising and given that sex is sold to sell everything from cars to shampoo it is ironic that the one service it actually does sell is not allows to advertise.<br><br>***Recommendation: That this section be amended to ensure that there is truth in advertising and that newspapers be prevented from charging*** |

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| | ***higher prices to place advertisements***. |
| 88. Promoting employment in prostitution industry | With respect to advertising for staff:<br><br>This prevents current sex workers from finding out about employment opportunities in the industry, and allowing them to work for businesses that provide the best most appropriate work conditions. It makes it difficult to recruit staff for other positions roles in the industry (e.g. driver, reception) where specific skills and attitudes are important. Being unable to openly advertise employment in the sex industry confines recruitment to word of mouth promotion. As one of the stated aims of this legislation is to reduce the involvement of crime networks it is more appropriate to be truthful and aboveground thus allowing people outside such networks to obtain employment.<br><br>Such a clause limits freedom of speech whereby sex workers cannot publish their own accounts of sex work, and speak out about their lives (including any positive aspects of sex work). This perpetuates societal stereotypes of sex workers as victims who are only demeaned and exploited in the course of their work. Many sex workers give contrary accounts of sex work, which could be censored under this section. For example:<br><br>'*Many community and government organisations assume that we only enter the industry due to the pressure of pimps or drugs. They don't realise that we are independent people making our own choices ... Many women are empowered by the work and for the first time gain economic independence'.* [ix]<br><br>*'Contrary to the stereotyped image of a sex worker as a victim, many WA sex workers directly attribute to their work an improved sense of self esteem and body image, health awareness, financial security and a valuable insight into human nature and the diversity in our community.'* [x]<br><br>This section undermines efforts to inform the community of the realities of sex work and sex workers' lives, to change public opinion in order to reduce discriminatory treatment of sex workers and ex-sex workers. Combined with s15 the Board would become the only authority to educate the community in relation to sex industry issues. This is despite the very limited knowledge about such issues, reflected in the membership of the Board.<br><br>This section limits service providers from undertaking effective health promotion campaigns. A target group is far more responsive to educational programmes and information resources which recognise them as normal members of society who have made valid choices about lifestyle and employment. Such campaigns targeting young people with same sex attractions were suppressed under 'promotion of homosexuality' laws, and the effect in this area is similar.<br><br>This provision also prevents services such as Phoenix and SWOPWA from encouraging street based sex workers to work in other areas of the sex industry which involve less risk to their health and safety and attract less community concern.<br><br>***Recommendation: That this section be deleted*** |

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| 90. Involvement in the business of self-employed sole prostitute | Scarlet alliance opposes this section as it unfairly penalises sole operators who employ people for their own safety.<br><br>This section duplicates other sections preventing employment by sole operators, and is extremely broad, potentially including cleaners or accountants. Of most concern is the fact that sole operators would not have the potential to employ receptionists, drivers, to ensure their safety.<br><br>***Recommendations: Delete this section and remove limitations on the activities of private workers, including anything contrary to Occupational Health and Safety.*** |
| 91. Interest in business of self-employed sole prostitute | This section is merely another manifestation of 'living off the earnings" section. See our earlier comments in the document for a fuller discussion. Although 121 (7) exempt partners and dependents other people could be found to derive a benefit. For example, this may include the providers of essential services such as landlords, electricity supply and telecommunications. This is discriminatory and denies sole operators the right to spend their earnings how they wish.<br><br>***Recommendations: Remove all offences pertaining to 'living off the earnings'.*** |
| 92. Possessing another person's licence document or extract of licence | What constitutes lawful excuse is not defined, and absence of lawful excuse is presumed under s181. This means that someone holding a licence, or wallet or bag containing a licence, such as a brothel manager or friend could be prosecuted under this section.<br><br>There would cease to be a need for an offence in this area if a licensing system for the WA sex industry was abandoned.<br><br>***Recommendation: Delete clause 92.*** |
| 93. Interfering with licence document or extract of licence | What constitutes lawful excuse is not defined. The penalty is excessive:<br><br>There would cease to be a need for an offence in this area if a licensing system for the WA sex industry was abandoned.<br><br>***Recommendation: Delete clause 93.*** |
| 94. Falsely implying certain things | Given that under the proposed bill most people working in the sex industry would be unlicensed this section is merely another charge directed at unlicensed persons and is therefore of great concern, particularly in relation to the penalties. Theoretically police could entrap a sex worker by posing as a client, asking the sex worker 'Do you have a licence?', 'Are you clean?' and if the sex worker 'falsely implied' the affirmative they could receive imprisonment for one year (s94), plus the penalties for offences under other sections.<br><br>This section removes control from sex workers in negotiations and places greater bargaining power in the hands of the client.<br><br>There would cease to be a need for an offence in this area if a licensing system for the WA sex industry was abandoned.<br><br>***Recommendation. Delete section 94.*** |

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| 95. Inspection of records | Scarlet Alliance opposes this section and the relevant s138 (Allegations)<br><br>This is an invasive provision which does not apply to the same extent in other industries. It is surprising that the Board seeks to have the power to inspect financial records of a sex work business. No other industry board or industry governing board has the power to inspect its member's finances. There are some measures in place with regard to investigation of financial records such as those imposed by State Law Societies for the purposes of inspecting trust accounts, but this is to ensure that monies held by legal professionals on behalf of their clients are not misused. Generally access to financial records is seen as a Taxation Office requirement and is enforceable under current state and commonwealth taxation law. Further, this power would be considered by the sex industry as the Board taking a dictatorial threatening approach to the industry. For any proposed 'Board' to exist effectively it must have a non-confrontational approach. Appearing to threaten by coercion to obtain information establishes a relationship that is likely to be confrontational with businesses failing to comply.<br><br>***Recommendation: Delete section 95.*** |
| 96. Information to be given to police and authorised persons | The section is redundant. It is already an offence to withhold or give this information falsely to police. The *Police Act s50* requires a person to give their name and address to a police officer when required. The penalty under the Police Act is $300 or 6 months. There is no need for a sex industry specific offence. There is no justification for the harsher penalty of 1 year imprisonment.<br><br>***Recommendation: Delete section 96.*** |
| 97. Hindering performanc e of functions | This section is redundant as it is already contained in other Acts.<br><br>The scope of this power is very wide. What constitutes 'hindering' or 'delay' is not clearly defined and is therefore very subjective and open to abuse. This power also extends to authorised persons.<br><br>In the Police Act hindering a police officer is not considered a very serious offence, across the board the maximum penalty is six months imprisonment. The Bill will give the police a wide range of powers that they do not have and should not have, and is already satisfactorily dealt with by the Police Act. There is no justification for a sex industry specific offence. There is no justification for the harsher penalty of 1 year imprisonment.<br><br>***Recommendation: Delete section 97.*** |
| 98. Other offences relating to the performance of functions | Scarlet Alliance opposes this section and s138 (Allegations) and the creation of a licensing system for the WA sex industry.<br><br>The information referred to in this section may apply to 'allegations' (s138) which seems to encourage people to pass on unsubstantiated information or rumours to the Board. If this information turns out to be incorrect the person would be liable for 2 year imprisonment, an extremely excessive penalty. There would cease to be a need for an offence related to providing incorrect information in a licence application if a licensing system for the WA sex industry was abandoned.<br><br>***Recommendation: Delete section 98.*** |

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| 99. Contravening certain orders by the Board | Scarlet Alliance opposes this section and s138, s141 and s142.<br><br>Orders made under Part 6 would appear to refer to medical examinations, injunctions and interim orders. We are opposed to these provisions, all of which contravene human rights and federal laws on privacy and the confidentiality of medical records. The penalty of 1 year imprisonment is excessive and not in line with health practice and the National HIV/Strategy. . It should be noted that interim orders might apply to lawful activities under the Act, for which someone could be liable for imprisonment.<br><br>***Recommendation: Delete section 99.*** |
| 100. Contraven-ing direction by police to move on | Scarlet Alliance opposes this section and the power of police to direct people to move on.<br><br>Move on notices are issued by police on a highly discretionary basis. They do not require evidence that an offence has occurred or is likely to occur. Move on notices are unappealable. Currently police do not escort someone issued a notice out of the area they are prohibited to frequent, and this area has frequently included the affected person's residence.<br><br>As previously stated the Scarlet Alliance Working Party views the penalties proposed in this legislation to be grossly disproportionate to those that apply in other jurisdictions. Theoretically someone could be walking down the street, committing no offence, be issued by the police with a move on notice, then be found to have contravened it (for example by leaving their house in the 24 hour period), and as a result be fined $6000. The 1st offence of this amount is not in line with similar penalties pursuant to the Crimes Act, e.g. loitering in a public place, public nuisance of public menace. Some existing examples are set out in the table below. |

| Criminal Code offence | **Penalty** | **PCB 2002** | **Penalty** |
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| *Indecent dealing with a child* | *10 years* | *Causing child to act as a prostitute* | *14 years* |
| *Aggravated indecent assault* | *7 years or 3 years, $12,000.* | *Seeking to induce to act as prostitute* | *10 years or summary 3 years* |
| *Deprivation of liberty* | *10 years* | *Causing a child to act as a prostitute* | *14 years* |
| *Statement or acts creating false apprehension* | *10 years or 3 years, $12,000* | *Seeking client or prostitute in public place* | *10 years or summary 3 years* |

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| | Move on notices contravene 'the right to freedom of movement', Article 13 of the UN Declaration of Human Rights. These do not apply to other 'public nuisance' issues, in fact police have used the move on notice provision within the Prostitution Act 2000 to remove 'undesirable elements' which reflects discriminatory attitudes in the community (young people, indigenous people, homeless people etc). This raises serious concerns about who in the community has access to public space.<br>Further information relevant to this section is included in s75, s193, and sections relating to restraining orders.<br>***Recommendation: That adequate legislation exists to deal with persons making a public nuisance and there is no necessity to replicate this in sex industry legislation.*** |
| 101. Failure to comply with certain requirements | Scarlet Alliance is opposed to this section and the relevant s148, s158, and s164.<br>These are intrusive provisions which are discriminatorily applied to people associated with the sex industry.<br>Although subsection (4) does not oblige someone to incriminate themselves, the right to silence has the potential to be undermined by this section and related ones. This especially the case considering refusal or failure to 'answer a question or otherwise give information' is punishable with 2 years imprisonment.<br>***Recommendation: Delete section 101*** |
| 102. Misbehaviour | Under the Justices Act 1902 s.41; the penalty for insulting or interrupting judges is liability for imprisonment for a term not exceeding 12 months or to a fine not exceeding $5,000 or to both, or in default of the fine imposed to imprisonment (a) until the fine is paid (b) for a term not exceeding 12 months. However, misbehaviour is not similar to contempt of court as a 'formal inquiry' is not a court of law.<br>The Board is not a judicial body, but more in the nature of a tribunal. Under the *Police Act 1982 (WA)* 33G(d); any one who wilfully disrupts the proceedings of the Board (Police Appeal Board) or in the course of proceedings behaves offensively to the chairman or a member - is guilty of an offence. Penalty $100.<br>Under the PCB s.102 Misbehaviour: wilfully misbehaving during formal inquiry; or wilfully insult board or board member; or wilfully interrupt proceedings of formal inquiry - penalty $12,000.<br>The PCB does not define 'wilful' or 'misbehaviour', or what constitutes insulting or interruption. It also does not seem to confine insulting to formal Board meetings - will newspaper articles criticising board members (or letters to the editor) be considered insulting? Therefore it is entirely at the Board's discretion what this would constitute misbehaviour, and there is a standard $12,000 unappealable fine for each and every offence. This is disproportionate to any offence, and is considerably higher the $100 applicable for misbehaviour before the Police Appeal Board under the Police Act.<br>***Recommendation: Greater consideration be given to the broad powers*** |

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| | ***of the Board and clause 102 be deleted.*** |
| 103. Execution of warrant to be assisted | Scarlet Alliance is opposed to this section because it is inconsistent with the application of the law to the rest of the community and is unjustifiable.<br><br>Brothel operators, managers, sex workers and others should not be obliged to assist police or authorised persons in the execution of their warrants. This principal is consistent with the rest of the community. The only WA legislation with a similar provision is the *Osteopaths Act* 1997 s84. The penalty for not providing assistance under that Act in the case of an individual is $2500; in any other case $5000. By comparison the penalty for not assisting under the Prostitution Control Bill 2002 is 1year imprisonment.<br><br>***Recommendation: Delete this section.*** |
| **Division 2 — Prostitutes generally** | |
| 105. Ban from acting as a prostitute | Scarlet Alliance is opposed to this section and the Board's power to exclude access to employment in the sex industry arbitrarily. We oppose this section because it is too broadly defined as it allows the Board to revoke the rights of any sex workers from working and therefore denying her of a living. There is no other occupation in which a Board is given such infinite power to revoke the rights of a person to earn a living in their chosen or skilled occupation. Further, there is no mention of any appeal mechanism. It is also likely to be unworkable as it will force sex workers to work illegally or underground without access to health services (which is the most likely reason for which an order would be made).<br><br>(1) (b) and (c) pertaining to Misuse of Drugs Act and Schedule 2 offences. We do not support these restrictions on who can act as a sex worker.<br><br>(2) The Board's capacity to ban 'for any reason it sees fit' is absolutely unsupportable. This means there are effectively no parameters to comply with and no need for evidence about a person. Combined with s205 – 208 a ban is completely unappealable.<br><br>This action by the Board could have a major impact on sex workers, their income, welfare, and that of their dependents. Combined with allegations (s138) someone could be banned on the basis of lies or rumours emanating from people in competition or dispute. This section is open to abuse (e.g. worker taking industrial action against a manager resulting in a manager acting to have the worker banned etc).<br><br>The parameters for what allows someone to be licensed, or what would result in them becoming unlicensed, need to be clear and fair. By comparison, the loss of a driver's licence occurs through loss of demerit points or serious offence, and this process is clear. As another example, doctors and lawyers are banned from operating as such on the basis of 'professional misconduct' and this is defined.<br><br>(3) Penalty for working while banned: 2 years imprisonment. If someone does not have alternative sources of income they may continue to work in the sex industry although banned. This is an extremely punitive approach.<br><br>(4) Natural justice should apply through an appeal process. There should also be an opportunity for someone to change behaviour or circumstances leading to the ban, prior to a ban taking effect. |

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| | ***Recommendation: That guidelines be provided to any Board for what offences would result in a notice to ban from acting as a sex worker, that any guidelines set out education and prevention as the primary method to address issues arising, and that an appeal mechanism be established.*** |
| 106. Prostitute not to act at place unlawfully provided | Scarlet Alliance anticipates low levels of compliance as demonstrated in Queensland and Victoria.<br><br>Further, this section places a sex worker in the position of having to determine whether their employer is operating lawfully. It is inappropriate to place this penalty on individual sex workers. This penalty could be combined with others relating to working without a licence, and could result in serious disadvantage and imprisonment. See also 76.<br><br>There would cease to be a need for an offence in this area if a licensing system for the WA sex industry was abandoned.<br><br>***Recommendation: Delete clause 106*** |
| 107. Acting as a prostitute for a child | Age of consent laws should apply and there should be no sex industry specific offence. See s78 and s80.<br><br>***Recommendation: Delete clause 107*** |
| 108. Persons with certain health conditions not to act as prostitutes | Scarlet Alliance is opposed to this section on the basis that it is counter-productive for the reduction of transmission of STIs.<br><br>Scarlet Alliance is fundamentally opposed for this clause for a range of reasons. Primarily we do not believe that criminal sanctions can be used to ensure public health. Sex workers should not be prevented from working in the sex industry if they have an STI. Prohibition is premised on the basis that intercourse is part of every service when sex workers offer many services which do not expose themselves or clients to STI exposure[17].<br><br>Health concerns in relation to the sex industry should be contained in enforceable occupational health and safety codes or guidelines that include the compulsory use of prophylactics, policies on condom breakage, visual inspection of clients etc. The sex industry has developed its own guidelines on Occupational Health and Safety which should be used as best practice in this area[18].<br><br>In addressing the perceived risk of the spread of STIs some legislatures have responded by forcing sex workers to be "compulsorily" tested for STI's. There are numerous inherent flaws in adopting this approach such as corruption, offers for |

[17] Banach L. (2000) Principles for Model Sex Industry Legislation. Sydney. Scarlet Alliance and AFAO (Metzenrath S. ed). P.24.

[18] Scarlet Alliance. (1999) Best Practice of Occupational Health and Safety in the Australian Sex Industry. Sydney. Australian Federation of AIDS Organisations.; South Sydney City Council. (1996) Brothels Policy. Sydney: South Sydney City Council; Prostitution Licensing Authority. (2001) Interim Code of Practice for Licensed Brothels. Brisbane.

greater payment, creation of a false sense of security in clients and workers, test results are unreliable as the window period for each infection varies[19].

Again the definition of 'a prostitute' is so broad under this legislation that it includes those who provide sexual services which present *no risk* of STI infection, such as stripping and erotic massage. Further, sex workers who are denied a license on these grounds will be forced to work in the illegal industry where access by health educators is limited.

There are many people in the community who suffer from incurable conditions such as HIV, Hep C and genital herpes (HSV-2). Sex workers with these conditions should be able to work as the emphasis should be upon the use of prophylactics. Further, many notifiable diseases, used as the basis for exemption under legislation, include hepatitis C which is not a sexually transmissible disease.

The focus of legislators should be on creating 'enabling environments' which encourage safe sex practices rather than penalising those people who are unfortunate to contract STIs.

In actuality, the regulatory system proposed by this Bill is likely to increase levels of STIs within the sex industry through removing access to services aimed at prevention of transmission and treatment of infection. Professor Basil Donovan, an eminent sexual health physician and academic, has studied the effect of legislation on the sexual health of the sex industry in a number of countries. His research has shown that where regulation exists (either licensing of individual workers or sex industry premises) the majority of sex workers operate outside regulation. He refers to these sex workers as Clandestinas and studies have shown they have made up the following proportions of the sex industry:
Vienna in 1990: 75%
Singapore in 1995: 66%
Sweden in 1917: 90%
Melbourne in 1999: 60%
Uruguay in 1997: 94%
Sydney in 2001: by definition no sex workers operate outside regulation, as no regulation applies.

Professor Donovan's research then goes on to examine the gonorrheae prevalence among registered sex workers and 'Clandestinas' and the general population.

| City | Gonorrhoea prevalence: Registered | Clandestinas | Overall population |
|---|---|---|---|
| Vienna | 0.3% | 6.9% | 5% |
| Singapore | 2.5% | 5.8% | 4% |
| Melbourne | 0.1% | 11.0% | ?5% |
| Sydney | 0.1% | NA | 0.1% |

These statistics demonstrate the failure to ensure a healthy sex industry through regulation, and in fact shows a serious negative impact on the sexual health of the broader community.

Where someone is STI positive the primary concern is that they access appropriate treatment, education and empowerment to avoid further transmission. Fear of criminal penalty could significantly inhibit this. This section could result in sex workers with STIs going 'underground' and avoiding contact with health

[19] Metzenrath S. "To Test or not to Test". Social Alternatives. Vol. 18(3) 25-31.

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| | services.<br><br>This provision ignores the diversity of sexual services provided within the sex industry which carry low or no risk of transmission. Revoking a sex worker's licence on the basis of a positive diagnosis denies them access to income from providing such services (e.g. massage and hand relief, bondage and discipline), and criminalises them if they do continue to work. Public health concerns regarding knowingly transmitting notifiable diseases (e.g. HIV) are already adequately handled under the Health Act.<br><br>***Recommendation: Scarlet Alliance supports the recommendations of the Intergovernmental Committee on AIDS Legal Working Party: 'There should be no special offences for sex workers, brothel operators or owners of premises used for prostitution where a sex worker is HIV-infected'.[xi] The Bill does not define which STIs will be notifiable, and the IGCA approach should apply to all STIs.***<br><br>***Recommendation: Sex workers with an STI should not be prevented from working in the sex industry. Instead a broader based public health focus on STI, prophylactic use as industry standard, and peer-based approaches be adopted.*** |
| 109. Medical examination not to be used to imply absence of certain health conditions | Scarlet Alliance supports sex workers not being obligated to produce medical certificates to clients or managers to prove they are 'clean'.<br><br>Whilst it is supported that medical examinations or certificates not be used to imply the absence of particular health conditions as they are unreliable to determine a persons health status and irrelevant when the emphasis is upon prophylactic use. We believe that medical examination should not be a requirement of work.<br>Requiring sex workers to show medical certificates is discriminatory as it focuses on the health status of the sex worker, and not on the health status of the other participating person, the client. STI screening cannot guarantee the absence of many STIs due to the window period prior to them being detectable, and loses relevance as soon as any there is further risk of transmission.<br><br>However, there should not be a penalty ($3000) for showing medical certificates, which tend to be proof of attendance rather than 'certificates of cure' which imply absence of disease. In many cases this would be in response to a request from a client: 'you're a clean girl who goes to the doctor aren't you, you haven't got AIDS?'[xii].<br><br>***Recommendation: Support for the clause that sex workers not be obliged to provide certificates to employers.*** |
| **Division 3 — Licensed persons generally** | |
| 110. Production of extract of licence | **Scarlet Alliance strongly opposes this section.**<br><br>This provision creates opportunities for corruption by police and authorised persons. It would also be costly and time and resource intensive to police. This section suggests a 'prostitute's identity card' which breaches human rights.[xiii]<br><br>A requirement to show the extract to a client tips the balance of power |

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| | between a client and a sex worker in favour of the client. If a sex worker is unlicensed or cannot produce their licence the client may use this as a negotiating tool (e.g. unsafe practices, services not usually provided etc) by threatening to report the sex worker. An unlicensed sex worker would also be unlikely to report a crime such as assault or theft. Being forced to carry around an extract of licence places sex workers at risk of being identified (e.g. friends, family, other employers etc).<br><br>This is unjustifiable in terms of 'consumer protection'. If the risk this provision aims to protect clients from is transmission of STIs it seems to stand in opposition to s109, s122(c), and 124(2)(b) which seek to disabuse clients of the assumption that a sex worker is 'clean'. It needs to be recognised that clients have a responsibility to protect their own health. Their needs to be a 'greater focus on men's responsibility in the fight against HIV and STDs.'[xiv] In actuality clients pose a greater a risk of STI transmission to sex workers than vice versa. Sex workers experience 'daily battles with their clients over the wearing of condoms'[xv].<br><br>Given the provisions proposing regulations regarding STI screenings for sex workers, and the liability of sex workers and managers for a STI positive sex worker engaging in sex work (s189 – essentially resulting in mandatory testing), clients may view an extract of licence as a 'clean bill of health' leading to forceful insistence on not using prophylactics.<br><br>See also s41.<br><br>***Recommendation: That Clause 110 be deleted*** |
| 111. Return of licence document and extract of licence | Scarlet Alliance is opposed to the excessive penalty for this offence. There would cease to be a need for an offence in this area if a licensing system for the WA sex industry was abandoned. |
| 112. Providing licence document or extract of licence to another | Scarlet Alliance is opposed to the excessive penalty for this offence. There would cease to be a need for an offence in this area if a licensing system for the WA sex industry was abandoned.<br><br>***Recommendation: That clause 111 de deleted*** |
| 113. Records to be kept | Scarlet Alliance is opposed to this section for the following reasons.<br><br>(1) It is not defined what constitutes records. It could be assumed that sex workers would need to keep tax records or council documents for other purposes.<br><br>(3) The retention period is too long.<br><br>(5) Will the Board destroy the records after the retention period?<br><br>***Recommendation: That greater consideration be given to the issue of record keeping and placed within the section on the Board's functions.*** |
| 114. Notice of | Scarlet Alliance is opposed to this section because: |

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| charge or conviction of indictable offence | It is not clear why the Board requires this information. We does not support the limitations on the granting of licences to individual sex workers on the basis of criminal record. Phoenix is opposed to s39 which restricts the granting of licences to people charged with indictable offences or with criminal records relating to Misuse of Drugs or the Schedule 2 offences.<br><br>The penalty for failure to notify within 7 days is $12,000, which is excessive.<br><br>There would cease to be a need for an offence in this area if a licensing system for the WA sex industry was abandoned.<br><br>***Recommendation: That this section be deleted.*** |
| 115. Board to be notified of certain other matters | A definition is required for what constitutes certain matters and places too much power with the Board.<br><br>***Recommendation: Delete clause 115*** |
| 116. Breach of condition or restriction | Phoenix is opposed to this section, the proposed licensing system, the provisions related to licensing, and the imposition of heavy penalties for breaching conditions or restrictions.<br><br>This sets high penalties (up to $60,000) for breaching restrictions which could vary in seriousness. There would cease to be a need for an offence in this area if a licensing system for the WA sex industry was abandoned.<br><br>'Criminal sanctions create a cycle of poverty. Workers fined for illegal prostitution often have no alternative but to return to prostitution to pay the fine. Workers who fail to pay fines for illegal prostitution are often imprisoned. Women released from prison have little alternative to resuming work on the street to meet their needs, at least initially'.[xvi]<br><br>***Recommendation: Delete clause 116*** |
| **Division 4 — Licensed prostitutes** | |
| 117. Acting as prostitute other than at brothel or through prostitution agency business | Scarlet Alliance is opposed to this section.<br><br>As stated previously we support the decriminalisation of the WA sex industry, including street based sex work.<br><br>***Recommendation: Sex workers should have flexibility in their employment comparable with other industries. They should be able to work as both brothel/escort workers and sole operators.*** |
| 118. Employment contract required in certain cases | Scarlet Alliance supports sex workers having access to improved working conditions and industrial rights. However, there should be the same choice of employment relationships in the sex industry as in other industries.<br><br>Not providing sex workers with employment contracts has been viewed as a way for operators to avoid their responsibilities. However there are many obligations which an operator would have to meet when |

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| | contracting sub-contractors, or providing premises for self-employed persons. The fact that these laws/guidelines have not been enforced is a reflection of the murky legal status of the sex industry.<br><br>Sex worker organizations are in daily contact with workers in the sex industry. They express a desire for flexibility and control over their working conditions. There is some concern among sex workers that employment contracts could result in operators requiring the provision of certain sexual services or a level of work (length and number of shifts) contrary to sex workers' wishes.<br><br>Sub-contracting or self-employment provides many sex workers with flexibility and the chance to move between premises quickly. Many sex workers work in the sex industry on an occasional basis or enter the industry the address pressing financial needs. An employment contract may not recognise a sex workers desire to work in the industry in a low level, short term, or occasional basis.<br><br>This section in effect binds a sex worker to one particular place of employment. By entering into a contract of employment with any one operator the sex worker is seemingly denied the right to exercise freedom of choice in their employment place. Normal principles of Industrial Relations and Employment Law in other industries do not require this. Generally a person may seek to be employed by more than one employer at any one time providing that they fulfill the relevant taxation, superannuation and Industrial Relations requirements with regard to deductions from respective salary's, wages or earnings. Seeking to enforce requirements of Clause 118 can only deter industry employees and employers from any obligation towards an employee by determining that persons working for an operator are in fact sub-contractors for the purposes of taxation remedies. Clause 121 further limits a sex worker's range of employment.<br><br>There is the same penalty for a sex worker and an operator. Any penalty for this offence should rest with the operator.<br><br>***Recommendation: Any penalties for contract violations should reside with the sex industry business operator not individual sex workers.*** |
| 119. Notification of notifiable sexually transmissible infection | Scarlet Alliance is strongly opposed to this section.<br><br>The Board should not be notified of people's STI status (see also section 108)<br><br>Information regarding health status is extremely sensitive and every effort should be made to protect confidentiality. There are concerns over the privacy of this information. The current situation with notifiable STIs involves notification by a clinician to the Health Department, with no identifiable information about the person. A notification to the Board would presumably result in this information being added to someone's records, along with their name and address. It is discriminatory to treat sex workers differently from others in the community in regards their health status and the way this information is recorded. The following |

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| | comments are also made in support of our objections:<br>• Notifiable diseases should not be used as the basis for exemption from work or as a reason for notifying the Board as many scheduled diseases are not sexually related;<br>• The presence of infection should not exempt someone from working in the sex industry as a range of sexual activities can and are engaged in which do not pose a specific risk. Any Board has no right to expect notification of an STI that has not, or will not, impact on the health of clients;<br>• The focus for sex work should be on compulsory prophylactic use;<br>• A person who is charged with not notifying the Board of an STI, and fined $6000, is likely to have no other option but to continue to work in the sex industry where access to health services is limited;<br>• It is not clear what services the Board will provide rather than fining options such as education;<br>• Occupational Health and Safety legislation or guidelines are sufficient to enforce and guide safe sex practices in the sex industry;<br>• Peer based outreach workers are best placed to advise infected sex workers on alternative services they can provide whilst undergoing treatment, thus preventing the fear of loss of income that may drive some sex workers to continue working while infected.<br><br>**Recommendation:** ***That notifiable diseases act not be used as a schedule for preventing sex workers from working in the legal sex industry.*** |
| 120. Self-employed sole prostitute acting as a prostitute | Scarlet Alliance is opposed to this section and the limitations placed on private workers by this Bill.<br><br>This clause means that a self-employed sole prostitute (private worker/sole operator) is unable to provide escort services (e.g. visit a client at a hotel etc), and is unable to work in a brothel or escort agency. No explanation is provided for why such a provision is made by limiting flexibility in work arrangements.<br><br>Private workers tend to operate very discreetly and have very little impact on the broader community. It is inappropriate to limit this option and increase the monopoly of larger premises. Sections such as these could increase the numbers of street based sex workers.<br><br>***Recommendation: Delete Clause 120.*** |
| 121. Independence of self-employed sole prostitute | Scarlet Alliance is opposed to this section and the limitations placed on private workers by this Bill and seeks an explanation for why self-employed sole sex workers are unable to even share premises at different times with another worker.<br><br>Subsection (1) prevents sex workers working alongside one or two other sex workers. Such a situation would allow greater financial viability of private work, which in turn would increase the ability to rent premises separate from their homes to work from. There are very good security |

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| | reasons why a sex worker may not want clients to know where they live.<br><br>Subsection (2) prevents sex workers from employing people to provide reception or security services. Subsection (3), like section 120, prevents sole operators from providing escort services.<br><br>The implications of these restrictions on sole operators are greater risks to personal safety (stalking, assault, theft etc); and pressure to work in a brothel environment, with related exposure to exploitation by brothel management, reduced control over work environment and the nature of services provided.<br><br>This condition means a legal worker, a taxpayer, is not allowed to employ another person to ensure the safety of their working environment. Surely this is discrimination when in other workplaces workers or business operators are not prevented from taking legal measures to ensure their safety. It also clearly undermines occupational health and safety guidelines which apply in other areas and should apply to the sex industry. This situation could easily be rectified by allowing two sex workers to work together for their own safety and allowing for those legal workers to employ someone to safe guard their working environment. 'Sex workers consider it unfair and discriminatory that in order to maximise their occupational health and safety they are required to break the law.' [xvii]<br><br>In 1999 Queensland reviewed aspects of their sex industry legislation and it was noted: 'Many commentators have argued that, because the key concern at the time of the 1992 amendments was to ensure the prevention of any participation by organised crime in the provision of prostitution services in Queensland, the issues of ensuring the health and safety of the workers were not given as high a priority as they should have.5 It is argued that this is evidenced, for example, in the prohibition on solo workers being able to employ another person or merely have the assistance of another person to help them in the operation of their business. This leaves workers vulnerable to violence and threatens their personal security. Anecdotal evidence suggests there has been an increase in the incidence of violence against sex workers in Queensland since the introduction of these laws.' [xviii]<br><br>***Recommendation: That clause 121 be deleted*** |
| **Division 5 — Licensed brothel operator, prostitution agent, or prostitution manager** | |
| 122. Licensed brothel operator or prostitution agent strictly liable for certain matters | Scarlet Alliance opposes the steps to seek licensed brothel operators to encourage sex workers to seek regular medical examinations as it appears as another means of enforcing mandatory testing. Research demonstrates that sex workers seek medical testing frequently and it is an invasion of privacy to compel sex workers to provide evidence to brothel operators. It is likely that unless sex workers provide evidence of health status that they will not be employed in legal brothels (as has occurred in NSW) and therefore, is another means of mandatory testing.<br><br>Peer based approaches to providing health services and information to |

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| | sex workers are the most successful means of providing knowledge which can be converted into safe sex practices.<br><br>(2)(a) constitutes 'micro-regulation' of the sex industry. Sex businesses often involve a day and night shift. This would necessitate employment of a number of managers to cover all hours of operation, and could mean that the business could not operate simply because the manager is sick or on holiday. Section 36 precludes people with a prostitute's licence acting as a manager, which limits the capacity of other staff within an agency covering for a manager. This provision will disadvantage smaller operators who may not have the revenue to employ multiple managers. In essence this subsection suggests that receptionists would take on the role of managers. If this is so the level of responsibility and the liability for penalties is inappropriate.<br><br>(3)(a) conflicts with community opinion that sex businesses should be inconspicuous. This also conflicts with sex workers and client's desire for anonymity.<br><br>(d) Phoenix provides education to sex workers in many areas and is committed to improving sex workers' access to this. However, sex workers should not be compelled or coerced to attend educational courses. Voluntary attendance is a more effective way of educating any person.<br><br>***Recommendation: That sex workers be encouraged through sex worker organizations to seek health information and referral to appropriate agencies.*** |
| 123. Records | Scarlet Alliance opposes this section due to the ambiguity around privacy, storage and the additional requirements for undertaking courses. Further, no other business is required to keep such detailed records. Requiring an operator to keep such records, only serve to encourage illegality in business operation. Clients would be likely to provide false information for fear of repercussions. Other concerns relate to:<br><br>(1)(a)(i) Security of information;<br><br>(1)(a)(ii) What justification exists for records of this information? This would not apply in other industries.<br><br>(1)(b) Sex workers should not be compelled to attend education courses. Voluntary attendance is a more effective way of educating any person.<br><br>(3) Reporting to the Board should be consistent with compliance with licensing requirements in other industries.<br><br>***Recommendation: Amendments are required in this section***. |
| 124. Certain duties of prostitution manager | Scarlet Alliance is strongly opposed to (2)(e). The Board should not be notified of, or keep records about, a person's health status. See s119 and s108.<br><br>Scarlet Alliance opposes the duties of a manager where it appears that the aim is to enforce mandatory testing of sex workers. Further it is |

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| | opposed for the following reasons:<br><br>• It compels managers to take responsibility over a sex workers health status when they have little control over the outcome (see **s.122**);<br>• May create a situation of fear when a sex worker is suspected of working whilst infected;<br>• Represents an invasion of privacy and an environment of suspicion when the focus should be on creating an environment where safe sex and sexual health practices are used as an educative and instructive manner.<br><br>***Recommendation: That clause 124 and its sub-sections be deleted.*** |
| 125. Obligation to ensure prostitute has employment contract | See section 118. |
| 126. Acting as prostitution manager under influence of certain substances | Although Scarlet Alliance does not condone managers working under the influence of substances there is no need for this section. The *Misuse of Drugs Act* is adequate to deal with the use of illicit drugs. There is no reason why it should be a special offence for a prostitution manager to work under the influence of alcohol, as compared to any other person in the community. Management of a sex business does not tend to involve the use of machinery etc.<br><br>***Recommendation: Delete clause 126*** |
| 127. Offering or supplying prohibited drug to prostitute | There should be no sex industry specific offences in this area. The Misuse of Drugs Act is adequate to deal with the supply of prohibited drugs.<br><br>***Recommendation: Delete clause 127*** |
| 128. Prophylactics to be provided for use | Scarlet Alliance supports this provision.<br><br>Sex business operators should provide personal protective equipment free of charge to sex workers, in a wide range appropriate to the range of services provided and the worker's needs.<br><br>***Recommendation: Support is provided for this clause although believes it would be better achieved under a decriminalised framework.*** |
| 129. Use of prophylactics not to be discouraged | Scarlet Alliance supports this provision.<br><br>This provision could also be achieved through decriminalisation of the sex industry, and the application of Occupational Health and Safety standards.<br><br>***Recommendation: The use of prophylactics not be discouraged in the sex industry but supported through peer based*** |

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| | ***information and education campaigns and programs.*** |
| 130. Strict liability for failure to use prophylactics | Scarlet Alliance opposes this section.<br>There should be no crime related to failure to use prophylactics in a commercial sex transaction.<br>See discussion at section 86<br>***Recommendation: That clause 130 be deleted.*** |
| 131. Person with sexually transmissible infection not to be allowed to act as prostitute | Scarlet Alliance is opposed to this section on the basis that it is counter-productive for the reduction of transmission of STIs.<br>As discussed previous through the discussion in Part Five Scarlet Alliance is fundamentally opposed to mandatory testing, exclusion of sex workers from working with an STI and public health focus that is cohesive rather than peer-based and educative. Therefore, our recommendation and related recommendations relating to working in the sex industry with an STI remain as stands in opposition to Clause 131.<br>We are also concerned this clause may impinge on sex workers' privacy and confidentiality regarding medical records. s131 and s108 could both result in a reduction of sexual health screening.<br>As addressed under s108 Scarlet Alliance supports the recommendations of the Intergovernmental Committee on AIDS Legal Working Party: 'There should be no special offences for sex workers, brothel operators or owners of premises used for prostitution where a sex worker is HIV-infected'.[xix] The Bill does not define which STIs will be notifiable, and the IGCA approach should apply to all STIs.<br>See full discussion at section 108 |
| 132. Board to be notified of certain other matters | Scarlet Alliance opposes this section because it again represents 'micro-regulation' of the WA sex industry.<br>The level of detail of information required to be notified to the Board is intrusive and the $12,000 penalty is excessive.<br>Phoenix is strongly opposed to (2)(e). The Board should not be notified of, or keep records about, a person's health status. See also section119 and s108.<br>***Recommendation: Delete clause 132*** |
| 133. No business to be given to self-employed sole prostitute | Scarlet Alliance is unable to determine why a referral within the sex industry should be an offence attracting a 2 year jail sentence. If a client requests a niche service which certain private workers provide, but is not provided by the brothel or escort agency, what is the harm of referring the client to the private workers? Referral does not constitute an involvement in a business.<br>***Recommendation: Delete clause 132*** |

| Division 6 —Licensed prostitution drivers | |
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| 134. Limits on what prostitution driver may do | It may be presumed that section (1) is aimed at preventing 'pimping' or other involvement of men in the sex industry. It should be noted that pimps are not a characteristic of the WA sex industry.<br>(2)(a) and (b) prevents a driver entering a sex worker or clients' residence. This precludes friends or partners of sex workers or clients acting as driver. Preventing a driver from entering a premises unless 'it is reasonably believed that the prostitute is in danger' may mean that violence is not prevented by the presence of the driver.<br>***Recommendation: Delete clause 134*** |
| 135. No weapon to be carried | This offence is covered under other laws and there is no need for a sex industry specific offence.<br>***Recommendation: Delete clause 134*** |

**References for table section appear under the references section.**

# Part 6 – SUPERVISORY PROVISIONS

## Division 1 – Boards supervisory functions

### Clause 136. Board to keep records about certain people

Scarlet Alliance opposes clause 136 in that the records kept by the Prostitution Control Board are onerous and would particularly further marginalize a sex worker. Further, we believe that if any licensing was to occur that licenses should only be held on businesses or sex industry employers not individual sex workers. Subsections 2 and 3 potentially leave some records open to abuse by misleading or incorrect information being deliberately recorded to discriminate against any person or persons.

**RECOMMENDATION 17**

*That a Board's supervisory function be limited to holding records relating to current licenses of sex worker operators.*

***RECOMMENDATION 18***

*That records of current or previous sex workers not be held.*

### Clause 137. Board may monitor compliance

This clause is overly dictatorial and authoritative. Imposing such a clause would serve to drive sex work underground for fear that persons could be wrongfully accused of an alleged offence. It also contains no mechanisms for redress in the event of a false or misleading allegation.

**RECOMMENDATION 19**

*That clause 137 be deleted.*

### Clause 138. Medical Examination

As previously stated this clause is opposed on grounds that sex workers maintain high levels of health and that by testing sex workers for sexually transmitted infections it merely,

> *Stigmatises sex workers as diseased and irresponsible.*
> *Isolates sex workers, rather than the clients or the general community as responsible for STI transmissions. Tests do not provide proof of sexual health due to window periods for various infections, Further tests are not always 100% accurate and Encourages clients to request services without prophylactics as they assume sex workers are clean (Principles for Model Sex Industry Legislation)".*

**RECOMMENDATION 20**

*That clause 138 be deleted.*

**Clause 139 & 140. Allegations and Minister may refer matters to the Board**

These clauses are opposed in that the Bill proposes duplication of existing powers exercised by other authorities. The functions set out for the Board are attempting to replicate a judicial court.

**RECOMMENDATION 21**

*That clauses 139 and 140 be deleted.*

**Clauses 141-143. Legal proceedings, injunctions and interim orders**

These clauses are opposed due to the fact that no other industry board has this power. Further, by granting such powers to the Board it will be setting a precedent by which other stigmatised industries can be treated, treats sex workers by different legal standards and may be perceived that the sex worker is a criminal and already has a criminal record.

**RECOMMENDATION 22**

*That clauses 141-143 be deleted.*

***RECOMMENDATION 23***

*That such discretionary legal matters be left within the boundaries of Summary Offences and Procedures legislation.*

**Clause 145 & 146. Investigations and authorised persons other than investigators**

Scarlet Alliance opposes Clause 145 for the ambiguity of the provisions and seeks clarification on this as it does not clearly state what matters can be investigated. Clause 146 is opposed because the powers given to authorise a person as an investigator are too broad.

**RECOMMENDATION 24**

That clause 145 specifically set out the power of investigators.

**RECOMMENDATION 25**

That an authorized person be prescribed as such by regulations pursuant to the Bill and not include persons who fall under the definition of an authorized person within the meaning of the Government Management Act and Regulations.

**Division 2 – Some powers of authorised persons**

**Clause 147-148. Powers**

Scarlet Alliance opposes clause 147 on the basis that it gives too wide a power to authorised persons that are then open to abuse within the meanings of Clauses 148 and the earlier clause 146. These powers as set out in clauses 147-148 also appear to remove the right of a person preferring not to answer a question on the grounds of incrimination or other legal concerns the right to seek independent legal or other representation at the time of questioning or investigation.

**RECOMMENDATION 26**

*That provided an authorized person is a person that is prescribed as an authorized person as per recommendation above, that a fair and equitable process be used in order to conduct such an investigation.*

**RECOMMENDATION 27**

*That the person being investigated has access to all forms of administrative law and natural justice principles.*

**RECOMMENDATION 28**

*That documentation that is requested during an investigation be only that information, that would be normally be accessible pursuant to freedom of information laws within the State.*

**Clauses 149. Entry of place of business without warrant**

Clause 149 is opposed because of concern as to the implied power this section has and related entrapment issues. Specific clarification is sought from the Minister as to reasons for the inclusion of such a provision in a lawful workplace.

**RECOMMENDATION 29**

*That clause 149 be deleted.*

**Clause 150 & 151. Warrant to enter premises, issue of warrant**

Scarlet Alliance is opposed to this clause as it again provides the Board with too much power which should reside with the judiciary. No other authority of this nature has the power to issue warrants and it is of concern that the government appears to be introducing such powers to Boards rather than power reside with law enforcement agencies to enter following obtaining an issue for a warrant.

It is imperative that the judiciary maintain the function of issuing warrants, as decisions must lawfully be made on the basis of proof of misconduct rather than allegation. A warrant to enter premises should only be applied for when proof of misconduct is evident and be of a specific nature such as the retrieval of specific information or objects. Any warrant issued by the judiciary or applied for by law enforcement agencies must only be executed according to current legal procedures. Further, given the sensitivities and discrimination faced by sex work businesses consideration should be given to the issue of warrants not being made public knowledge where the particulars may serve to cause a detrimental effect on the person(s) named in the warrant.

**RECOMMENDATION 30**

*That clauses 150 and 151 be deleted and issues related to warrants be subject to judicial processes.*

**Clause 152. Warrant obtained remotely**

This clause is opposed as it is open to abuse by any person requiring entrance to a premise where the suspicion is not supported by any written information or physical object. In the case of an urgent need for a warrant careful considerations should be given to the indentity of the person named to afford due care in respect of the potential for being 'outed' to people personally close to the sex worker such as family, partners and children.

**RECOMMENDATION 31**

*That clause 152 be deleted.*

**Clause 153. Execution of warrant**

Scarlet Alliance opposes clause 153 due to the broad and overarching nature relating to the power of execution and because power currently resides with the Board not the judiciary. With respect to the execution of warrants the following consideration must be given if this clause is enacted:

- That the person executing the warrant must produce the warrant for inspection at all times to all persons named in the particulars of the warrant;
- That execution of the warrant is only valid when at least one of the normal occupants is present at the address set out for service on the warrant;
- That the warrant specify a period for validity and be clearly recorded on the warrant otherwise sex industry businesses could be served with warrants at anytime.

**RECOMMENDATION 32**

*That clause 153 be deleted and subject to judicial processes*

**Division 3 – Formal inquiry**

**Clauses 154-156. Formal inquiry, hearings not to be public, representation of persons involved.**

These clauses are opposed because they give too broad a power with respect to reasons to pursue a formal inquiry, the failure to provide for protection of the identify a persons subject to inquiry and powers given to the Board to deny legal representation to those named in the inquiry. If such clauses were enacted then formal consideration needs to be given to the following:

- Define when a formal inquiry can be held
- That terms of reference be developed to define the scope of the enquiry;
- That due to the sensitivities related to the sex industry and to protect parties not subject to an inquiry but effected by it, such as family, partners, children that all inquiries are held *in camera* and identities of person withheld;
- That all documentation be confidential;
- That only legal representation and persons directly involved or called as witnesses be allowed to be present at any inquiry.

Instead the following recommendation is made in place:

**RECOMMENDATION 33**

*That if an inquiry is made the Board make a formal recommendation to the relevant Minister for an inquiry incorporating all the issues for consideration listed above.*

**Clause 157. Procedure**

Scarlet Alliance is opposed to clause 157 because of the potential for unfair procedural bias against person subject to an inquiry. If such procedures were adopted then consideration must be given to the follow issues.

- That clear procedural guidelines be made prior to each inquiry.
- That the inquiry be conducted within the boundaries of existing court/legal procedure.
- That all the rules and principles of law be applied in any inquiry including representation;
- That the power to decline to continue a formal inquiry be only when the terms of reference fail to demonstrate the need for a formal inquiry at law;
- That the board may only use telephone or video conferencing tools when the identity of a person involved in the proceedings needs to be protected for any reason whatsoever.

**RECOMMENDATION 34**

*That clause 157 be opposed unless issues relating to unfair procedural bias against person subject to an inquiry be addressed with the establishment of clear guidelines, within the boundaries of existing court and legal procedures and that rules and principles of law be applied with respect to representation.*

**Clause 158. Powers on formal inquiry**

This recommendation is acceptable only if the previous recommendations in Part 6 are enacted, particularly with respect to the powers available to the Board and the confirmation of judicial processes. These processes must include the following:

- That the notice be in the form of a subpoena or other document that is normal procedure requiring a person to attend to give evidence;
- That a subpoena to produce any other evidence or proof of anything that is being investigated in an inquiry be signed by as Justice of the Western Australian Courts Authority;
- That any documentation or thing obtained in the course of an inquiry be return to the person providing the documentation or thing on completion or within 21 days of completion of the inquiry;
- That all copies made of documentation be destroyed as per normal court procedure or returned to the legal representative involved in the inquiry.

**RECOMMENDATION 35**

*That clause 158 be opposed unless issues relating to unfair powers of formal inquiry as outlined in the submission are met.*

# Part 7 - PLANNING CONTROLS

**Clauses159-162. Meaning of "planning scheme", Existing planning schemes, Prostitution control under planning schemes, public release day for certain planning concessions.**

These clauses are dealt with together as Scarlet Alliance opposes them as dangerous and unnecessary (together with the accompanying Schedule (3)) as the intention is to restrict all brothels throughout WA to industrial zones.

Industrial zones are not suitable for service-based businesses. Industrial zones are, by nature isolated, often on the periphery of the major population areas. They are generally physically distant from population centers, with only one feeder road into the industrial area, which creates a security and privacy risk for both sex workers and clients driving to or from such an area, particularly at night.

There is a lack of passive observation in industrial areas generally, as the types of businesses carried out there tend to be less densely populated, for example commercial areas. The types of co-located businesses that sex workers and their clients may need to safely conduct the business are not found in industrial estates- there are no chemist shops for purchasing condoms, lubricants, contraceptive devices or personal health products, nor are there business offering food, particularly at night.

The types of accommodation available to lease or purchase in such areas are rarely suitable for service-based, domestic scale activities such as the sex industry.
Further, the restriction of brothels to industrial zones reinforces an incorrect perception that prostitution work is dangerous and should be treated in the same manner as, say, chemical production.

Scarlet Alliance believes that location of brothels should be determined according to the general local council guidelines for other service industries in either commercial/industrial or multi-purpose zones in order to decrease the risk to sex workers operating in isolated areas where they are at risk of violence and robbery. Our recommendations in relation to this section are found at the end of our comments in Schedule 3 where we believe issues relating to planning controls should be located.

**RECOMMENDATION 36**

*That the use of land which is zoned and deemed suitable for service businesses, such as commercial, business, or mixed use zones be included in the Schedule 3, 1. (2)*

# Part 8 – PROVISIONS FOR POLICE
## General Comments on Part 8

Scarlet Alliance believes that the Police should not be provided with additional powers specifically relating to the sex industry, particularly where these powers relate to control, seizure, detention and are generally prohibitive in nature and exclusive to one industry. Instead, we believe that law enforcement agencies should treat the sex industry as any other business. Current police powers are adequate to address issues arising in the sex industry (as discussed previously).

We also believe that the expansion of police powers is a means to allow police greater powers in respect of other industries and is merely a 'back-door' method of obtaining such powers and hence represents an invasion of civil liberties which is likely to be objectionable to both the judiciary and other parties.

With specific reference to the sex industry we believe the Police primary function should be to protect sex workers from violence and respond to calls for assistance. This is unlikely to occur under a criminalized/legalised framework when sex workers are reluctant to access the services of the police for fear of prosecution. The Western Australia policy of 'containment' and the police role in this policy has resulted in an extremely low rate of crimes perpetrated against sex workers being reported. By providing police with greater punitive powers it is unlikely that this situation will change. Evidence exists to demonstrate that the few cases that have been reported include concerning elements of police corruption – similar to those found in Queensland[19]. Therefore an environment exists which promotes police corruption through bribery and coercion. We believe that current police powers contained within the *Prostitution Act 2000* and now proposed to be included in the *Prostitution Control Bill 2002* have created an environment where sex workers may be coerced into providing sexual services in exchange for not being charged.

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.

**RECOMMENDATION 37**

*That there be no expansion in police powers.*

### Clause 164. Powers to obtain information

As stated above and in the detailed comments in Section 6 relating to the Boards functions we oppose this clause due to the wide-ranging powers to obtain information, because they are unjustified, unnecessary, and will act against the interests of sex workers rights to natural justice.

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

**RECOMMENDATION 38**

*That clause 164 be deleted and reference made to existing judicial processes covering all industries.*

**Clause 165. Police may direct person to move on**

Opposition is given to this clause being specifically included within sex industry laws as adequate criminal laws already exist to deal with issues relating to disorderly, criminal and behaviour. The additional comments are provided for consideration:

- Laws based on police suspicion, as is the case here, are open to different interpretations and discretionary use and it is not appropriate for police to have these powers as they may be used to harass sex workers and their clients;
- More on laws can be used to prevent anyone (whether a sex worker or not) from being out at night. This is particularly so for women, young people, indigenous and homeless persons[20];
- Current move on provision contained in *The Prostitution Act 2000* have failed. They have not reduced the number of street based sex workers but instead have resulted in WA street-based sex workers dispersing into different and more isolated areas where they are at more risk of violence;
- We believe move-on notices are currently being used incorrectly and are aware of reports of WA persons being issued with move-on notices even though they were not working as a sex worker at the time. Sex workers have reported that they feel unsafe going out in their free time or staying out of the inner city areas of Perth for fear of being charged incorrectly with a prostitution related offence;
- There is no mechanism to appeal the notice;
- According to current policing of this legislation several move-on notices may be enough to show cause for a person to be issued a restraining order preventing them from accessing the inner city area. Evidence is not required that the person was operating as a sex worker at the time;
- Sex workers who reside within the exclusion zone are further disadvantaged and are forced to leave their homes and the area for the 24-hour period.
- Move on notice contravene the United Nations Universal Declaration of Human Rights (1948) by preventing freedom of movement.

**RECOMMENDATION 39**

*That clause 165 relating to move on notices be deleted from both this Bill and the Prostitution Act 2002.*

[20] Chief Justice's taskforce on Gender Bias 30 June 1994, The Hon Mr Justice D.K. Malcolm AC Chief Justice of Wester Australia.

**Clause 166. Detention, search, and seizure without warrant**

We oppose this clause and believe that existing judicial process should be applied in relation to detention, search and seizure. Further, that warrants should be obtained in these instances. The following additional points are made in reference to this clause:

- Existing laws should be applied to the sex industry as it should not be treated differently to any other businesses;
- Extra powers are excessive and represent a way of expanding police powers unnecessarily;
- These extra powers are based on a stereotype regarding sex workers and substance use and will allow for greater surveillance than the general population. Current research does not reflect a need for this extra attention[21].
- A similar clause contained within the *Prostitution Act 2000* has resulted in a corruption of statistics. Many people have been searched under the suspicion of sex work often with little reason but charges resulting from this interaction are from other legislation and therefore do not correctly effect the impact of this legislation on sex workers.

**RECOMMENDATION 40**

*That clause 166 relating to detention, search and seizure without warrant be deleted from both this Bill and the Prostitution Act 2002.*

**Clause 167**. **Entry of, and seizure at, place of business without warrant**

Similar to the other clauses relating to an expansion of police powers without reference to existing judicial processes we oppose this clause. Additional points to support our position for deletion of this clause from the Bill is provided as follows:

- In order to avoid misuse of power there are certain requirements which must be met before police can obtain a warrant in order to ensure the protection of a citizens right to privacy. These measures must not be lost in the effort to prevent other crime. In this case, the loss to the broader community by the possible misuse of this clause (likely when it is based on suspicion not evidence) far outweighs the perceived (but not proven) benefit;
- Under no circumstance should the use of force be sanctioned, particularly where there is no evidence to prove a crime has been committed.

**RECOMMENDATION 41**

*That clause 167 relating to entry of, and seizure at, place of business without warrant*

[21] Australian Bureau of Statistics. (1992) 1989-1990 National Health Survey Health Risk Factors. Queensland. Canberra: Commonwealth of Australia; Boyle et al. (1997) The Sex Industry: A survey of sex workers in Queensland, Australia. Aldershot: Ashgate.

*be deleted.*

**Clause 168. Search and seizure with warrant**

We oppose this clause because current legislation exists with respect of search and seizure with warrant. There appears no reason why such duplication should be included in the current Bill or any reason why the sex industry would require specific or different powers of search and seizure with respect to the issue of a warrant.

**RECOMMENDATION 42**

*That clause 168 relating to search and seizure with warrant be deleted.*

**Clause 170. Provisions about searching a person**

Scarlet alliance opposes this clause because current legislation exists with respect to provisions for searching a person. There appears no reason why such duplication should be included in the current Bill or any reason why the sex industry would require specific or different powers in relation to provisions for searching a person. This is particularly concerning regarding the issue of cavity searches as there is no evidence to suggest that such a provision is warranted, particularly if the provision is to detect drugs as this is already contained within the *Misuse of Drugs Act*. Further, we believe it is unfair and inappropriate for one sector of the community to be targeted for drug related crime, particularly when research demonstrates that sex workers in some instances use less drugs than the general community.

**RECOMMENDATION 43**

*That clause 170 relating search and seizure be deleted as they are already contained in existing legislation.*

**Clause 172. Forfeiture and delivery on conviction**

Scarlet Alliance opposes this clause as existing legislation already exists within other legislation upon proof of commission of a crime. These same procedures should be used for the sex industry and not specified in sex industry legislation. Further, it is unacceptable that money be seized from street based sex workers as is currently occurring and the wording of this clause allows for this situation to continue. Forfeiture clauses are not an incentive to stop someone working in the sex industry but rather serve to continue the activity.

**RECOMMENDATION 44**

*That clause 172 relating to forfeiture be deleted.*

**Clause 176. Undercover officers**

Scarlet Alliance opposes this clause because it sets the conditions for the emergence of police corruption and the opportunity for police to extort services in exchange for not reporting an offence. These claims are sustained by The Chief Justice's Taskforce on gender bias[xx] which acknowledges that allegations of corruption within the police force are widespread amongst the sex industry and entrapment only results in a greater encouragement of such practices[22]. Further, this legislation does not prevent a police officer from participating in a sexual service in order to gain a conviction.

We believe clauses relating to undercover offices will negatively impact upon the working practices of sex workers and as resulted in WA during containment, force persons unable to gain a license to promote their service in a false manner in order to avoid detection resulting in these persons being open to coercion.

**RECOMMENDATION 45**

*That clause 176 relating to undercover offices be deleted.*

**RECOMMENDATION 46**

*That if clause 176 is to remain that provision be made to prevent police officers from participating in a sexual service in order to gain a conviction.*

**Clause 177. Police may retain records for certain purposes**

Scarlet Alliance opposes this clause because it allows police to record a licensed sex workers name on record even when that person has not committed a crime. Further, this clause is inconsistent with previous elements of the Bill that suggest a secure data base be held and controlled by an external board

**RECOMMENDATION 47**

*That clause 177 relating to police maintaining records be removed.*

[22] Chief Justice's taskforce on Gender Bias 30 June 1994, The Hon Mr Justice D.K. Malcolm AC Chief Justice of Wester Australia.

# Part 9 – MISCELLANEOUS PROVISIONS

## Division 1 – Evidence

### Clauses 179-186 & 188-189 – refers to reversal of the onus of proof

These clauses in relation to evidence for advertisements, presumptions about prostitute's licenses, absence of lawful excuse to be presumed, good faith to be presumed in certain cases, accused presumed to know if person is a child, person residing with child prostitute presumed to receive payment, accused prostitution manager presumed to have allowed presence of child, intention presumed in some cases, permission to use presumed in some cases, and presumption of knowledge of sexually transmissible infection are all dealt with together and opposed as they reverse the onus of proof. The following additional comments are made with respect to our opposition to the reversal of the onus of proof within this Bill or any other piece of legislation as it fundamentally undermines the principles of law. Further, some specific clauses are referred to under their sub-heading.

It is with great concern that we object to the above sections as reversing the onus of proof and subsequent provisions in the *Prostitution Control Bill 2002* are unwarranted and overrides well established civil liberties and judicial principles of law. The current onus of proof 'innocent until proven guilty' is a protection defending basic individual rights against the power of the State. This is demonstrated by the lower standard of proof required for the accused if the onus of proof has been reversed.

This fundamental right should not be directed at any citizen and has no place in legislation targeting one section of the community – sex workers and others working in the sex industry. Instead it is imperative, given the opportunities for exploitation and police corruption that in an illegal sex industry that this right be secured, particularly where sections of the Bill refer to a person suspected of committing or having the intention to commit an offence. In reality, such provision mean that at no point is there any requirement for the Western Australian Police Force to prove an offence was committed and the responsibility remains with the accused to prove they did not have the intention to commit an offence. For example, in Section 75 (Seeking client in or in view or within hearing of public place) and Section 165 (Police may direct person to move on) a police officer who has reason to suspect that a person has committed, or intends to commit an offence may together with the onus of proof reversal clauses under 186 (intention presumed in some cases) effectively charge persons who have not committed a crime as intention in presumed and can not be proved otherwise.

**RECOMMENDATION 48**

*That clauses 179, 180, 181, 182, 183, 184, 185, 186, 188, 189 relating to reversal of the onus of proof be removed.*

### Clause 179. Advertisements to do with the advertisement of prostitution

Scarlet alliance objects to this clause because existing legislative controls over advertising already exist and specifically for the following reasons:

- This clause is ill defined as it may be interpreted in a variety of ways. This will result in workers in the sex industry being unaware of how to remain operating within the law;
- As there is no objective standard for the term 'promoted prostitution' this clause be interpreted to include health promotion activities which our member groups provide through Health Department funding to sex workers;
- The use of ambiguous wording like 'promotion' and 'publicised' creates a barrier to clear communication and negotiations between a sex worker business operator and potential clients; AND
- The ability to clearly define a service should be available to all service providers in order to avoid misrepresentation and possible conflict.

**RECOMMENDATION 49**

*That clause179 relating to advertisement of prostitution be removed.*

### Clause 187. Possession of prophylactics not evidence of offence

Scarlet Alliance agrees that prophylactics should not be used as evidence of an offence as it undermines safe sex practices within the sex industry. However, we believe this clause should be made stronger to protect sex workers from cases where although possession is not used directly as evidence their possession has been used to illustrate reason for suspicion. [23] There have been situations when officers from Operation Bounty were asked why they suspected a person was seeking a client and the officer replied 'she has got a bag full of condoms'.

**RECOMMENDATION 50**

*Support for clause 187 relating to the possession of prophylactics not being used as evidence.*

### Clause 189. Presumption of knowledge of sexually transmissible infection

Scarlet Alliance fundamentally opposes this clause. A thorough discussion of the issues relating to sexually transmissible infections has already been made through the submission and we ask that you make reference to it in consideration of the issues raised here. The major points we raise in support of our objection to the presumption of knowledge of a sexually transmissible infection are as follows:

- This clause requires that both sex workers and their employers in order to protect themselves from prosecution introduce mandatory health screening/testing.

[23] Phoenix outreach workers complained about an officer from Operation Bounty who when asked why they suspected a person was seeking a client he replied 'she has got a bag full of condoms'.

Mandatory testing is unsupported at a State, territory and National level as it has proven unsuccessful in Australia and overseas countries[24] and instead creates a barrier to people accessing health care and treatment;

- By including 'regular testing' as proof of innocence, (where what constitutes 'regular' is decided by the Board) further enforces mandatory testing in a manner which is not properly defined;
- The clause makes owners and managers accountable for situations they have no control over and encourages them to enforce the testing (and disclosure of medical records) of sex workers in their employ; and
- The removal of the presumption of innocence is a gross civil rights violation, and particularly where the onus of proof is reversed is dangerous for sex workers and their clients when sex workers and their employees are in no position of knowing whether they or their clients currently have an STI.

**RECOMMENDATION 51**

*That clause189 relating to the presumption of knowledge of sexually transmissible infections and all clauses relating to or encouraging mandatory testing be deleted. .*

## Division 2 – Restraining orders

**Clauses192 – 203 - refers to restraining orders, provisions regarding children, appeals, family orders.**

These clauses in relation to the above are opposed and discussed together with the exception of sections 200 and 201, which are discussed separately. Much of the discussion is relevant to the issues raised in Part 8 of the Bill - Clause 165 relating to police direction to move persons on and we refer you to that section for further evidence to support the points made below.

The specific points we raise in the section are as follows:

- Street based sex workers or those persons suspected of being street based sex workers do not provide a serious threat of violence to the community. Therefore there is no justification for these persons to be prevented access to any area of the city;
- Restraining orders which are used for reasons other than to protect the safety of an individual will in fact marginalise and remove 'the right to freedom of movement and residence', (Article 13 of the UN Universal Declaration of Human Rights) from the community;
- A concern exists when a restraining order can be served on a person likely to re-offend;
- The accumulation of several move-on notices may be used to demonstrate repeated offences even though it is not necessary to prove an offence has been committed (s.186). Further, when guilt is presumed in some cases (s75, s100, s165, s186) it is likely that a person who is not guilty may be served a restraining order;

[24] [1] Refer to meeting organised by Phoenix between Professor Basil Donovan and Police Ministers office).

- This Bill does not seek to affect change on the social issues which effect street based sex workers but only prescribe penalties which will further marginalise street sex workers;
- These clauses (and penalties attached throughout the Bill for breaches) Bill will result in an increase in imprisonment, and excessive fines perpetuate a cycle whereby street based sex workers have little choice but to return to work and risk further criminalization and imprisonment; and
- There is currently adequate legislation to address issues that may arise amongst community members such as nuisance and criminal laws and therefore, no requirement to specifically outline restraining orders in the Bill.

**Clause 200. Provisions about children**

Scarlet Alliance objects to restraining a child over the age of 10 as extreme, unwarranted and cruel. The Bill seeks to penalise children whilst failing to address the complex socio-economic issues surrounding youth who participate in situational sex work.

**Clause 201. Breach of restraining order**

Scarlet Alliance is opposed to this clause due to the excessive nature of the fine related to breaching a restraining order. It is not possible for a street based sex worker to recover $6000 for fine payment except to continue to break the law. In order to prevent detection it is likely this will occur in a more covert and hence risky environment. The eventual outcome from such penalties will be imprisonment at great expense to the community.

It is also likely that this clause could be directed against other street groups (such as indigenous, young people and homeless) as there is no responsibility on the police to prove that a crime has taken place. A person can be given a restraining order having received several move on notices which were served due to suspicion.

**RECOMMENDATION 52**

*That clauses192-203 relating to restraining orders be deleted.*

## Division 3 – Other miscellaneous provision

**Clause 205. Exclusion of rules of natural justice**

Scarlet Alliance has strong objections to this clause and makes the following points. It is also suggested that section 208 in reference to decision of the Board not subject to judicial supervision are read together with these comments. We have also made a range of comments throughout the document which support our objection to powers being removed from the judiciary and specific sex industry legislation applying powers that remove access to legal remedies.

- Sex workers must have the right to natural justice which is one of the principles of administrative law similar to all other members of our community;
- Given the types of discrimination that sex workers have faced it is essential that sex industry legislation seek to maximise rules of natural justice rather than remove them[25]; and
- Governments and statutory authorities should be subject to natural justice in order to protect them against accusation and actual instances of misuse of power and corruption. Without these safeguards and without any appeal mechanism there is nothing to protect the interests of the individual against miscarriage of justice.

**RECOMMENDATION 53**

*That clause 205 relating to rules of natural justice be deleted.*

### Clause 206. Nature of Board's discretion

Scarlet Alliance objects to the discretionary powers provided to the Board as detailed in length in the submission under Part 6 of the Bill. The board must be held accountable for its actions and be responsible to an external body who should periodically review not only the boards effectiveness but its necessity and the impact, both positive and negative, of this legislation on the sex industry and in particular sex workers.

**RECOMMENDATION 54**

*That clause 206 relating to the nature of the Board's discretion be deleted.*

### Clause 207. Reasons for Board's decisions

The board must be required to give proof that it has behaved in a respectful and fair manner and information as to why it has made a certain decision and how that decision was made should be given to individual applicants or licensed persons. It should not have the power to release any information pertaining to the identity or any identifying characteristics of any individual sex worker unless that person requires that information to be released.

**RECOMMENDATION 55**

*That clause 207 relating to the reasons for Board's decision be deleted.*

[25] 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.;

**Clause 208. Decisions of Board not subject to judicial supervision**

This clause is opposed for the following reasons:

- The exclusion of procedural fairness in other areas of law usually exists only after an individual has been convicted in a court of law. [26] In this case it would remove this right from members of the public applying for license and persons licensed to work as sex workers;
- A lack of transparency or judicial review is cause for concern, and allows for potential corruption and miscarriages of justice. The WA government should seek at all times to amend legislation which creates the possibility for citizens to be unfairly treated. This is particularly relevant during the Royal Commission into police corruption in WA.

**RECOMMENDATION 56**

*That clause 208 relating to the board not being subject to judicial supervision be deleted.*

**Clause 209. Protection of certain persons**

Scarlet Alliance is opposed to this section on the following basis.

- There is a need to maintain consistency across legislation and this clause conflicts with Police Act s.137 (5) which states "The crown in liable for a tort that resort from …". [27]
- Sex workers must be entitled to the same rights as other persons and must not have their rights removed by legislation.

**RECOMMENDATION 57**

*That clause 209 relating to protection of certain persons be deleted.*

**Clause 210. Protection in supervisory matters**

Scarlet Alliance has serious concerns regarding 'authorized persons' and in what situations that person may be allowed contact with individual sex workers. There is a strong possibility this will simply shift the possibility of corrupt activities from the police department and onto public servants or 'authorised persons'. The protection afforded to this person must not prevent them from being held responsible for their actions.

[26] Acts where procedural fairness is excluded are: Bail Act 1982 s 50h; Prisons Act 1981 s15a, 15u; Prisoners (Release for Deportation) Act 1989 s.7 etc.
[27] Police Act 1892 s.137 (5)

**RECOMMENDATION 58**

*That clause 210 relating to protection in supervisory matters be deleted.*

**Clause 211. Publication of Board's findings, decisions and reasons**

Scarlet Alliance objects to this clause for the following reasons:

- At no time should any information about an individual sex worker licensed or otherwise be reproduced or printed in any publication; and
- No finding, reason, or decision of the Board which relates to an individual sex worker or provides any identify information about that person should be passed on to any person, even if in the opinion of the Board, they should be made aware of the finding, reason or decision.

**RECOMMENDATION 59**

*That clause 211 relating to publication of Board's findings be amended to protect the identity and personal information of sex workers.*
*.*

**Clause 213. Confidentiality**

Whilst this clause is supported in principal Scarlet Alliance opposes it in its current form as we believe that there must exist no possibility that could lead to the identification of any person to whom it relates as this may result in discrimination and even violence against a sex worker. Recommendation: Change wording, replace 'reasonably be expected to' with 'in any circumstance'.

**RECOMMENDATION 60**

*That clause 213(3) relating to confidentiality be amended to replace the words "reasonably be expected to" with the words "in any circumstance".*
*.*

**Clause 218. Regulations**

Any regulations pertaining to the sex industry must be made in consultation with a broad representation of the sex industry. Otherwise these regulations will be ill informed and impact negatively on working practices within the industry. It is inappropriate for the board to make regulations without consultation with key stakeholders and the Western

Australian sex worker projects. For example, the board is not qualified to make regulations or orders in relation to health-based matters in the sex industry.

We strongly reiterate our objection to the Government offering this Bill for public comment when large segments of the legislation, such as the regulations, have not been documented.

**RECOMMENDATION 61**

*That clause 218 relating to regulations include sex worker representation. Further, any health 'regulations' must be designed with input from sex workers, sex workers organizations, sex industry businesses, medical practitioners, health officials and WorkSafe.*

### Clause 221. Review of Act

In principal Scarlet Alliance supports the review of the Act with the following caveats. All reviews must be comprehensive and conducted by independent body after the first twelve months of operation. Its terms of reference should be broader and include the following matters that we believe will result from the passage of such a Bill:

- It must address the psycho-social impact of legislation on sex workers as the key stakeholders;
- Assess the impact upon the sex industry with respect to occupational health and safety;
- Assess wether it has reduced access and service provision to these groups of people;
- Created an environment where police corruption exists.

**RECOMMENDATION 62**

*That clause 222 relating to a review of the Act is supported with the caveat that the review be conducted after one year of its passage and that a strong terms of reference relating to impacts upon sex workers be included.*

*.*

## Schedule 1 – Constitution and proceedings of the Board

### Division 1 & 2. Term of office, Deputies and representatives

These divisions are acceptable in their current format if the recommendations made earlier in the submission with regard to the role, powers and scope of the Board are accepted and the Bill amended accordingly.

**RECOMMENDATION 63**

*That Division 1 and 2 of the Bill be accepted following amendments to the role, powers*

*and scope of the Board.*
*.*

**Division 3 - Meetings**

**Clauses 7-10. General procedure, voting, holding meetings remotely, minutes.**

The clause on meetings is opposed due to our opposition to the establishment of a Board in general and in particular its role, powers and scope. Therefore, we make no comment on the procedure for voting, holding meetings remotely or minute taking for such meetings.

**RECOMMENDATION 64**

*That Schedule 1 Division 3 of the Bill relating to meetings be deleted.*
*.*

**Division 4 - Resolution without meeting**
**Clauses 11-14 – Passing resolution without meeting, when meeting take place, separate identical documents may be used, how assent may be signified.**

These clauses are opposed due to our opposition to the establishment of a Board generally and in particular the manner in which it is formally constituted. Further, our opposition is based on the potential for abuse by members of the board, particularly with reference to separate identical document use. The following comments are provided to highlight the types of amendments that would be required to strengthen this section if the Government is intent on pursuing the option of establishing a Board. We believe that this section highlights how the unnecessary complexity of the Board workings and the failure of the Bill to specify or qualify a range of guidelines necessary for direction of the passing resolutions, particularly in the absence of a meeting. The following points merely highlight the necessity to detail the provisions for meetings, the difficulties of meaningfully commenting on a Bill which does not provide such detail and is used as an example for all matters in this regard (previously discussed in our submission.

- In the event that a special resolution is required through establishing an extraordinary meeting that the section specify the time-frame in which such a meeting can be called. For example, three days prior to an ordinary meeting;
- That the type of resolution that may be passed without a meeting should be set out as serious matters should be presented to a quorum of members and not by remote meeting;
- Clause 13 is meaningless due to its complexity and is not standard practice of making legislation more 'reader friendly'. Further, the references to clause 11 provide an opportunity for misinterpretation of the entire section by confusing the intention of the division;
- As clause 13 relates to resolutions without meetings it is important that it specifies when documents can be duplicated such as in relation to a meeting or inquiry undertaken by the board. The potential for misuse resides with the failure to exempt distribution to other agencies such as government departments, police media releases

etc. Further, misuse resides with the ability to duplicate documents with any reference to destroying documents (other than formal minutes) no longer in use, where and how and by whom they are to be destroyed;

- Further, clause 13 does not state where documents are to be stored, if they can be any by whom removed from the place of meeting or place of inquiry and who has access to them;
- Consideration is not given to offences set out in Commonwealth Privacy Legislation for Board Members to remove documents to a place of residency or other places not designated as a meeting place or board of inquiry; and
- Clause 14 is too broad and therefore allows for access to sensitive documents by persons not specified to have access. Further, assent to any document should only be valid when the document bears the signature of that member of the board.

**RECOMMENDATION 65**

*That Schedule 1 Division 4 of the Bill relating to resolution without meeting be considered as an example of the failure of the Bill to address essential details such as the use of plain English, opportunities for misinterpretation due to complexity, failure to properly consider the full range of implications such as other legislative requirements such as confidentiality, difficulties of commenting on a Bill which does not provide detail on a range of matters or the requirement to establish guidelines addressing these issues, and highlights the need to simplify the proposed structure for sex industry reform in its current form as overly regulatory, too cumbersome and open to abuse or misuse of powers at the expense of sex workers privacy.*

*.*

**Division 5 – Disclosure of interests.**

We support the need to include a division on the disclosure of interests by Board and Committee members. However, as with Division 5 this section suffers from the same misdirection. Consideration should be given to establishing a timeframe for disclosure of conflict of interest, that the member not take part in determining the outcome of the matter (such as through the right to vote), that the member have an opportunity for defense and representation and that the penalty be in accord with those imposed within the *Commonwealth Corporations Law.*

**RECOMMENDATION 66**

*That Schedule 1, division 5 relating the disclosure of interests be supported in principle following amendment in regard to consideration of further issues to be identified more fully.*

*.*

## Schedule 2 – Offences relevant to Licensing or Banning from Acting as a Prostitute (Addressed throughout body of document)

# Schedule 3 – CLAUSE IMPLIED IN PLANNING SCHEMES

### Clause 1 (2). Use of land for prostitution purposes

This section states that sex industry businesses "as an attended prostitution agency" be permitted only in industrial areas. This is both unnecessary and discriminatory as such agencies whether attended or not, are not likely to cause an amenity impact of any type that differs from the impacts of any other office based activity. The activity is held withindoors, no clients' sexual services are provided on site, and it is simply functioning as an office in virtually the same way as for example, personnel recruitment agency.

To require such offices to be located in an industrial zone is inconsistent with the purpose and prime uses carried out in such zones. This simply adds to the costs of running such a business or working for such a business, as the additional travel required to and from the office to the work locations (clients address etc) would be prohibitive, and as discussed in Part 7 is dangerous at night due to the zones' isolation. The government owes a 'duty of care' to the employees of such businesses to maximise occupational safety not minimise it and such would become and issue for Work Safe and possible legal action.

**RECOMMENDATION 64**

*Prostitution agency offices in particular should be permitted location in any commercial, private, industrial or mixed zone due to safety reasons. This is due to individual sex workers or their agents carrying money entering/leaving industrial zones would be vulnerable to robbery and violence.*

### Subclause 4(a)

It is unclear why a distance of 300 metres, or, indeed any other distance, has been chosen for location from local neighbourhood amenities, as there is no particular planning issues If the business is conducted indoors, within an allocated building on an industrial estate, then the proximity to other neighbouring land uses does not appear to be an issue for amenity impact.

An analysis of the scale and relative distances of WA's industrial zones needs to be investigated before such arbitrary figures are enshrined in the Schedule. For instance, it has been found that in NSW Council planning schemes the combination of zoning restrictions with conditions relating to distance may eliminate over 50% of the industrial zoned land, leaving few options for brothels to be appropriately located, and therefore creating a proliferation elsewhere. No genuine planning objectives are being met by such mechanisms.

**RECOMMENDATION 65**

*Scarlet Alliance recommends that if brothels are ONLY to be permitted in industrial zones, which we fundamentally oppose, that there be no distance from other land uses prescribed, as there is no genuine planning reason for choosing to impose such conditions.*

**Subclause (7)**

The complexity of this subclause is yet another example of the over regulation of the proposed planning and location of brothels which have significant ramifications for the successful implementation of the Bill. It is increasingly difficult to make meaningful comment on the proposed Bill as the references to other sections, divisions, subsection, clauses and attendant schedules of the Bill are not clear. This means that the proposed regulatory framework is unworkable, contradictory, contains various loopholes, is incorrect in sections, fails to define adequately the intention and application of the section and is highly over regulatory. We use as an example this clause. We have taken Subclause 7 as meaning that in the planning scheme an existing use right clause for businesses fitting the definitions of a brothel within the proposed Act is accepted. It is unclear, however, whether this includes only those brothels and escort agencies currently accepted under the 'containment' policy but also those brothels that are tolerated and use other fronts whilst essentially operating as a brothel.

If the Bill is to proceed then Scarlet Alliance supports this clause, only if ALL existing brothels or attended prostitution agency offices, including those NOT known to Police at the time of commencement of the new Act are to be recognised. This would include all such businesses currently fitting the new Act's definitions, which may have been forced to masquerade as a business of a different nature under the current laws (eg Massage/ Gentlemen's Club etc). An amnesty offered to existing businesses would assist in drawing these types of brothels into a legal framework.

If the amnesty were not offered on the above basis, then Scarlet Alliance would not support the clause**.** Our withdrawal of support would be based on the selectivity of businesses e.g. 'containment' businesses, as this would create an artificial competitiveness for some existing premises over other existing non-containment premises or new applicants/business. As these existing premises would no doubt be located in more commercially viable areas than those to be proscribed under the new Act, a competitive edge would be artificially created within the industry.

**RECOMMENDATION 66**

*That support is provided for this section if all existing brothels or attended prostitution agency offices (known or unknown to police) are recognised and offered an amnesty to operate as a brothel.*

## SCHEDULE 4 – CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

**Reference to this schedule has been made throughout the document.**

# Appendix 1
# Outcomes from the Scarlet Alliance National Forum, November 2002

**In November 2002, Scarlet Alliance, the National Forum for sex worker organisations met in Perth. Nine member organisations from every state in Australia attended the forum, with 54 representatives present. These community-based organisations are predominantly funded by their respective Health Departments to deliver services to sex workers. All delegates participated in a workshop commenting on the potential impacts of licensing individual sex workers, as is proposed in the Bill. A Report on the issues identified follows.**

**The knowledge and expertise gained from the participants represents a clear, comprehensive, evidence-based analysis of the potential impacts of licensing on individual sex workers, and related diminished outcomes in relation to health, privacy, human rights and social cohesion.**

**Throughout this document the term "ID Card" is used to refer to the proposed Licence extract document which the Bill intends sex workers to obtain, carry at all times, and produce "immediately" upon request from relevant authorities.**

## WHY SEX WORKERS DON'T WANT AN ID CARD

### STIGMA and ID CARDS

Stigma is the biggest issue for sex workers. ID cards will only enforce the stigma of working in the industry. Due to this stigma, the majority of sex workers do not disclose their sex work, so their family and friends may not know that they are in the industry. If a family member or friend were to discover the ID card, it would have a huge negative implication for the sex worker. One of the many results it would lead to is family and relationship breakdown. Our expert representatives spoke of cases where sex workers had become estranged from their families once their occupation was disclosed, leading to isolation for themselves, and their children.

This position is not inconsistent with the referendum results for the introduction of an ID card were unanimously rejected by the Australian public. Sex workers, as members of the general community, are no different in perceiving that an identity card is an invasion of civil liberties.

### MALE AND TRANSGENDER SEX WORKERS and ID CARDS

Transgender and male workers may not be out about their sexuality or their work, as may would place them at risk of vilification, harassment and violence due to social attitudes and values. Even within the gay and transgender community, stigma about sex work exists, and if their peers found out it would be a harder struggle for them in their community.

International workers are the most marginalised in the industry, due to cultural and language barriers. They are also the most exploited because they have the least access to information and rights (especially those who are working illegally). If ID cards are brought in, a black market in fake cards will be the only way these international workers (and illegal workers) will have access to work in the industry. The ID cards will become a commodity, sold to international and illegal workers and enable underground conditions to control the industry.

Licensing male sex workers to a particular brothel will keep prices down and give the houses a larger cut, and greater control, artificially regulating the workplace and incomes. Men will be less likely to license or work in an agency because of the practice of price control. Short-term male workers who are unsure about how long they will stay in the industry are unlikely to license, when they don't know how it would benefit them.

**YOUNG WORKERS, NEW WORKERS PLACED AT GREATER RISK**

Given the major reason sex workers cite for first entering the industry (money and unemployment), very few young or new workers perceive themselves to be entering a long-term career. The average stay in the industry is 2 years, and individuals rarely identify as a sex worker during or after they have engaged in the occupation. The Bill, with it's ID cards, will create a sector of the industry which is "fly by night" to avoid detection. Young and new workers will most likely be attracted to such workplaces, and therefore work illegally at first, placing the most vulnerable individuals in the sector of the industry where they will be most at risk in terms of health and safety.

**NON-CITY WORKERS and ID CARDS**

Smaller, more isolated communities make for greater confidentiality risks with any form of ID card, let alone one which says the carrier is a sex worker.
ID cards/ Licensing is a barrier in regional settings due to:

- Privacy/disclosure risks, where if cards are lost or stolen, the worker risks violence and stigma
- Potential blackmail of workers by clients, partners, etc
- Secondary stigma for partners and friends
- Huge safety risks due to discrimination and stigma are created for male/transgender workers

Licensing would drive rural sex workers more underground, making them vulnerable to violence, corruption and abuse, and would reduce access to services and even health and safety procedures (eg local chemist could 'dob' on workers buying condoms). Licensing will create a two-tiered industry, with the 'illegal' sector left in a worse situation than before. Licensed Brothels would become more powerful in a regional setting, with the owners legitimised, but leaving sex workers with fewer options for work. This is because licensed brothel/escort sex workers must work at a licensed brothel, but unlicensed workers would be forced to work alone or at unlicensed brothels/escort agencies.

Businesses having to be Council approved under planning Schedule 3 also removes anonymity for both sex workers and clients, yet the option for sex workers to be licensed as sole operators is also unattractive in a regional setting for all of the reasons above. The experience in NSW and VIC is that the Sex Industry is forced underground by over

regulation, particularly in regional settings. Over regulation also brings opportunities for corruption both in Councils and Police.

How will rural workers become licensed? In a regional setting sex workers at present are cut off from health and outreach services due to issues of disclosure and distance. What will be put in place in terms of communication and protocols to ensure these workers will receive the same "treatment" in applying for a license? There is no benefit at all to workers in a regional setting, the risks are too great for no gain. Regional workers will be more likely to not comply and therefore at higher risk of charges. This is simply unjust and un-Australian.

## THE STIGMA OF ID CARDS WILL COST THE COMMUNITY MONEY

- Unlicensed sex workers will be placed outside the system. Violence against sex workers who are not licensed will increase because unlicensed sex workers will be unable to report the crime without incriminating themselves. Clients and others will know that unlicensed workers are less likely to report violence and crime, including sexual assault, robbery, stalking, and blackmail of themselves and their clients.
- Licensed workers are also placed at risk of vilification, assault, and other crimes.
- Family breakdown is likely to occur if an ID card is found in a workers purse or wallet.
- It will cost the community money, yet deliver no benefits to either sex workers or the community.
- Increased costs to the community will include:
  - Policing costs- resource intensive operations, and diversion of resources.
  - Enforcement, detention, Court and Jail costs
  - Fines will place undue financial strain on sex workers.
- All of the complications that sex workers will experience from the requirement to carry an ID card will cost the mainstream community money. Funds will have to go to services such as counselling, court and support services, police services, Legal Aid, family and children's' services such as foster homes, and other costs that result from marginalising a group of people, 90% of whom are women with 24% having at least one dependant child.

## HUMAN RIGHTS AND PRIVACY ARGUMENTS AGAINST THE STIMATISATION OF SEX WORKERS THROUGH REQUIRING ID CARDS

**The Australia Card was rejected!** Australians recognise that there has to be a balance between state powers and privacy, and also understand the inherent safety and security risks in being required to carry an ID card at all times. Sex workers are Australian citizens too, and share the same understandings as other Australians. Sex workers don't want Governments to collect information and keep records containing their real name associated with sex work. Indeed, sex work is the only occupation where it is automatic to adopt a different name and image in the workplace, in order to protect one's anonymity and privacy.

The Privacy issues of such a proposal are very grave indeed, given the range of agencies and individuals able to access information. Other government authorities such as Taxation, Centrelink and Police will be able to access the information collected by Prostitution Control Board (the Board).

Police will have more powers over sex workers than over people who have committed rape, murder and any other criminal act. The licensing/ID proposal and the PCB resembles the notion of a Paedophile register – as if sex workers are criminals- and yet such a notion has clearly been rejected consistently in Australia on Human Rights and privacy grounds. The proposed penalties for unlicensed sex workers are also extraordinarily harsh. Jail terms should be for people who abuse other people, not those who treat other people with dignity! (and in a consensual, adult, commercial service setting!)

Potentially, the system may impact on sex workers' equity and access to social security supports, housing, future employment, Family Court decisions, Justice within the system, Police treatment and response, relationships with Finance Companies and Banks, and so on.

The ID card offers no tangible positive outcomes for sex workers, such as increased safety, health or dignity. Scarlet Alliance wonders if it is simply a system of tracking sex workers and gathering statistics, or a revenue raiser for the proposed Board. Unlike, say, a Union, the Board will, ironically, is to be funded by sex workers even though workers will get nothing in return.

## INDUSTRIAL RIGHTS LOST FOR SEX WORKERS

The Bill will enable sex workers to be easily monitored and given the sack for, say, working at 2 different premises. Inter-brothel communication on individual sex workers is already an issue, and now the WA government intends to hand over a new tool to the operators of brothels to control "their" workers. The Bill contains no provisions for penalties relating to the exposure of any individual as a license or ID card holder, and doesn't protect the privacy of sex workers in the workplace at all, as the cards must always be carried for "immediate" checking by regulators.

Transient and Interstate sex workers will not chose to license, thus reducing the options for sex workers from other places, or who wish to travel within WA. These sex workers will be outside the system, with the only option to work illegally, with all of the attendant risks already described.

This legislation will increase street work for marginalised workers (for example non-licensed, young, migrant, drug using or transient workers), as such workers will prefer to take the risks of street work, rather than be caught up in the system. Sex work will simply diversify to allow non-licensed workers to operate. If clients are able to require the presentation of a license, non-licensed workers will be completely exposed to violence, coercion and sexual assault. Non-licensed workers are placed in a bad situation to negotiate safe sex and prices. The penalties for non-compliance, are way too high to considering the person is simply trying to protect their confidentiality.

## OH&S RIGHTS, HEALTH AND IDCARDS

This Legislation moves far away from the recommendations of the National AIDS strategy, harm reduction and health promotion models for public health outcomes. Forcing STI testing is widely understood to be a costly, low benefit strategy for sex workers and public health. The Bill ignores the reality of safer sex –that STI transmission is prevented by condom use-whether money changes hands or not. Australian sex workers have the

lowest incidence of HIV and AIDS in the world (Chris Puplick, Chair of ANCHARD) and are clearly not placing the public health at risk. This record has been achieved through voluntary compliance with safer sex practices, combined with voluntary health monitoring. Under the proposed laws, sex workers who test positive for an STI may be unable ever to work legally again-which discourages testing, and reduces access to health services. This is hardly an intelligent public health outcome!

An illegal sector has no access to OH&S or IR or any legal cover against incidents that may happen at work. Owners too know that workers have no legal means to justice, and are able to carry out unfair dismissal, suffer long hours, require more risks with clients, and can avoid providing safe sex equipment. Such operators may take a larger cut of the workers money, and are not concerned about workers health.

Workers from overseas will be forced underground, due to the power owners will have to control the movements of their unlicensed workers, and who will have no avenue for access to protection under the law from crimes of violence. Sex workers without a license will be scared to disclose their profession to doctors, and may be forced to "doctor hop" reducing the chance of being identified as a sex worker. Public health outcomes will not be met, as they will not be appropriately screened for STIs, as they will not disclose risk behaviour or occupation. No one stops other people from having sex.

Should the client be tested as well? If sex workers records are to be kept by a Board who will keep names for 7 years and know any relevant medical history, why not require the same of all adults? Health is a right, and a matter of choice and sex workers should have the same rights as workers in other industries, to be free to choose the kinds of health monitoring, tests and treatments they wish to take up.

**CONTRADICTIONS between the intention of the Bill and the probable impacts**:

Corruption will increase due to the creation of a market in false or duplicated documents such as ID cards. Thus crime involvement increases, due to over-regulation.
Under the proposed Bill, a person is not supposed to promote a person in the sex industry. Yet, doesn't an ID card promotion of sex work? Potentially MORE people will know that the person is a sex worker than at present.
Clients won't have to produce and carry ID cards or be STI tested. Clients' behaviour in visiting sex workers may be consistent throughout their adult life, while sex workers spend an average of only 2 years in the industry.
The proposed laws will prevent sex workers from running a legitimate business, even though we pay taxes.

**NO WINS FOR SEX WORKERS**

***Losers List:***
Clients and their families
Sex Workers and their families
Communities and the Economy
Police because they have more work to do
Tax because it will be funding all of this unnecessary enforcement

Health workers who can't get their real work done
Brothel owners

***Winners List:***
Underground business
Wealthy women and men who own brothels
Politicians who can claim 'law and order' victory while sex workers rot in jail at a cost to the public
Lots of money and effort for no outcomes, what should the government be putting resources into? Stopping terrorists or controlling sex workers?

## LICENSING WILL DIVIDE THE INDUSTRY

A small percentage of workers will be eligible for licenses, all others will be forced to work illegally.

**People won't License because:**

- Future job prospects are risked, especially if working for the Justice Department, Lawyers, Police, Paralegals, working with children,
- Workers fear the stigma of having their name recorded by the Board. Who will have this information? Who will access it? Ability to have name removed will deter workers – how can you be sure you will ever get your name taken off?
- Transient workers – Workers who are opportunistic or may only work for one night, once a year or less will not consider getting a license to be necessary
- Seasonal workers –Workers who follow the work through rural areas, mining, fishing, US sailors, picking etc will not have a 'place' of work, so will not be able to license
- Indigenous sex workers who will have less access to information about the system and risk stigma and shame from within and without the community
- Sex workers who are parents are unsure how it will effect the family – workers may be concerned about Family and Children's Services keeping a closer eye on them because they are licensed
- Confidentiality, Identity and Disclosure
- Concerned about discrimination
- Intend to carry out International Travel in the future – workers who may want to travel in the future won't license because they will be concerned about how it will affect their ability to travel**.**

**Negative Impact on those who don't License**

More marginalised, less access to services, less likely to access safe sex equipment due to fear of being discovered as an illegal worker (higher criminal charges due to the emphasis on licensing)
Clients will deliberately target unlicensed/illegal workers for unsafe sex. Clients know that the particular illegal workers have less recourse to justice and are therefore prepared to take more risks because of their illegal status.
Workers who are illegal will be pressured to take more risks with their health, in order to make more money in less time because of fear about being caught working.

**People who will License:**

- Jaded workers who feel like they already have no rights or voice
- Workers who are used to containment "I was registered under containment, they have my name, what can I do"
- Workers under police pressure "If we catch you working again it won't just be a restraining order, it will be before the PCB and get yourself on the register."

**Negative Impact on those who DO License:**

More takes, brothel owners can set prices and be more exploitative.
Male and Transgender workers experience lower incomes in general, no bargaining power, limited variety of agencies, limited ability to negotiate price

**Human rights / Civil rights for sex workers include:**

- Individuals have the right to make choices about their occupation
- Rights to protect individual health through needle and syringe exchange and condom use
- Individuals have the right to access health and support services (but restraining orders will stop that)
- Individuals have the right to work in a safe and healthy workplace eg: refuse to provide specific services if they want to
- Individuals have the right to access shelter (housing)
- Individuals have the right to emotional and mental and physical and spiritual wellbeing and Happiness
- Rights to family relationships (risked with ID Cards + stigma)
- Rights to self expression without fear (freedom of speech)
- Individuals have the right to fair and due process
- Individuals have the right to privacy and confidentiality (not ID Cards)
- Individuals have the right to live and work free from harm
- Individuals have the right to live/work and play free from harassment and entrapment
- Individuals have the right to access the justice system, and the presumption of innocence.
- Rights to live in a community that dispenses proportionate penalty for criminal offences.
- Individuals have the right to access information and education
- Individuals have the right to live free from discrimination, vilification and stigmatisation

**RECOMMENDATIONS**

1. ***The Western Australian Sex industry be decriminalised.***

2. ***That the long title read: An Act to decriminalise the sex industry alternatively***
   ***An Act to regulate sex work businesses and sex workers, and to improve the working conditions and accessibility of certain agencies for sex workers and sex work businesses, to Repeal the Prostitution Act 2000 and amend certain other Acts, and for related purposes.***

3. ***That the bill be amended to delete the following provision in the draft bill - "The Parliament considers it inappropriate for the control of persons involved in prostitution to be subject to the normal principles of administrative law".***

4. ***That all persons involved or working in the Sex Industry be afforded the same legal rights available to all other Western Australian citizens (including those in goal) and continue to be afforded protection and access to administrative law processes.***

5. ***That the definition be amended to recognise a clear distinction between personal and private sexual relations.***

6. ***That sex work be recognised as a legitimate form of work and consequently a distinction be made between work and private activities.***

7. ***That no control board be established and that the sex industry be regulated according to the principles articulated in the document Principles for Model Sex Industry Legislation.***

8. ***That if a Board is established a specific sex industry person(s) be appointed and their appointment guaranteed under the legislation. That these appointees reflect the diversity of the sex industry and cover representatives from all sectors of the sex industry with expertise in issues relating to gender, ethnicity, and sexuality.***

9. ***That a clear set of guidelines governing ethics and other issues be determined prior to the establishment of any board.***

10. ***That the function relating to deterring people from entering the sex industry and assisting sex workers leave the sex industry be abolished until it is articulated how such a goal is to be met.***

11. ***That the functions of any board be clearly articulated and include advising the appropriate Minister on best practice in relation to occupational health and safety.***

12. ***That any board take a peer based approach who takes its direction directly from the sex industry to ensure maximum compliance.***

13. ***That the Prostitution Control Act 2002 decriminalize the sex industry therefore eliminating the possibility of receiving illegal funds.***

14. ***That the Bill and all references to individual licensing of sex workers be deleted.***

15. ***That the Bill and all references to licensing of sex industry businesses be deleted.***

16. ***That the Bill delete all references to prostitution managers and instead use the definitions and provisions contained within the Occupational Health and Safety legislation that describe the responsibilities of a 'manager', including undergoing appropriate training. Further, there are already provisions under Assessing the 'character' of the manager should be the responsibility of the employer, as it is in any other business.***

17. ***That a Board's supervisory functions be limited to holding records relating to current licenses of sex worker operators.***

18. ***That records of current or previous sex workers not be held.***

19. ***That clause 137 be deleted.***

20. ***That clause 138 be deleted.***

21. ***That clauses 139 and 140 be deleted.***

22. ***That clauses 141-143 be deleted.***

23. ***That such discretionary legal matters be left within the boundaries of Summary Offences and Procedures legislation.***

24. ***That clause 145 specifically set out the power of investigators.***

25. ***That an authorized person be prescribed as such by regulations pursuant to the Bill and not include persons who fall under the definition of an authorized person within the meaning of the Government Management Act and Regulations.***

26. ***That provided an authorized person is a person that is prescribed as an authorized person as per recommendation above, that a fair and equitable process be used in order to conduct such an investigation.***

27. ***That the person being investigated has access to all forms of administrative law and natural justice principles.***

28. ***That documentation that is requested during an investigation be only that information that would be normally be accessible pursuant to freedom of information laws within the State.***

29. ***That clause 149 be deleted.***

30. ***That clauses 150 and 151 be deleted and issues related to warrants be subject to judicial processes.***

31. ***That clause 152 be deleted.***

32. ***That clause 153 be deleted and subject to judicial processes.***

33. ***That if an inquiry is required the Board make a formal recommendation to the relevant Minister for an inquiry incorporating all the issues for consideration listed above.***

34. ***That clause 157 be opposed unless issues relating to unfair procedural bias against person subject to an inquiry be addressed with the establishment of clear guidelines, within the boundaries of existing court and legal procedures and that rules and principles of law be applied with respect to representation.***

35. ***That clause 158 be opposed unless issues relating to unfair powers of formal inquiry as outlined in the submission are met.***

36. ***That the use of land which is zoned and deemed suitable for service businesses, such as commercial, business, or mixed use zones be included in the Schedule 3, 1. (2)***

37. ***That there be no expansion in police powers.***

38. ***That clause 164 be deleted and reference made to existing judicial processes covering all industries.***

39. ***That clause 165 relating to move on notices be deleted from both this Bill and the Prostitution Act 2002.***

40. ***That clause 166 relating to detention, search and seizure without warrant be deleted from both this Bill and the Prostitution Act 2002.***

41. ***That clause 167 relating to entry of, and seizure at, place of business without warrant be deleted.***

42. ***That clause 168 relating to search and seizure with warrant be deleted.***

43. ***That clause 170 relating search and seizure be deleted as they are already contained in existing legislation.***

44. ***That clause 172 relating to forfeiture be deleted.***

45. ***That clause 176 relating to undercover offices be deleted.***

46. ***That if clause 176 is to remain that provision be made to prevent police officers from participating in a sexual service in order to gain a conviction.***

47. ***That clause 177 relating to police maintaining records be removed.***

48. ***That clauses* 179, 180, 181, 182, 183, 184, 185, 186, 188, 189 *177 relating to reversal of the onus of proof be removed.***

49. ***That clause179 relating to advertisement of prostitution be removed.***

50. ***Support for clause 187 relating to the possession of prophylactics not being used as evidence***

51. ***That clause 189 relating to the presumption of knowledge of sexually transmissible infections and all clauses relating to or encouraging mandatory testing be deleted.***

52. ***That clauses192-203 relating to restraining orders be deleted.***

53. ***That clause 205 relating to rules of natural justice be deleted.***

54. ***That clause 206 relating to the nature of the Board's discretion be deleted.***

55. ***That clause 207 relating to the reasons for Board's decision be deleted.***

56. ***That clause 208 relating to the board not being subject to judicial supervision be deleted.***

57. ***That clause 209 relating to protection of certain persons be deleted.***

58. ***That clause 210 relating to protection in supervisory matters be deleted.***

59. ***That clause 211 relating to publication of Board's findings be amended to protect the identity and personal information of sex workers.***

60. ***That clause 213(3) relating to confidentiality be amended to replace the words "reasonably be expected to" with the words "in any circumstance.***

61. ***That clause 218 relating to regulations include sex worker representation. . Further, any health 'regulations' must be designed with input from sex workers, sex workers organizations, sex industry businesses, medical practitioners, health officials and WorkSafe.***

62. ***That clause 222 relating to a review of the Act is supported with the caveat that the review be conducted after one year of its passage and that a strong terms of reference relating to impacts upon sex workers be included.***

63. ***That Division 1 and 2 of the Bill be accepted following amendments to the role, powers and scope of the Board.***

64. ***That Schedule 3 Division 3 of the Bill relating to meetings be deleted.***

65. ***That Schedule 1 Division 4 of the Bill relating to resolution without meeting be considered as an example of the failure of the Bill to address essential details such as the use of plain English, opportunities for misinterpretation due to complexity, failure to properly consider the full range of implications such as other legislative requirements such as confidentiality, difficulties of***

***commenting on a Bill which does not provide detail on a range of matters or the requirement to establish guidelines addressing these issues, and highlights the need to simplify the proposed structure for sex industry reform in its current form as overly regulatory, too cumbersome and open to abuse or misuse of powers at the expense of sex workers privacy.***

***66. That Schedule 1, division 5 relating the disclosure of interests be supported in principle following amendment in regard to consideration of further issues to be identified more fully.***

***67. Prostitution agency offices in particular should be permitted location in any commercial, private, industrial or mixed zone due to safety reasons. This is due to individual sex workers or their agents carrying money entering/leaving industrial zones would be vulnerable to robbery and violence***

***68. Scarlet Alliance recommends that if brothels are ONLY to be permitted in industrial zones, that there be no distance from other land uses prescribed, as there is no genuine planning reason for choosing to impose such conditions.***

***69. That support is provided for this section if all existing brothels or attended prostitution agency offices (known or unknown to police) are recognised and offered an amnesty to operate as a brothel.***

## *References for table*

[i] ABC Radio National Law Report 7th January 2003.

[ii] AGSPAG reference

[iii] ABC Radio National Law Report 7th January 2003.

From South Sydney Council Sex Industry Policy:

**Safe house brothels are defined as: Premises where income is gained from the short term rental of rooms to sex workers (who usually solicit for work on the street) or their clients for the purposes of prostitution. The sex workers are not employed "in house", nor do they live on the premises. Safe house brothels must be close to 'street soliciting' areas.**

[iv] Recommendations from the Legal Working Party of the Intergovernmental Party on AIDS

[v] 'A guide to best practice: Occupational Health and Safety in the Australian Sex Industry' Scarlet Alliance and the Australian Federation of AIDS Organisations, 2000.

[vi] Sexual Health And Safety Amongst A Group Of Prostitutes: At Work And In Their Private Lives, Roberta Perkins, Senior Research Assistant, School of Sociology, University of New South Wales, Sex Industry and Public Policy, P 148

[vii] Judy Edwards p14. Additionally, the Community Panel on Prostitution (1990/91) received 22 submissions, only three of which mentioned advertising.

[viii] Judy Edwards P 9

[ix] ALRC

[x] A whore's haven: website of a local sex worker

[xi] Intergovernmental Committee on AIDS Legal Working Party. (1991). *Recommendations of the Legal Working Party of the Intergovernmental Committee on AIDS*. Canberra: Department of Health, Housing and Community Services: p15.

[xii] To Work or Not to Work?, Cheryl Overs p.159 in Sex Industry and Public Policy; Australian Institute of Criminology, 1992.

[xiii] 'In some countries the human rights of sex workers are violated when they are detained… in medical programmes against their will;… required to use special identity cards'. P56 fn 96 Handbook for Legislators on HIV/AIDS, Law and Human Rights UNAIDS

[xiv] Sexual Health And Safety Amongst A Group Of Prostitutes: At Work And In Their Private Lives, Roberta Perkins, UNSW, p.152 in Sex Industry and Public Policy; Australian Institute of Criminology, 1992.

[xv] ibid

[xvi] ALRC 69 Equality Before The Law: Justice For Women The Australian Law Reform Commission, 1994, retrieved from: http://www.austlii.edu.au/au/other/alrc/publications/reports/69/vol2/ALRC69Ch15.html#ALRC69Ch15SexWorker.

[xvii] P12 ujcp

[xviii] p QPL

[xix] Intergovernmental Committee on AIDS Legal Working Party. (1991). *Recommendations of the Legal Working Party of the Intergovernmental Committee on AIDS*. Canberra: Department of Health, Housing and Community Services: p15.