Australian Sex Workers Association

SEX WORKER OUTREACH PROGRAM
SEX WORKER REFERENCE GROUP

Information on submissions to the NT Sex Industry Bill 2019

You may have heard that the laws for sex workers and the sex industry in the Northern Territory are changing. Following the consultation process that happened in April this year, the Attorney General has introduced the Sex Industry Bill 2019 to parliament on the 18th of September. The Bill has effectively responded to submissions that had highlighted the issues with the current framework that criminalises sex workers under the Prostitution Regulation Act 1992 and prevents us from working legitimately and safely.

There is now a submissions process through the Economic Policy Scrutiny Committee to the Legislative Assembly of the NT seeking comments on the Bill before parliament, i.e. the Sex Industry Bill 2019.

The current submissions process will inform the Committee's response to the Assembly on the Bill.

NT sex workers are still calling for the full decriminalisation of sex work.

Thank you to all of you who submitted to the last process which helped to ensure the Northern Territory government understood what was wrong with the current regulations in NT and why sex workers want full decriminalisation. It was great to see that sex workers' voices were heard in the development of the Sex Industry Bill 2019.

Now is the time to let the government know what we think about these proposed new laws and how these regulations decriminalising sex work will protect sex workers rights, health and safety. It will be important to continue to have sex worker voices shaping the legislation to fully decriminalise sex work in the NT.

This is an important opportunity to make sure the Northern Territory government understands why sex workers need access to workplace protections, occupational health and safety mechanisms and equal protection under the law.

They will hear many people's opinions but as sex workers we know how these different models of regulation impact on our work and our safety. Changes to this Bill in critical areas could be extremely damaging to sex workers and how and where we work.

The closing date for submissions is Tuesday, 8 October 2019.

- Let's make sure they hear from sex workers and sex worker organisations on why we support this Bill to fully decriminalise sex work in the NT.

Decriminalisation is essential to our workplace rights, health and safety.

Sex workers want full decriminalisation in NT !

www.scarletalliance.org.au www.ntahc.org.au/programs/sex-worker-outreach-progam-swopnt

This information pack is to assist people to have a say on the proposed laws.

It includes information on:

1. Where to locate the Sex Industry Bill 2019, Explanatory Statements and other reference materials for the submissions process

2. Have your say as a community member/sex worker/business operator/allied stakeholder

3. Laws in the Northern Territory

4. Comments on the Sex Industry Bill

5. Full decriminalisation & the evidence

6. Other key points

7. Further reading and reliable research

If you would like more information on the NT Sex Industry Bill 2019 and its submissions process you can contact us on the details below:

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1. Where to locate the Sex Industry Bill 2019, Explanatory Statements and other reference materials for the submissions process

https://parliament.nt.gov.au/committees/EPSC/105-2019

2. Have your say as a community member/sex worker/business operator

As a Member of the Community

You can add your opinion on the Sex Industry Bill 2019 without identifying yourself as a sex worker. Many other members of the community will be doing just that. They will not feel the need to identify what they do. Take advantage of being part of the community.

As a Sex Worker

You may want to say you are a sex worker and discuss the way the laws will impact on your work – it is important for the NT Government to understand the real impact of the laws and proposals from sex workers.

If you cannot identify yourself consider using your working name or another name and state why you are doing so – 'for privacy reasons' or 'to protect my safety'.

As a Manager or Operator

If you are involved in the sex industry you have a right to point out how the laws will impact on your work and your business.

As an Allied Stakeholder

Support sex workers' right to health, safety, inclusion and justice and to be free of police entrapment and discriminatory laws and policies. Add your voice to the support for the full decriminalisation of sex work, sex workers, our workplaces, clients and third parties that is essential for sex workers' rights, health and safety.

Full decriminalisation:

-Removes police as regulators of the sex industry;
-Repeals criminal laws specific to the sex industry;
-Regulates sex industry businesses through standard business, planning and industrial codes;
-Does not single out sex workers for specific regulation; and
Is a whole-of-government approach to regulation.

The current regulation in NT is unworkable.

This is the opportunity for the Northern Territory government to move away from its current failed approach of registration and licensing and toward the full decriminalisation of sex work.

The aim of legislation should be to provide health, safety and rights to ALL Northern Territory sex workers.

Scarlet Alliance, SWOP NT and its Sex Workers Reference Group supports the government's intention to fully decriminalise sex work through the Sex Industry Bill 2019.

3. Laws in the Northern Territory

The sex industry laws in the Northern Territory are covered by the Prostitution Regulation Act 1992. In summary:

- Escort agencies that are registered can operate in the Northern Territory under a licensing system.
- Sex workers who work for an escort agency must be registered with police – on a lifelong register. Sex workers who have had a relevant drug offence in the last 10 years cannot be registered. The Northern Territory is the only jurisdiction in Australia to still have a system of police registration of sex workers. This approach is discriminatory and provides no positive outcomes for sex workers.
- Brothels, massage parlours or other sex industry business models are illegal.
- Sex workers are permitted to provide escort services to a client's home or from a hotel room, however they cannot arrange or organise the booking from the same place as where the service is provided.
- Sex workers are not permitted to work with another sex worker, small groups or co-ops; hire support staff (such as a security person, driver, receptionist, etc) or work from their own home.
- Street based sex work is illegal.

Scarlet Alliance and SWOP NT supports most of the amendments proposed in the Sex Industry Bill 2019 and applaud the intention to fully decriminalise sex work in the NT. It would be beneficial to highlight the positives of the Bill as well as the issues with some of the clauses in the Bill. The Committee will be required to report back to the Assembly on the following 4 items:

a) whether the Assembly should pass the Bill

We support the passing of the Sex Industry Bill 2019. Sex workers in NT have long being campaigning for the full decriminalisation of sex work. These important changes will be a critical element in ensuring sex workers are able to access workplace health and safety protections. The Bill will ensure industrial protections and rights are afforded to sex workers as they are to all Territorians.

This Bill also supports sex workers ability to access justice in the event of a crime, and protection and redress for exploitative work conditions. The Bill enables sex workers and sex services businesses to be able to operate within existing laws and regulations, including employment, occupational health and safety, workers compensation and rehabilitation, planning, taxation and discrimination.

b) whether the Assembly should amend the Bill

There are only a couple of areas of the Bill we would like to see amended, specifically in relation to the advertising restrictions that carry forward the unworkable restrictions in the existing Prostitution Regulations Act 1992 and in relation to suitability certificates that require operators engaging more than 2 workers to obtain a suitability certificate. Further comments in relation to those areas are detailed below.

Any further amendments are not recommended as they will impact on the ability of the Bill to provide its intended benefits and protections. Any divergence from the full decriminalisation of sex work would be detrimental to the intended, well documented and widely supported impacts of decriminalisation. Further information on the evidence for and the benefits of decriminalisation of sex work are detailed below in section 5. Why sex workers want decriminalisation.

c) whether the Bill has sufficient regard to the rights and liberties of individuals

We support the government's conclusion that the Bill is compatible with human rights as it does not raise any human rights issues. Instead it provides much needed protections for sex workers and removes the current violation of rights against sex workers in the NT. The Bill promotes the welfare and occupational health and safety of sex workers, safeguards the human rights of sex workers and protects us from exploitation and is the best framework for positive public health outcomes. It enhances sex workers ability to refuse clients and sex work, and to seek alternative employment if desired. Consistent with the evidence, the Bill provides a fully decriminalised and transparent framework for sex work that is the best way to address exploitation and trafficking. Criminalisation and licensing has been recognised as extremely harmful to the rights of sex workers and to increase vulnerabilities to exploitation and trafficking. In line with Australia's obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Bill recognises every individual's right to choose their occupation and the right to just, favourable and safe work conditions . The Bill, through the full decriminalisation of sex work, ensures the protection of the rights and liberties of all individuals.

d) whether the Bill has sufficient regard to the institution of Parliament.

The Bill allows for the transparent operation of the sex industry. It aligns sex work with existing regulatory frameworks and laws. The Bill allows parliamentarians to affirm the best regulatory model to govern sex work in the NT that will assure the best outcomes for the whole NT community. The Bill does not endorse sex work, instead it enables parliamentarians to effectively govern the sex industry. Under the current regulation and any other model of regulation other than decriminalisation, the sex industry is driven underground, and operates outside of legal frameworks. Decriminalisation of sex work enables sex work to be regulated under the existing laws and regulations that govern other industries.

4. Comments on the Sex Industry Bill 2019

The following provides explanations of the clauses in the Bill and how they will impact on sex workers.

GENERAL OUTLINE OF THE SEX INDUSTRY BILL 2019

The General Outline of the Bill explains that the Bill repeals the current problematic laws under the Prostitution Act 1992, allows sex workers to work together and employ staff, prohibits exploitation of sex workers and our right to refuse clients. Consistent with the intention of decriminalisation it enables the sex industry to operate in accordance with existing laws and regulations, including laws governing employment, occupational health and safety, workers compensation and rehabilitation, planning, taxation and discrimination.

Definitions

The changes to the outdated and stigmatising terminology in the Prostitution Regulation Act 1992 to the terms 'sex work', 'sex services business' and 'sex worker' is crucial in positioning sex work as work and ensuring non-judgemental, non- discriminatory and inclusive terminology is used to describe the diversity of sex work and sex workers in the Sex Industry Bill.

Relationship with Public and Environmental Health Act 2011

This clause establishes that the Public Health and Environmental Health Act 2011 applies to the provision of sex work with it to be treated as a declared activity under that Act. This means that sex work is declared as a "public health risk activity". Activities are considered as such when there is a risk of transmission of disease. While it should be recognised that sex workers have maintained a high standard of safer sex practices resulting in low rates of STI and BBV, we do support the amendments that exempt sex workers and sex services businesses from registration under that Act and removes powers and functions of police officers in relation to sex work. These are important provisions as registration has been a significant issue for sex workers, has failed to provide any benefits and is recognised as harmful to sex workers. Additionally, police have been recognised as inappropriate regulators for the sex industry, creating significant barriers to sex workers access to justice in the event of a crime.

The explanatory statement describes that the application of the Public Health and Environmental Health Act 2011 is to allow the development of guidelines and standards on health and hygiene for sex services businesses by the Chief Health Officer and the Minister for Health. These guidelines must be developed in consultation with sex workers and sex worker organisations. This is essential to ensure guidelines that are appropriate to sex services premises and provide adequate protections for sex workers.

We support the development of WHS Guidelines in line with such guidelines developed in NSW by Scarlet Alliance, SWOP NSW, Touching Base, Worksafe and Department of Health. In the NT it will be critical to develop these guidelines to ensure appropriate workplace health and safety protections for sex workers, in conjunction with Scarlet Alliance, SWOP NT, Unions NT and NT Worksafe.

Part 2 Sex work generally

Contract for sex work not void

This clause means that contracts for sex work are legal. In this context "contracts" refers to an agreement made by a sex worker and a client, which is usually a verbal contract with conditions agreed upon by both parties. It can also refer to a contract between an employer and a sex worker, which in many cases can also be verbal. This provision allows for the agreements made in a sex work context to be protected and legal regardless of other legal or public policy positions. This is an important provision that will enable sex workers to be able to access legal redress in cases when the contract/s for services are breached.

Refusal to perform sex work

This clause ensures that sex workers can refuse to undertake sex work at any time. Even though there is a contract for sex work, i.e. an agreement between sex worker and client, a sex worker can refuse to provide, or refuse to continue to provide services at any time. The contract does not mean consent under criminal law, if the sex worker does not consent or withdraws consent at any time. This provision means that a sex worker who does not consent to services or withdraws their consent, can pursue criminal charges against anyone who forces them against their will. Consent is an ongoing and fundamental requirement for sex work and any agreements made do not constitute a defense against assault or sexual assault of a sex worker. This provides important protection for sex workers to refuse clients or services at any time.

While subclause 3 allows for the client to seek remedy in the event of a breach of contract, this does not apply in the situation where their conduct constitutes a criminal offence. If the sex worker is an employee, general employment law provides that the employer is liable for any reimbursement, but it does not mean that employers can seek reimbursement from employees in the event a booking is refused or discontinued.

Part 3 Offences

Inducing person to perform sex work

This offence means a person cannot make another person sex work or continue to sex work by intimidation, assault, threat of assault, supplying a dangerous drug, false representation or damaging or threatening damage of property. The maximum penalty for this offence is 5 years in prison. This offence ensures that sex work is a voluntary choice for all sex workers.

Inducing person to provide payment from sex work

This offence means a person cannot make another person pay, directly or indirectly for sex work by intimidation, assault, threat of assault, supplying a dangerous drug, false representation or damaging or threatening damage of property. The maximum penalty for this offence is 5 years in prison. This offence ensures that sex work is a voluntary choice for all clients.

Causing or allowing child to perform sex work or work in sex services business

The following 3 clauses relate to offences for sex work involving a child. We define sex work as consensual adult sexual services. However it is important to note that a person under 18 should never be penalised for engaging in sex work and should never be denied appropriate services and

support. The following offences relate to causing or allowing a child to engage in sex work or work in a sex services business.

In subclause 1, this offence means if a person intentionally engages in conduct that results in a child of under 14 engaging in sex work or working in a sex services business then they are subject to a maximum penalty of 14 years in prison.

Subclause 2 states that if the child is 14 to 18 in the same circumstances then the maximum penalty is 7 years in prison.

Receiving payment from sex work by child

Similarly these offences mean if a person receives payment from sex work by a child under 14 they are subject to a maximum penalty of 14 years in prison and if the child is 14-18 then a maximum of 7 years in prison.

Agreeing to sex work by child

This offence relates to offering or accepting an offer of sex work by a child with a maximum penalty of 14 years in prison if the child is under 14 and a maximum of 7 years if the child is 14-18.

Non-compliant advertising

These regulations are inconsistent with the intentions of the Bill. It retains advertising regulations that exist in the current, problematic Prostitution Act 1992.

These clauses restrict the ability for sex workers to advertise on the radio or TV. Sex workers can advertise in the newspaper, but there are restrictions on what you can include in the ad. The ad must be in the "Adult Entertainment" section of the classifieds. You can only show a persons head and face in an ad – no other parts of the body. You cannot describe yourself, others or a sex services business by age, race, colour or ethnic origin. You cannot refer to any physical attributes and if you say massage or masseur you must actually say 'erotic massage' or 'erotic masseur'. The ad in the paper cannot be any bigger than 3.5cm by 4.5cm.

These are arbitrary and illogical restrictions on what and how sex workers can advertise. Standard advertising restrictions should apply to sex worker's ads instead of these unworkable restrictions. Sex workers often will not want to include a head shot in their advertising and should be able to describe themselves and their services.

Sex services businesses or other independent sex workers cannot advertise for sex workers (staff or coworkers) within the Northern Territory. Given the intention to decriminalise sex work, sex workers should be able to advertise safely and transparently. Sex services businesses should be able to advertise transparently for employees just as other legal businesses.

As defined under the Fairwork Act 2009, transparency in advertising positions for employment as a sex worker, driver, manager, receptionist, cleaner must be clear before people apply for the work, to ensure employees are protected from:

- adverse action
- coercion
- undue influence or pressure
- misrepresentation.

Medical examinations

Sex workers in Australia have maintained low rates of STI and BBVs and high rates of condom use, with no reportable differences between migrant and non migrant sex workers. Mandatory testing is recognised as a harmful and costly practice that provides no discernable benefits (see Section 6).

This clause states that a person commits an offence if they state or imply that they or another person has undergone a medical examination in order to induce someone to believe they are not infected with an STI or BBV and enter into a contract for sex work. This clause applies regardless of a persons BBV or STI status. It is an offence to simply state a person has had a STI or BBV examination in the context of sex work and applies equally to sex workers, operators of sex services businesses and clients.

Part 4 Suitability certificates

The following clauses apply to suitability certificates for operators of sex services businesses that engages more than 2 sex workers. Requirements for operators to hold suitability certificates for sex work in practice has not achieved the intended results and have instead resulted in high levels of non-compliance. The requirements for suitability certificates should be removed from the Bill.

Additionally the requirement for suitability certificates for operators of businesses with more than 2 sex workers is overly onerous and excessive. In NZ the requirement for suitability certificates applies to sex services businesses with more than 4 workers and recent amendments by the SA Attorney General to the SA Decriminalisation of Sex Work Bill 2018 only requires this for businesses with more than 5 workers.

The requirements in the Bill should not apply to sex workers who are working together and do not manage or employ each other. It is common practice for sex workers to work together or share a premises, and/or support staff. Requiring these independent sex workers to hold suitability certificates creates a situation similar to the current registration requirements. These clauses must explicitly exclude independent sex workers who are working together without an employment or management relationship to each other.

Part 5 Miscellaneous

Regulations

This clause is a standard clause stating that the Administrator may make regulations under the Act. This means the Administrator can make regulation under this Act that may prescribe fees payable, set out requirements for advertising, and provide for the requirements of suitability certificates and matters relevant to revocation of suitability certificates. It is crucial that any such regulations cannot be made without a consultative process with sex workers. It is of notable concern that the areas specified relate to areas where there are already concerns with the current clauses in this Act, such as advertising restrictions and suitability certificates.

Part 6 Repeal and transitional matters

Acts repealed

On commencement of the Sex Industry Act, the Prostitution Regulation Act 1992 (Act No 6 of 1992), the Prostitution Regulation Amendment Act 1993 (No 47 of 1993), and the Prostitution Regulation Amendment Act 2000 (No 69 of 2000) are repealed.
It is great that these problematic regulations will be repealed, allowing for the decrriminalisation of sex work in the NT. Sex workers in NT have detailed the devastating impact of these regulations on their rights, health and safety. The repeal of these regulations is welcomed by sex workers and will have a positive impact on sex workers workplace health and safety, industrial rights and access to justice.

Destruction of certain records created under Prostitution Regulation Act 1992

This is an important clause that means that once the Sex Industry Act commences, all personal information held in registration records will be destroyed. Currently the Northern Territory is the only jurisdiction in Australia to still have a system of police registration of sex workers. This approach is discriminatory and provides no positive outcomes for sex workers, instead has branded sex workers on what is a lifelong register, with no means of having yourself removed from the register. Destruction of the personal information on the register will be significant for sex workers who continue to be negatively impacted by these records.

Part 7 Consequential amendments

This Part amends various other Acts and Regulations to remove references to offences contained in the Prostitution Regulation Act 1999 following its repeal, and inserts references, where relevant, to offences under the Sex Industry Act 2019 as they relate to those specific Acts and Regulations.

Division 3 Criminal Records (Spent Convictions) Act 1992

This section merely repeals section 15(g) of the Criminal Records (Spent Convictions) Act 1992 which will have no operation when the Prostitution Regulation Act 1992 is repealed.

This is missing an important opportunity to destroy criminal records for sex work with the introduction of the Sex Industry Act. Similarly when homosexuality was no longer considered criminal, previous convictions for homosexuality were spent.

Historical convictions in relation to sex work must be taken to be spent on the commencement of the Sex Industry Act. This has been a crucial issue in NSW where this was omitted creating barriers to sex workers employment in other industries, prohibiting travel, preventing sex workers from being able to leave sex work if they wish to do so. Furthermore, these criminal records for sex work have created issues in other legal matters for sex workers such as custody cases.

5. Why Sex Workers Want Decriminalisation

Decriminalisation is the removal of laws specific to the sex industry, including those in the Prostitution Regulation Act (NT) 1992. By repealing the laws which criminalise aspects of sex work, sex workers are able to access the rights and protections afforded to other employees, contractors and small business owners in the Northern Territory.

Decriminalisation does not include registration or licensing.

Rather than resulting in de-regulation or 'no regulation' full decriminalisation ensures that sex industry businesses are regulated in the same way as other businesses, subject to existing regulatory mechanisms such as Northern Territory Government Planning Scheme planning and zoning regulations, WorkCover and the Australian Taxation Office.

In NSW the sex industry is subject to a whole of government regulation including Workplace Health and Safety, council, business, industrial, taxation, migration, planning, health and criminal laws and regulations. Police are not involved as regulators at any level unless there has been a breach of law.

Existing laws covering exploitative work practices in any workplace, violence, robbery, fraud, sexual assault, harassment already exist but when criminalisation is lifted sex workers can access the protections of these laws. Sex workers are more likely to report crime or harassment to police and raise and seek legal recourse for exploitative workplace conditions when sex work is decriminalised.

A decriminalised system amplifies opportunities for outreach, magnifies capacities for peer education, supports sex worker self-determination, maximises compliance, increases transparency and minimises discrimination. By contrast, licensing or registration create significant negative impacts on sex workers.

Decriminalisation has brought improved work safety, high rates of safer sex practice and low rates of sexually transmitted infections with no evidence of organised crime in the New South Wales.

The NSW sex service premises planning advisory panel highlighted that 'establishing planning controls which are reasonable (rather than unnecessarily restrictive) is likely to result in a high proportion of sex services premises complying with council requirements, with corresponding benefits to council operations, the local community and health service providers'.

The Lancet Series on HIV and sex workers showed that decriminalisation of sex work would have the greatest effect on the course of HIV epidemics across all settings, averting 33–46% of HIV infections in the next decade. Decriminalisation would reduce mistreatment of sex workers and increase their access to human rights, including health care.

And there is ample support for the full decriminalisation of sex work and support is continuing to grow for the evidence affirmed best practice model of sex work regulation. Decriminalisation is supported by United Nations, UNAIDS, UNFPA, UNDP, Amnesty International, International Labor Office (ILO), World Health Organisation, Lancet Medical Journal, Global Alliance Against Trafficking in Women, Global Network of Sex Work Projects, Asia Pacific Network of Sex Workers, and within Australia's National BBV and STI Strategies.

See further reading list for more evidence on decriminalisation.

6. Other key points

Anti-discrimination protections.

Anti discrimination protections are essential for sex workers and important to supporting the implementation of full decriminalisation. There was a recent inquiry into the proposed Modernisation of the NT Anti Discrimination Act where both Scarlet Alliance and SWOP NT submitted advocating for the important inclusion of sex work' and 'sex worker' as protected attributes and for inclusion in the modernization of the Act protections against vilification. For issues for and case studies of NT sex workers, including with discriminatory provisions in current legislation see Sex Worker Outreach Program (SWOP NT) & Sex Worker Reference Group (SWRG) Collective Submission in response to the Northern Territory Government Discussion Paper – release September 2017
Modernisation of the Anti-Discrimination Act: **https://www.ntahc.org.au/programs/sex-worker-outreach-program-swop-nt/parliamentary-submissions**

Anti discrimination protections for sex workers are essential for providing necessary protection against widespread and persistent stigma and discrimination that sex workers face in every facet of our lives. It will also be a crucial element in supporting the implementation of the decriminalisation of sex work. These protections must be included in the NT Anti Discrimination Act and the Sex Industry Bill could be a key opportunity to move forward these amendments and provide sex workers with necessary protections against discrimination.

Sex Workers and BBV and STIs

Research and surveillance demonstrates sex workers have maintained rates of HIV and STI that are equal to or in many cases lower than the general population and there are high levels of condom use and testing. Studies show migrant sex workers have similarly low rates of STIs and HIV. Decriminalisation supports this. In their 2005 comparative study of brothels in Perth, Melbourne and Sydney, Harcourt et al. found that of three Australian approaches to sex work legislation (criminalisation, licensing and decriminalisation), decriminalisation led to the best health outcomes. Sex worker access to health providers and outreach is best supported by decriminalisation.

Mandatory Testing

The Eighth National HIV Strategy and *The Fourth National Sexually Transmissible Infections Strategy* explicitly identifies mandatory testing of sex workers as a key barrier to evidence based prevention, and access to testing and healthcare services

Mandatory testing 'endorses a false sense of security in the form of a "certificate", which, due to window periods, doesn't actually confirm a sex worker's sexual health status, but instead just indicates that the sex worker has participated with the states' mandatory testing regime

Mandatory testing places an unnecessary burden on sexual health clinics which are already beyond capacity. Sex workers in need of access to sexual health service quickly are particularly marginalised by mandatory testing regimes

The cost of over-testing is high - screening sex workers for HIV every 12 weeks costs $4mil for every one HIV infection averted.[1]

[1] Jeffreys, E., Fawkes, J., & Stardust, Z. (2012). Mandatory testing for HIV and sexually transmissible infections among sex workers in Australia: a barrier to HIV and STI prevention. *World Journal of AIDS, 2*(03).

Mandatory testing of sex workers is considered a rights violation by a number of international human rights organisations, such as by the United Nations Human Rights Office of the High Commission for Human Rights and UNAIDS. In Australia, mandatory testing has had negative consequences for sex workers confidentiality, human rights and industrial rights.

Mandatory Condom Use Laws

Mandatory condom use is based on the assumption that without legal intervention safer sex practices will not be implemented. Research demonstrates that there are high rates of condom use amongst sex workers, including migrant sex workers, in jurisdictions that do not legally mandate sex workers to use condoms. For example, The *Sex Industry in NSW: a Report to the Ministry of Health* study found that sex workers was approaching 100% in Sydney brothels with no differences for migrant sex workers.

Mandatory condom use laws are difficult and costly to enforce, leading to entrapment of sex workers by police and barriers to sex workers access to health and justice services.

The implementation of sex worker peer education programs has been central in the maintaining low rates of STIs and BBVs amongst sex workers. Peer educator programs in Australia were instrumental in persuading brothel managers and workers to adopt safer sex practices. Condom use in brothels rose from under 11% of sexual encounters to over 90% between 1985 and 1989 and high rates of condom use has been consistently maintained by sex workers since and the health of sex workers improved commensurately.

Registration and Licensing

Registration and licensing has never succeeded and do not provide an accurate picture of the sex industry. The majority of sex work businesses are unable to comply with the onerous requirements of licensing and forced to operate outside of the legal framework.

Businesses are simply required to meet normal planning, workplace health and safety and business registration requirements.

Queensland and Victoria sex industry laws have a licensing framework and provide comprehensive evidence of the model's failure. 50% -80% of the sex industry cannot operate/work legally in Victoria and Queensland respectively where sex work is licensed. In ACT where individual sex workers were required to register from 1994 until the laws were repealed in August 2018, only 14 sex workers had ever registered demonstrating the failure of registration.

The Kirby Institute's 2012 Report to the NSW Ministry of Health states that licensing is a 'threat to public health' and should not be regarded as a viable legislative model.

It would be a mistake if the NT government decided to implement a system that included either sex industry business or individual sex worker registration or licensing. This approach has demonstrated, in other parts of Australia, to: create a two tiered system with the majority of the sex industry operating outside of the legal sector; to be an expensive system; and, to result in high levels of non compliance and reinforce police as regulators. Evidence in other states demonstrates that licensing and registration creates an illegal, 'underground' industry that cannot be quantified.

Home based private or independent sex should not be subject to registration or the same regulation as brothels

Requiring home based private sex workers to be subject to the same requirements as brothels or to registration conditions not required of any other home occupation is discriminatory and fosters stigma against sex workers. Enforcing unnecessary and discriminatory regulation creates an inevitable underclass of 'illegal' sex workers who are unable to comply with restrictive and invasive registration systems who face significant barriers to accessing essential support, services and justice, such as reporting crime to the police. Research from NSW has demonstrated that there are minimal amenity and safety impacts to the community as a result of home-based private sex workers.[2]

Another study which surveyed the perception of 401 residents in two neighbourhoods in NSW found that, despite residents assumptions around public nuisances and private sex work, '43% of respondents were unaware of living or were uncertain that they lived near a sex premise, while a further 30% were aware but noted no impact'.[3] The study found that 'those who had been aware of sex premises operating in their neighbourhood for a number of years appeared less likely to report negative impacts than those who had more recently become aware of their existence, suggesting that established sex premises had acted to mitigate any negative local impacts, or simply that residents had realised that sex premises created few problems'.

Private or Independent sex workers should not be forced to work alone

Independent sex workers should not be restricted from working with other workers for their safety, to share costs, to reduce isolation and to enable peer support. Independent sex workers who are not in a management or employment relationship to each other can legally work together in Tasmania, NZ and in some parts of NSW without negative legal or amenity impact. Sex workers have reported greater flexibility, improved WHS, reduced overheads and a greater sense of security.

In states where sex workers must work alone or illegally, sex workers have reported frequent police entrapment, harassment and arrest. These independent sex workers report being forced to work longer hours in order to cover the costs of operating and reduced control over their work and safety strategies.

Not all private sex workers want to or will always work with another sex worker. However in the instance that a private worker should chose to do so, they should not be subject to entrapment and criminalisation as a consequence.

Street Based Sex Workers

Prohibition or laws seeking to control of street based sex workers are ineffective and creates increased risks and barriers for sex workers. It places sex workers safety at risk as they must prioritise evasion of authorities over safety strategies. It limits the ability for sex workers to safely screen clients and negotiate their services. Criminalisation and police enforcement disrupts peer networks and displaces sex workers from usual places of work, making it difficult for outreach services to find people and hindering sex workers ability to organise. It creates significant barriers for

[2] Prior, J., & Crofts, P. (2015). Is Your House a Brothel? Prostitution Policy, Provision of Sex Services from Home, and the Maintenance of Respectable Domesticity. *Social Policy and Society, 14*(1).

[3] Hubbard, P., Boydell, S., Crofts, P., Prior, J., & Searle, G. (2013). Noxious neighbours? Interrogating the impacts of sex premises in residential areas. *Environment and Planning A, 45*(1). Pg 8

street-based sex workers to report crime to the police in fear that reporting will result in charges being laid against them.

Zones, 18+ Precincts or Isolated Industrial Areas

Restricting sex workers to isolated industrial areas is a risk to the safety of sex workers. Issues have being highlight by sex workers forced to work in industrial zones where they have no access to public transport, poor lighting and no amenities. This risk is exacerbated for the large number of sex workers who work at night.

Sex workers strategically choose the location of their work based on access to essential services, public facilities including public transport, access to clients visibility, lighting and safety. Zoning of sex industry premises to isolated, poorly lit, under resourced and unsafe areas undermines sex workers' safety.

There is currently a review of the Planning Regulations underway and we encourage sex workers to submit to this process. Scarlet Alliance and SWOP NT will be providing submissions to this process outlining issues in relation to planning for sex workers. We will keep you informed when the public submissions process for the Planning Regulations is announced.

7. Further reading and reliable research

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