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Scarlet Alliance response to the West Australian Prostitution Amendment Bill 2007

Terminology – ‘Sex Worker’

The term ‘sex worker’ was coined by Carol Leigh, a San Francisco based sex worker activist, in the 1970’s. The intention was to reposition sex work within a workplace and industrial framework, rather than the morally charged ‘public good’ debate that had driven sex industry laws up until that point. Scarlet Alliance and our membership wholeheartedly support the Government’s decision to use the term ‘sex worker’ in place of the stigmatising and outdated term ‘prostitute’. The adoption of appropriate language in sex industry legislation is a critical element in addressing stigma at the same time as changing laws. The use of accepted and self determined language is essential in acknowledging and respecting the human and civil rights of sex workers and providing a positive example to the media and other sections of the community.

Terminology – ‘Decriminalisation’

Use of the term ‘decriminalisation’ to describe the proposed model is inaccurate. Decriminalisation is the removal of criminal penalties and the removal of police as regulators of the sex industry. In the proposed model, a number of new offences will be created and police will still have extensive involvement in the sex industry.

Local Government

Scarlet Alliance supports efforts to regulate Local Government powers in relation to the sex industry. Informing and working with Local Government prior to the laws becoming active will prevent confusion in the implementation of the laws. Scarlet Alliance suggests that sex worker groups who have experience with these policies, in Australia and internationally, be involved in designing training for Local Government planning staff and councillors. This will ensure that as well as familiarity with the practicalities of the law, staff would be sensitised to treat sex workers and sex industry businesses with dignity, respect and equality.

Peer Education

Scarlet Alliance supports the ongoing provision of targeted sex worker support services in Western Australia. We hope that these proposed changes will see additional funding directed toward those organisations that employ sex worker peer educators; the key to Australia’s internationally acclaimed success in STI/BBV education and prevention in the sex industry. Scarlet Alliance runs a nationally accredited workplace skills recognition project that assesses and formally recognises the work of sex worker peer educators. We strongly recommend that sex worker peer educators in Western Australian outreach organisations be resourced to participate in this process.

Occupational Health and Safety

Scarlet Alliance supports the Government's approach to sex worker Occupational Health and Safety. We have appreciated the opportunity to provide input into the draft OH&S Code of Practice and thank the WA Health Department for recognising our expertise in this field. However, we would like to point out that although the guidelines themselves appear to be non-discriminatory and in line with other similar businesses, the penalties for non-compliance with these guidelines far exceed the penalties imposed on other workplaces.

Protections for Sex Workers

Scarlet Alliance applauds the WA Government for the proposed additional protections for sex workers, including employee protections and entitlements, a clear definition of sexual assault and an increased capacity to employ best practice personal safety methods, eg. working in tandem with other private workers. However, we have concerns that these protections may not go far enough in practice. The greatest barrier sex workers have to accessing legal recourse is the negative stigma and discrimination attached to sex work. As well as in the judicial system and industrial relations, there are many other ways sex workers are discriminated against in their working and private lives. Some examples include; landlords charging private sex workers exorbitant rents under threat of eviction, newspapers charging the sex industry around 10 times the usual fee for advertising, and employees being fired from non-sex industry jobs on discovery of past sex work. Some of the provisions within the proposed legislation may actually increase the risk of discrimination, such as the requirement for employers to photocopy employee's identification and keep the copies for a period of 3 years, which provides relatively accessible documented proof of sex work status. (*21a. 13 Prostitution Amendment Bill 2007*) Scarlet Alliance requests that the Government formalise protection for sex workers in anti-discrimination legislation, to ensure sex workers are able to take advantage of the protections included in the proposed legislation.

Criminalisation of sex workers with STIs/BBVs

Scarlet Alliance does not support the creation of additional offences for sex workers with STIs/BBVs. Penalties for infective persons who knowingly endanger the health of others are already contained in the WA Health Act. In addition, decriminalisation will see further protections provided by OH&S guidelines, with a breach of Duty of Care prosecutable by Worksafe. The creation of sex worker specific laws pertaining to STI/BBV transmission is unnecessary and discriminatory. In particular, we do not approve of the sexual health of sex workers being considered the responsibility of their employers. (*21s and 21t Prostitution Amendment Bill 2007*) These offences encourage sex industry employers to demand medical certificates from sex workers, which is not only a violation of privacy, but creates a defacto mandatory testing regime - a practice condemned by peer educators and health professionals as being detrimental to sex worker and public health. The employer's responsibility for the sexual health of their employees should end at the provision of, or encouragement to access, information and education on safe sex practices. The exemplary health record of Australian sex workers - even in jurisdictions where sex work is criminalised and/or unregulated - proves that sex workers are more than capable of taking responsibility for their own sexual health.

Private Sex Workers

An option preferred by many, private work offers a sex worker complete autonomy, in control of their own working conditions and financial dealings. Best practise Occupational Health and Safety policy recommends private sex workers work in groups of two or more. Scarlet Alliance commends the Government's acknowledgement of this recommendation and the decision to allow sex workers to work in pairs. We would, however, like further clarification on how the new legislation will affect private sex workers, including their ability

to rent separate premises to work from, employ staff (driver, receptionist, security) and whether safeguards will be introduced to minimise discrimination by councils and landlords.

New Penalties and Offences

The penalties and fines imposed on sex industry businesses far exceed those applied to other businesses and are generally not consistent with the gravity of the offence. This could prove detrimental to the effectiveness of the proposed certification system. It must be acknowledged that the people these penalties will be applying are those doing the right thing by obtaining a certificate. If the regulations and penalties associated with operating a certified business are similar to, or exceed, those for illegal operators, there is no incentive to comply. Harsh restrictions and unnecessary financial burdens placed on legal sex industry businesses facilitate a growth in illegal operations, as has occurred in Victoria. Certified operators should be rewarded for their compliance, not punished.

Police right to enter sex industry premises

Scarlet Alliance does not support powers that allow police to enter premises to inspect certificates issued by the Department of Racing, Gaming & Liquor. (*21v. Prostitution Amendment Bill 2007*) Sex industry businesses should be subject to the same inspection and enforcement processes as other businesses, such as licensed premises, where Department of Racing, Gaming & Liquor inspectors are responsible for compliance activities. Allowing police to inspect certificates and enforce compliance puts them in the same 'regulatory' position they held during Containment, with the same risk of corruption and abuse of power.

Retention of extraordinary police powers (Prostitution Act 2000)

The positive aspects of the proposed model will be undermined if police retain extraordinary powers in relation to the sex industry. The potential for police corruption will also remain. For the model to achieve its stated goals, it is vital that the Prostitution Act 2000 is not included in the new legislation. Scarlet Alliance supports the existence of a police liaison and recommends the engagement of a specifically trained Sex Industry Liaison Officer as employed in other Australian states. We would appreciate the opportunity to discuss the establishment of a Sex Industry Liaison Officer with the Government and the WA Police.

Police Registration of Individual Sex Workers

Scarlet Alliance is vehemently opposed to the concept of adding sex workers to what is effectively a criminal database, particularly in what will be a 'decriminalised' environment. The current methods of collection and retention of personal details used by the WA Police are a violation of sex workers' right to privacy and anecdotal evidence has repeatedly demonstrated that the current database is not secure. The proposed legislation gives police the right to demand identification from sex workers and 'any other documents' from their employers, which could conceivably include employee records, during routine inspections. The proposed legislation must prohibit the collection, retention and improper use of sex workers' personal information by police.

Street Based Sex Work

The ongoing criminalisation of street based sex work is incongruent with Working Party attempts to improve conditions for sex workers in Western Australia. The Prostitution Act 2000 violates the human and civil rights of all WA sex workers, regardless of their workplace, but street based sex workers are especially marginalised and endangered by the legislation. Scarlet Alliance, our members and colleagues will continue to fight for the rights of street based sex workers to work without fear of prosecution in Western Australia.