



The coalition for the decriminalisation of sex work is a coalition of organisations with a concern for and interest in the sex industry in WA.

It was formed as a result of numerous community, health and political organisations identifying decriminalisation of the sex industry as the best available model of legislation.

Decriminalisation is the absence of criminal sanctions specific to the sex industry and therefore sex work is no longer a crime.

The CDSW over the past 2 years has participated strongly in a campaign to lobby government and other stakeholders to ensure that all policy introduced will meet the following objectives:

1. The focus of all sex industry legislative reform should be to increase sex worker health and safety.
  - ensuring sex workers have access to a safe working environment.
  - preventing the negative impact of unnecessary regulation on the working practices of sex workers in Western Australia
  - enabling the very low rates of sexually transmissible infections (STI's) amongst sex workers in Western Australia to continue through self-regulation of sexual health.
2. Sex workers as employees should be entitled to the same workplace protection as provided to workers in other industries.
3. Sex workers must be provided with the opportunity to have input into and the evaluation of all legislation pertaining to the sex industry. Without comprehensive consultation sex industry legislation will be unworkable. Decision-making bodies must consult with sex workers.
4. Criminalisation marginalises sex workers within the community, legitimising discrimination towards sex workers, and sanctioning violence against sex workers. We oppose current and proposed models of legislation which include criminalisation of sectors of the sex industry.

**The CDSW strongly opposes the Prostitution Control Bill 2002.**

## ***Background of Sex industry legislation in Western Australia***

Refusal of governments to provide realistic and effective legislation surrounding sex work in Western Australia left the industry governed by an often un-enforced and unwritten 'containment policy' between 1975-1999, along with outdated laws leftover from the 1800s.

Gentrification of inner city suburbs resulted in an outcry by newer residents regarding street based activities, including street based sex work, which has historically co-existed in these areas.

The Western Australian Police department reacted to this outcry with an explicit police operation aimed at moving the workers away from Palmerston Street and down towards the lower end of Stirling Street. Police advised Phoenix, and a front page newspaper article detailed, that this move would mean the workers would not be charged in the area and that the area would provide a safer working environment. Unfortunately, within a short period of time sex workers were arrested in the new area and as a result began to move further along Stirling Street and throughout the Highgate area. This move resulted in an increase of visibility of street based sex workers and disturbance to a new set of residents, a group of whom have petitioned the local council and generated much media attention.

It was this complex set of circumstances which led to an environment where the Prostitution Act 2000 largely aimed at the very small street based sex work community (only 2% of the total number of WA sex workers) was introduced. Hansard illustrates the Labor Partys' opposition to this legislation and the subsequent sunset clause was included to ensure the Act only serve as the stopgap measure it was intended to be.

However, the Labor Government, once in power, extended this legislation for another term even though service providers and community groups have outlined the ill effects of the legislation.

Recently Labor have included the Prostitution Act 2000 in the Prostitution Control Bill 2002. This legislation has been produced by the Police Minister, Michelle Roberts and includes legalisation of small sectors of the sex industry. However, in Queensland and Victoria where Licensing Models similar to those proposed in Western Australia have been introduced, the outcome has been an illegal sector much larger than the legal sector. Therefore, a safe work environment is only available to a small number of sex workers and the rest are left to work illegally and risk imprisonment.

## Health Issues

1. There are no documented cases where HIV/AIDS has been contracted from a sex worker in Australia.<sup>1</sup>
2. Peer-based safe sex education programs do work <sup>2</sup>
3. The majority of workers have regular health checks and follow up with treatment if a sexually transmissible infection (STI) is detected <sup>3</sup>
4. Criminalisation in other states has seen workers go underground with numbers accessing specialised health services dropping dramatically <sup>4</sup>
5. There is a higher incidence of STIs in the general community than amongst sex workers <sup>5</sup>
6. Prevalence of STIs and risk behaviour are lower amongst clients of sex workers accessing health service than those reporting no commercial sexual contact <sup>6</sup>
7. Public health concerns are best met through removing criminal sanctions, so that sex workers can confidently access health services and promote safe sex practices as an industry standard <sup>7</sup>

The West Australian Health Act 1911 already deals extensively with public health issues such as STIs, therefore additional legislation is unnecessary.

The measures that have been found to work best in terms of the control of STIs in the community are **health promotion strategies** rather than a punitive approach. These strategies are:

1. raising awareness of the issues
2. providing information
3. offering education programs relevant to specific target groups
4. encouraging personal skills development in areas such as negotiation, assertiveness & self-esteem

**The CDSW asserts that a punitive approach is not the answer. Sex workers must have access to safe sex education programs and specialised clinical services without fear of prosecution. Sex workers must be involved in developing safe sex codes of practice, and working to identify and eliminate barriers that prevent safe sex awareness translating into safe sex behaviours.**

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<sup>1</sup> C. Harcourt "Prostitution & Public Health in the Era of AIDS" in Perkins, R; Prestage, G; Sharp, R; Lovejoy, F (eds) (1994) *Sex Work & Sex Workers in Australia*. University of NSW Press; Sydney, p.217

<sup>2</sup> Ibid

<sup>3</sup> Boyle, Frances M. et al, 1997, 'Sexual and reproductive health', in *The Sex industry: a survey of sex workers in Queensland, Australia*, Ashgate, Sydney.

<sup>4</sup> Boyle, Frances M. et al, 1997, 'Sexual and reproductive health', in *The Sex industry: a survey of sex workers in Queensland, Australia*, Ashgate, Sydney.

<sup>5</sup> Parliament of South Australia, Inquiry into Prostitution Final Report, Aug 1996, p. 91

<sup>6</sup> Coughlan E, Mindel A & Estcourt CS. 2001, 'Male clients of female commercial sex workers: HIV, STDs and risk behaviour', *International Journal of Sexually Transmitted Diseases and AIDS*, 12 (10), 665-9.

<sup>7</sup> Banach, Linda & Metzenrath, Sue 2000, *Principles for Model Sex Industry Legislation*, AFAO/Scarlet Alliance, Sydney.

## LEGAL ISSUES – Police powers

The current Prostitution Control Bill 2002 criminalises large sections of the sex industry. Only if the industry is decriminalised will it be possible to regulate it appropriately. **Decriminalisation does not mean deregulation, in fact, it permits regulation.**

There are many things that make up society that certain individuals might not like – hotels, public sports grounds, industrial sites. This does not mean they should be banned. It is a matter of using the law to factor in the various needs of a society so they can coexist.

Coupled with the ineffectiveness of criminalisation, the Prostitution Control Bill 2002 is notable for its breaches of the fundamental civil liberties of all Western Australians.

### A productive model is possible

1. Sex work can be regulated so that it does not encroach on other urban land use. Good regulation requires that we put aside our moral position. It is not the law's job to dictate private morality (John Stuart Mill, 19<sup>th</sup> Century).
2. Laws regarding town planning, health, occupational health and safety, and workplace relations can all be used to ensure that the sex industry occupies an appropriate place in the community and to protect workers from exploitation.
3. Criminal laws can be used to protect the community from harassment from would-be clients, from drug use (which people assume to be associated with sex work), from indecent public acts or from someone knowingly spreading diseases.
4. The regulation needs to match the nature of the business and the clients. It is pointless having onerous provisions that sends the Industry underground.

### The existing model encroaches on the civil liberties of all Western Australians

1. Without special prostitution legislation police already have the power to obtain the name and address of anyone they choose<sup>1</sup> and to arrest without a warrant on the basis of reasonable suspicion of an arrestable offence or for public order offences.<sup>2</sup> There is no need to expand police powers.
2. Police have been granted additional powers to stop, detain, search and seize on reasonable suspicion of soliciting or of having evidence of an offence.<sup>3</sup> This applies to any member of the public.
3. The presumption of innocence, a fundamental tenet of liberal legal systems, is removed. If the police *think* you intend to solicit or look for services, you are presumed guilty unless you can prove your innocence.<sup>4</sup> Is it possible to prove your intention *not* to do something? If you can't you can be liable for imprisonment of up to 2 years.<sup>5</sup>
4. Police can issue move-on notices preventing someone they *think* is soliciting from being in a public area.<sup>6</sup> A designated area can span a number of suburbs and can include the place in which someone lives. If a person doesn't comply (they might not be a street worker) they can be liable for 6-12 months imprisonment.<sup>7</sup>

**In light of recent police corruption claims should we give police greater powers that can be exercised against any one of us?**

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<sup>1</sup> s164 (1) (a) Prostitution Control Bill 2002

<sup>2</sup> s564 Criminal Code

<sup>3</sup> s166 Prostitution Control Bill 2002

<sup>4</sup> s166 Prostitution Control Bill 2002

<sup>5</sup> s75 (4) (b) Part 5 Division 1 Prostitution Control Bill 2002

<sup>6</sup> s165 Prostitution Control Bill 2002

<sup>7</sup> s100 Part 5 Division 1 Prostitution Control Bill 2002

## **Sex work is legitimate employment**

The Prostitution Control Bill 2002 works on the premise that employment in the sex industry is not legitimate employment. Sex workers are not entitled to the same industrial rights and protections as other workers. It will result in two different groups within the industry licensed sex workers and the unlicensed sex workers. Therefore some sex workers will be gain work entitles and the larger group will have entitlements.

1. Because of the severe licensing restrictions large numbers of workers will avoid licensing and therefore will not be entitled to awards, superannuation, OH&S, workers compensation, holidays or sick leave
2. Sex workers are taxpayers and should be entitled to the same industrial rights and protections as any other workers paying tax.
3. Sex work has already been recognised as legitimate work for tax purposes and sex workers are able to claim work related expenses.
4. Sex work has a positive effect on the economy through collection of GST and income taxes.
5. The sex industry is the only work environment that is regulated by the police. Other health service and entertainment providers are self regulated and are subject to WorkSafe guidelines and industrial regulations, not criminal sanctions.
6. Health and safety priorities are undermined by policing strategies that include seizing safer sex paraphernalia.
7. Criminal laws hinder the implementation of sexual health education and prevention strategies.
8. Licensed sex workers will be the only group of workers whose license may be revoked without the opportunity to appeal.

Banach, Linda and Metzenath, Sue. October 2000, *Principles for Model Sex Industry Legislation*, AFAO/Scarlett Alliance, Sydney.

## Community Issues

From discussions at resident group meetings in various areas there is a vocal minority of residents who are opposed to sex work in their immediate and surrounding areas. Sex work has little impact on an average residents day to day lifestyle. This vocal minority highlight discriminatory stereotypical views of sex workers as drug addicts, immoral and separate from the community. Evidence demonstrates this is not the case and that sex workers care as much about the community that they work and/or live in as the next person.

1. Street based sex workers have been unfairly scapegoated for the presence of inappropriately disposed syringes and condoms. This issue should be addressed by education campaigns and the provision of syringe disposal units in public places.
2. Residents often cite the presence of associated public nuisance as problematic not street based sex workers. The solution to these factors is not criminalising street based sex workers as the Prostitution Control Bill 2002 does. In fact existing public nuisance laws are adequate to address these issues.
3. A brothel in a community has less impact on the local residents than for example a hotel.
4. Noise coming from a hotel is significantly higher than that from a brothel.
5. Sex industry premises do not pose a threat to the community and therefore zoning requirements within the Prostitution Control Bill 2002 which state "a sex industry business must be in a light industrial zone and 300 metres from a educational establishment, a place of worship, childcare premises, community purpose premises, or an hotel or land in a residential zone or precinct" are excessively restrictive.
6. The latest Westpoll shows that 70% of Western Australians want sex work legalised.

## 7. Human Rights and the Sex Industry –

The following points refer to articles from the United Nations Declaration of Human Rights.(1948)

**The Prostitution Control Bill 2002 breaches the basic human right that “Everyone has the right to recognition everywhere as a person before the law (Article 76)”.**

The Prostitution Control Bill 2002 discriminates against sex workers by making them criminals. We believe the following articles of the UN Declaration of Human Rights are also breached by the Prostitution Control Bill 2002:

**Freedom from Harassment-** *No one shall be subjected to arbitrary arrest, detention or exile (Article 9)* Police can detain without charge because they suspect a persons’ intention regarding the sex industry. No evidence is required. It is not a charge, and will not be heard by Magistrate or Judge. Police can enter any premises without a warrant. No evidence is required. Approval from a senior officer is also not required. This allows police to harass people without being held accountable.

**Freedom of Movement-** *Everyone has the right to freedom of movement and residence within the borders of each state (Art. 13, sec. A)* Move on Notices and Restraining Orders stop individuals from moving freely though a specified area. Police are able to serve these notices without evidence and on *suspicion of intent and therefore* affecting the entire community, not just sex workers.

**Access to Employment-** *Everyone has the right to work and free choice of employment (Art. 23)* Sex work is a form of employment and should not be penalised with harsh and punitive laws.

**Access to Safety-** *“Everyone has the right to life, liberty and the security of person (Art. 3)* Police Powers in the Prostitution Control Bill 2002 push all forms of sex work further out from the city into industrial areas, isolating workers from public utilities including public transport and health services. Under current and proposed laws private workers are forced to work alone from their own home, without the power to employ a security guard or receptionist. The Bill creates unsafe work environments for sex workers.

**Right to Privacy-** *No one shall be subjected to arbitrary interference with their privacy, nor to attacks upon their honour or reputation. Everyone has the right to the protection of the law against such interference or attacks. (Art. 12)* The Licensing Board proposes to force sex workers to carry an id card, taking away individuals’ rights’ to decide who and when they will disclose their profession to.

**Right to Fair Trial-** *Everyone charged with a penal offense has the right to be presumed innocent until proven guilty according to law in a public trial at which they have had all the guarantees necessary for their defence. (Art. 11)* Prostitution Control Bill 2002 in section 205 excludes the rules of Natural Justice. The police can issue Move-On-Notices without the accused even being present. Restraining orders against sex workers can be ordered by the Magistrate without the person being present to defend or witness the case. These notices and orders do not require the usual evidence or witnesses – it is all based on suspicion. The provision of ID cards by a Licensing Board gives the board the power to determine who is legal and who isn’t, without any peer, community or independent legal advocacy. There is also no appeals board.

## **Nancy Hudson-Rodd**

President, UNAA (WA)  
Spokesperson, UNAA (WA) Committee on Human Rights  
Lecturer, International Human Rights Edith Cowan University

“The Prostitution Act 2000 in WA violates 10 articles of the Universal Declaration of Human Rights, including the right to movement, fair trial, safety, employment and privacy. The Scarlet Alliance “Model for Sex Industry Law Reform” document indicates that there are better ways to move forward on this issue.”

## **Maria McMahon, President, Scarlet Alliance**

It is vital that sex workers are consulted in developing legislation relating to the sex industry, as the impacts of poor reform can have devastating consequences for the health and safety of individuals.

The proposed legislation, with a combination of registration and licensing will only further stigmatise sex workers - as the only people in Australia required to carry ID cards by the state. This is a notion which was rejected a decade ago in the debate on the "Australia Card", bringing into question the human rights and privacy issues attendant in any such proposal.

The proposed laws will only create a cycle of arrest and imprisonment for those who are unable or unwilling to enter into the registration system - leaving these people open to corruption, abuse and violence. Further, they "lock in" people, particularly women, who may intend only to work briefly in the industry, yet find themselves "branded" by registration, and tied to only one registered workplace - not what we'd call a fair go.

We urge the Minister for Police to seek to create a legal framework that supports occupational health and safety, and therefore has optimum public health outcomes for sex workers, their clients and families.

Western Australia already has adequate laws in place to protect individuals from the risk of STDs being knowingly transmitted, and so should encourage the sex industry to become as self regulating as possible, through OH&S programs in the workplace.

## **Carolyn Smith**

Assistant Secretary, Australian Liquor, Hospitality and Miscellaneous Workers Union

“Workers in the sex industry deserve the same protection and recognition as every other worker. We are disappointed that Labor in opposition opposed the Prostitution Act 2000 but are not taking this opportunity to replace it with workable effective legislation.”