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12 October 2012

Dear Committee Secretary,

Submission on Issues Paper: Brothel Regulation in NSW

Thank you for the opportunity to comment on the Issues Paper on Brothel Regulation in NSW. Scarlet Alliance, the Australian Sex Workers Association, is the peak national sex worker organisation in Australia. Formed in 1989, the organisation represents a membership of individual sex workers and sex worker organisations. Through our project work and the work of our membership we have very high access to sex industry workplaces in the major cities and many regional areas of Australia.

Scarlet Alliance has played a critical role in informing governments and the health sector, both in Australia and internationally, on issues affecting sex workers in Australia. Scarlet Alliance is represented on the Ministerial Advisory Committee on Blood Borne Viruses and Sexually Transmissible Infections, and the Blood Borne Virus and Sexually Transmissible Infections Sub-Committee (BBVSS) of the Australian Population Health Development Principal Committee (APHDPC).

Although our organisation appreciates the opportunity to provide a submission, alongside our membership and associate member organisations and individual sex workers, we are still seriously concerned that this review is taking place at all. Our organisation provided advice to members of the current Government, prior to its election, outlining that all evidence demonstrates the success of the current model and the failure of licensing and registration models. We are disappointed that the Government is now proposing models which the Australian experience clearly indicates are unworkable, result in high levels of non-compliance, are expensive and ineffective, with such short turnaround for submissions and a lack of consultation with sex workers (the key stakeholders) about the supposed need for law reform.

Please find attached our submission. Scarlet Alliance supports option one outlined in the issues paper, and does not support registration or licensing. Our submission contributes comprehensive evidence on why decriminalisation should be maintained along with suggestions to support the effective implementation of decriminalisation in NSW.

Scarlet Alliance strongly recommends that any committee formed, or process, to further decisions resulting from this submission phase should include sex worker organisation representation. We also draw your attention to the international and regional significance of your considerations as the UNAIDS, UNFPA, & UNDP Report, *Sex Work and the Law in Asia and the Pacific*, was released last week recognising the value of decriminalisation and the failure of licensing models in effectively regulating the sex industry.

For any further information on this submission or its content please contact our Chief Executive Officer, Janelle Fawkes, at our organisations head office in New South Wales.

Regards,

Ari Reid, Acting President

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Brothel Regulation in NSW

Scarlet Alliance Submission

Executive Summary

Sex work has been decriminalised in New South Wales since 1995. NSW is world renowned for its best-practice model, decriminalisation recognised by the United Nations Secretary General, United Nations Population Fund and UNAIDS as best for sex worker occupational health and safety, industrial rights and human rights. NSW has one of the healthiest sex industries ever recorded, including among migrant sex workers. Evidence from the Kirby Institute, Australia's National STI and HIV Strategies and case studies demonstrates that decriminalisation has brought improved work safety, high rates of safer sex practice, low rates of sexually transmissible infections, low incidence of trafficking, little to no amenity impacts and no evidence of organised crime. Evidence shows that these health outcomes are *because* of decriminalisation, community-driven health promotion and peer education.

The concerns instigating this inquiry are not evidence-based, and a new regulatory system is not warranted. A move away from decriminalisation would be to step back 17 years in sex worker law reform. It would be a public health disaster and damaging for Australia's international reputation. The United Nations Report on Sex Work and the Law in Asia and the Pacific released in October 2012 states specifically in its conclusions that '[p]ositive public health and human rights outcomes have been achieved in jurisdictions that have decriminalized sex work' and that '[l]icensing and registration models have not been effective.¹

Scarlet Alliance does not support the introduction of a registration system (Option 2) or a licensing system (Option 3) for owners/operators – for businesses or individuals. The registration and licensing models proposed are flawed and dangerous. States with registration and/or licensing have *extremely low compliance* and *enormous administrative expense*. Over ten years of licensing in Queensland (where 90% operate illegally) and Victoria (where 50% operate illegally) demonstrates that licensing is ineffective and unworkable. Sex workers avoid licensing because the excessive conditions in place pose a threat to our safety. Licensing creates 'illegal brothels', creates a two tiered industry and a criminal underclass, and facilitates police and council corruption. The Better Regulation Office should formally oppose any model other than decriminalisation – this includes registration, licensing, mandatory testing and the Swedish Model.

The intention of decriminalisation in NSW is undermined by the actions of local councils. The majority of local councils are themselves creating significant barriers to sex industry business compliance. These barriers are the reason for non-compliance. Local council barriers include: excessive requirements when a Development Application (DA) is for a sex industry business (extra parking, opening times, zoning restrictions etc); councillors refusing sex industry business applications based on moral objections or fear of losing local government votes even when planning staff advise the application is in line with council requirements; lack of recognition of the different scales and sizes (and therefore necessary regulation) of different sex work settings. These approaches by local council have resulted in excessive costs to rate payers and business owners when DAs are not approved by council and must be appealed to the Land and Environment Court (LEC). The number of LEC cases that have found the application should have been approved by council demonstrates the widespread barriers created by councils. The City of Sydney and Newcastle

¹ UNAIDS, UNFPA, UNDP, *Sex Work and the Law in Asia and the Pacific*, 2012, UNDP Thailand, accessed at <http://www.snap-undp.org/elibrary/Publications/HIV-2012-SexWorkAndLaw.pdf> on 23 October 2012, page 6.

Councils in NSW provide evidence that significant numbers of sex industry businesses can be regulated and integrated effectively. Councils need assistance in implementing decriminalisation. Historically the level of enforcement of sex services industry has been wildly disproportionate to the risks involved. Systemic police corruption was a catalyst for decriminalisation in NSW. Police and licensing authorities should play no role in regulating the sex industry. Increased surveillance, monitoring and enforcement activities will result in low compliance and act as barriers to safer sex practices, occupational health and safety, and the management of blood-borne viruses (BBVs) and STIs.

Scarlet Alliance supports continuing decriminalisation of sex work in NSW, with improvements including: ant-discrimination protection for sex workers; decriminalisation of street-based sex work; repeal of advertising restrictions for sex workers; revision, update and application of the Sex Services Premises Planning Guidelines as an ongoing resource to support council in implementing decriminalisation; Government endorsement and implementation of the Sex Services Premises Planning Guidelines; appointment of a sex work liaison officer within the Department of Planning; removal of discriminatory provisions against sex workers from the standard LEP; Government funding and support for a sex worker-run education program to inform councillors of the rationale behind decriminalisation; and funding for sex workers organisations, peer education and translation of resources.

The United Nations report *Sex Work and the Law* states the importance of sex worker involvement in law reform:

It is critically important that sex workers are centrally involved in efforts to improve legal environments. Sex workers and, where they exist, sex workers' organizations should be supported to participate in setting national priorities for an agenda for action to improve the legal environment for sex workers.²

² UNAIDS, UNFPA, UNDP, *Sex Work and the Law in Asia and the Pacific*, 2012, UNDP Thailand, accessed at <http://www.snap-undp.org/elibrary/Publications/HIV-2012-SexWorkAndLaw.pdf> on 23 October 2012, page 31.

Misguided inquiry, lack of evidence base and insufficient consultation

Sex work has been decriminalised in New South Wales (NSW) since 1995. In 2011, the Liberal Party announced an intention to introduce 'brothel police' as an election promise during their State Government election campaign. This announcement was made despite evidence that NSW is world renowned for its best-practice model, decriminalisation recognised by the United Nations as best for sex worker occupational health and safety, industrial rights and human rights, and that NSW has one of the healthiest sex industries ever recorded.

Sex workers were not invited to participate in the inter-agency committee established by the Liberal Government to implement changes to the regulation of brothels in NSW.

The Issue Paper states that the need for the review is due to concerns about a large number of unapproved ('illegal') brothels in NSW and to reduce and/or prevent crime and corruption. This is despite evidence demonstrating that organised crime is not a facet of the sex industry in NSW; trafficking is not a facet of the sex industry in NSW; and the main cause of unapproved premises are overly-restrictive council regulations.

The concerns instigating this inquiry are not evidence-based, and a new regulatory system is not warranted. A move away from decriminalisation would be to step back 17 years in sex worker law reform. It would be a public health disaster and damaging for Australia's international reputation.

The options proposed

Scarlet Alliance does not support the introduction of a registration system (Option 2) nor a licensing system (Option 3) for owners/operators.

After discussion with the Better Regulation Office and assurance in writing that Option 1 'does not include registration or licensing', Scarlet Alliance can support Option 1 to improve decision making in planning and improving sharing of information between NSW regulators within the current regulatory system.

Scarlet Alliance supports continuing decriminalisation of sex work in NSW, with improvements as outlined below.

Scarlet Alliance notes that a main reason for considering changes to the regulatory framework include non-compliance however, in both states of Australia with a licensing model, it has been demonstrated that the model itself promotes non-compliance.

Objectives of proposed regulatory system

How would you alter the working definitions that we have proposed for the Government's objectives for the regulation of sex services premises, relating to protection of residential amenity, protection of sex workers, and safeguarding public health?

The Government has proposed 3 working definitions as the objectives for the regulation of sex services premises, relating to protection of residential amenity, protection of sex workers, and safeguarding public health.

Amenity

The location and operation of sex services premises should not have negative impacts on the safety of sex workers. Sex worker safety is best protected by giving sex workers choice over where, how

and when they work. The objectives should recognise that sex workers *are* also residents and part of communities in which we work. There is considerable evidence that the amenity impact of sex industry businesses and private sex workers can be, and generally is, very low. There is further evidence that those living near sex industry businesses believe there will be an amenity impact but that this is actually not the case.³ The following section provides evidence of the low amenity impacts of sex industry businesses.

Protection

The approach to ‘protection of sex workers’ in the Issues Paper is flawed. ‘Protectionist’ policies have historically been used to introduce harmful legislation that disadvantages sex workers under the guise of ‘protecting’ us.

The implicit assumption in these Objectives is that danger for sex workers lies inherently in the nature of our work. The ‘protection of sex workers’ section lists workplace injury, harassment, violence and sexual assault, trafficking and sexual exploitation, drugs and organised crime as issues sex workers need protection from. Police corruption, social stigma, social harassment, restrictive laws, barriers to health promotion and discrimination are not listed. Although the objectives then state that sex workers should feel empowered to enhance their protection through support from outreach providers, to report crimes to police, access WorkCover and workers compensation, ironically, the proposals for licensing and registration will create clear *barriers* to sex workers accessing any of these services.

Perceived association between sex work and criminality is what causes harm, stigma, prejudice and discrimination. This is what sex workers need protection from. Media issues that prompted this review - trafficking, organised crime and illegal brothels – are not borne out in evidence, as discussed below in our submission.

In NSW, occupational health and safety standards already exist for sex workers. The 2001 *NSW Work Cover Health and Safety Guidelines for Brothels* provides comprehensive guidelines and minimum standards for maintaining a safe and healthy environment for sex workers.⁴ The 2012 United Nations report on Sex Work and the Law in Asia and the Pacific states that ‘[s]ex workers should enjoy legally enforceable rights to occupational health and safety.’⁵

If the Government is interested in protecting sex workers, they should be creating an enabling legal environment to ensure sex workers can access human rights, industrial rights, and occupational health and safety mechanisms. The objectives must include protection of sex worker human rights, including rights to free choice of work, freedom of movement and protection from discrimination. Sex workers should not be exposed to police corruption, social stigma, harassment, prejudice or discrimination because of our work, or because of the regulatory framework around our work. The regulatory framework must empower sex workers with opportunities to choose how to work in a way that enhances our safety. Sex workers are best ‘protected’ through peer education, peer-led health promotion, and when Governments afford sex workers access to our human, civil and industrial rights, and treat us as experts on our own lives. The UN report on Sex Work and the Law states that ‘[t]o enable sex workers to fully enjoy legal rights to health and safety at work requires decriminalization.’⁶

³ Prior and Crofts, ‘Effects of sex premises on neighbourhoods: Residents, local planning and the geographies of a controversial land use’ (2012) 68 *New Zealand Geographer* 130.

⁴ NSW Government, WorkCover NSW, *NSW Work Cover Health and Safety Guidelines for Brothels*, 2001.

⁵ UNAIDS, UNFPA, UNDP, *Sex Work and the Law in Asia and the Pacific*, 2012, UNDP Thailand, accessed at <http://www.snap-undp.org/elibrary/Publications/HIV-2012-SexWorkAndLaw.pdf> on 23 October 2012, page 7.

⁶ UNAIDS, UNFPA, UNDP, *Sex Work and the Law in Asia and the Pacific*, 2012, UNDP Thailand, accessed at <http://www.snap-undp.org/elibrary/Publications/HIV-2012-SexWorkAndLaw.pdf> on 23 October 2012, page 7.

Health

Public health objectives are best met by supporting successful health promotion activities such as peer education and creating an enabling legal and policy environment. Sex workers have *lower rates* of sexually transmissible infections (STIs) and HIV than the general population, and engage in health promotion with peers (other sex workers), clients and the wider community. Sex workers in Australia are recognised as having some of the lowest rates in the world. Laws and policies on sex work should support sex workers to maintain low rates of STIs/HIV and high rates of testing and must be consistent with Australia's National STI and HIV Strategies. This includes full decriminalisation, opposing mandatory testing and removing HIV and STI disclosure laws.

Minimal to nil amenity impacts of sex industry businesses

Do you have any evidence about sex services premises' impact on residential amenity?

When considering applications for sex services premises, should councils use only evidence-based approaches that rely on verifiable criteria about possible amenity impacts? Why or why not?

There are little to no amenity impacts of sex industry businesses on surrounding communities. Yet councils often regulate on moral grounds and treat sex services premises differently to other businesses with similar amenity impacts. Where local councils refuse Development Applications on the basis of perceived amenity impacts such as noise or nuisance, these impacts rarely manifest or justify council bias. A central aspect of sex work is discretion to ensure the confidentiality of ourselves and our clients.

In our 2010 Submission to the Shadow Attorney General on Sex Industry Regulation in NSW, Scarlet Alliance and Nothing About Us Without Us (NAUWU) noted that there are low or no amenity impacts from sex services premises.⁷ Research from 2008 demonstrates that after 13 years of decriminalisation in NSW, only one brothel owner had been ordered to cease operation due to amenity impacts, and there had been no complaints relating to amenity impacts for private sex work.⁸ As Penny Crofts states, 'Most people are unaware that they have been living next to a home occupation (sex services). [Private sex workers] need to be discreet – to keep clients and also for personal safety'.⁹ Her research with Prior referenced below suggests that brothels have a neutral or positive effect on neighbourhoods.¹⁰ Private workers may work in various locations, including from home, and may also work in pairs or co-operatives. Many brothels are also small-scale – as the Issues Paper documents, those visited by the LASH team for their 2012 report had an 'average of seven workers per brothel, with about four workers employed on day shifts and up to six during evening shifts'.¹¹

Saul Isbister notes that in Marrickville Local Council, town planners checked with neighbouring Councils and Police Local Area Commands in 2002, covering a population of half a million people, and found that 'No complaints had been recorded in any police area command and corresponding

⁷ Scarlet Alliance and Nothing About Us Without Us, *Submission to Shadow Attorney General Chris Haatcher on Sex Industry Regulation in NSW*, September 2010, 10.

⁸ Scarlet Alliance and Nothing About Us Without Us, *Submission to Shadow Attorney General Chris Haatcher on Sex Industry Regulation in NSW*, September 2010, at 10.

⁹ City of Sydney (2005) Home Occupation Sex Services Premises Research Project Final Report, cited in Penny Crofts, 'Brothels: Outlaws or Citizens?' 2010), *International Journal of Law in context*, 6:2, 151-166 at 164.

¹⁰ Prior and Crofts, 'Effects of sex premises on neighbourhoods: Residents, local planning and the geographies of a controversial land use' (2012) 68 *New Zealand Geographer* 130.

council.¹² Feminist sociologist Eva Cox supervised students at the University of Technology, Sydney, surveying residents in blocks in Marrickville and Woolhara which ‘showed quite clearly that local residents were unaware of home based sex workers in their immediate neighbourhood.’¹³

Such studies are supported by research presented in the Issues Paper, including Prior and Crofts’ 2010 study illustrating that of 400 residents living in close proximity to commercial sex services in City of Sydney and Parramatta, 43.1% were unaware they lived within 400m, and of those who did know, 48.2% believed the business had no overall impact in the local area, and 24.1% rated it positively.¹⁴ As the Issues Paper states ‘negative impacts were felt most commonly late at night, on weekends, and for less than an hour.’ Residents also believed that other local businesses have similar amenity impacts.¹⁵

Prior and Crofts’ research suggests that communities come to accept sex services premises as they become more familiar with them and the longer they are in the neighbourhood: ‘residents become more accepting of a nearby sex premises the longer they are familiar with its presence.’¹⁶ Importantly, the findings suggest that where individuals or community groups put in submissions about a council’s proposed land use, the planning process tends to attract participation by those who have negative views.¹⁷

Council restrictions on sex industry businesses often have no evidential basis and are unjustified and founded on stereotype. This means that sex services premises have to fight their way through costly Land and Environment cases for council approval. When considering applications for sex services premises, councils should use only evidence-based approaches that rely on verifiable criteria about possible amenity impacts.

Council discrimination – contrary to decriminalisation

Do you have any information about whether councils treat sex services premises differently to other businesses with similar amenity impacts?

Even though, as the Issues Paper states, ‘The Land and Environment has generally confirmed that offensiveness and morality are not relevant planning considerations, and that clear and objectively assessable evidence is required of the potential impact of a sex service premises on amenity’,¹⁸ local councils have not made consistent and fair decisions regarding development applications for sex services premises. Barriers by councils include excessive requirements when a Development Application (DA) is for a sex industry business (extra parking, opening times, zoning restrictions etc); councillors refusing sex industry business applications based on moral objections or fear of losing local government votes even when planning staff advise the application is in line with council requirements; lack of recognition of the different scales and sizes (and therefore necessary regulation) of different sex work settings. These approaches by local council have resulted in excessive costs to rate payers and business owners when DAs are not approved by council and must be appealed to the Land and Environment Court (LEC). The number of LEC cases that have found the application should have been

¹² Saul Isbister, ‘Corruption and Associated Risks in NSW Development Approval Processes of Local Government’, in *Provision: Defining Sex Worker Space*, Issue 1, 2006, 27 at 28.

¹³ Lauren Jamieson, ‘UTS Students’ Research on Home Occupations’ November 2003, Findings presented by Eva Cox to commissioners at the Sydney City Council, 15 March 2004, cited in Erica Red and Saul Isbister, ‘Why Sex Workers Believe Smaller is Better: The Faulty Implementation of Decriminalisation in NSW’ *HIV Australia*, Volume 3 No. 3, March-May 2004.

¹⁴ Prior J and Crofts P (2012), *Effects of Sex Services Premises on Neighbourhoods: Residents, local planning and the geographies of a controversial land use*, New Zealand Geographer, 68, page 134, cited in NSW Government, Better Regulation Office, *Issues Paper: Regulation of Brothels in NSW*, September 2012, 29.

¹⁵ NSW Government, Better Regulation Office, *Issues Paper: Regulation of Brothels in NSW*, September 2012, 29.

¹⁶ Crofts P and Prior J (2012), *Home Occupation or Brothel? Selling Sex from Home in New South Wales*, Urban Policy and Research, Vol 30, No 2, 127-143, June 2012, page 137

¹⁷ NSW Government, Better Regulation Office, *Issues Paper: Regulation of Brothels in NSW*, September 2012, 31.

¹⁸ NSW Government, Better Regulation Office, *Issues Paper: Regulation of Brothels in NSW*, September 2012, 26.

approved by council demonstrates the widespread action by councils. The City of Sydney and Newcastle Councils in NSW provide evidence that significant numbers of sex industry businesses can be regulated and integrated effectively. Councils need assistance in implementing decriminalisation.

Speaking on Penny Croft's academic work on the regulation of disgust at the Australian Institute of Urban Studies 2012 Seminar Series on Planning and Brothels, Janelle Fawkes cited a repetitive cycle of council discrimination in which:

Councillors see opposing sex industry business applications as a vote winner; development applications are refused on moral grounds; non-compliant sex industry businesses are created; council staff must act on non-compliance (unethical behaviour = private investigation/corruption); local media play up the concept of non-compliant brothels being less safe and providing unsafe services.¹⁹

Councils usually apply discriminatory, restrictive and stringent planning requirements upon sex industry businesses that they do not apply to other commercial businesses. As the Issues Paper notes, local council discrimination against sex industry businesses is contrary to the rationale behind decriminalisation, and in 1996 councils were advised that the then Minister for Planning 'did not support the blanket prohibition on brothels throughout a local government area as this was contrary to the intention of the 1995 legislative changes'.²⁰

Evidence shows that majority of local councils have been unable to make consistent and fair decisions regarding sex industry businesses from as far back as 1999.²¹ Penny Crofts writes that despite the 1995 reforms decriminalising sex work in NSW and bestowing legal status upon brothels, brothels continue to be 'perceived as outlaws' and 'regarded as inherently awful, disorderly, and hence warranting and requiring exclusion from the community.'²² Crofts writes that these regulations include strict parking requirements, operating hours, notification requirements and zoning restrictions.²³

In 2007 in NSW, the *Brothels Legislation Amendment Act* expanded the powers of the Land and Environment Court (LEC) and local councils to close 'disorderly and unlawful brothels'.²⁴ Brothel closure laws are effective within five working days rather than the previous twenty-eight days, and no longer require 'sufficient complaints' but only one complaint. The LEC and local courts can then direct water, electricity and/or gas to be switched off from premises failing to comply with the closure order.²⁵ These amendments, along with persistent discrimination against sex industry businesses by local councils, treat sex work as a public nuisance in need of strict control, and undermine the intended outcomes of decriminalisation, such as health promotion and reducing the stigma and discrimination towards sex workers.

¹⁹ Janelle Fawkes, Planning in NSW – 'Sex Workers Deserve Safe Workplaces', Australian Institute of Urban Studies 2012 Seminar Series – Planning and Brothels, April 2012.

²⁰ NSW Government, Better Regulation Office, *Issues Paper: Regulation of Brothels in NSW*, September 2012, 15.

²¹ Christine Harcourt (1999) 'Whose Morality? Brothel Planning Policy in South Sydney' *Social Alternatives* 18:3. 32-27.

²² Penny Crofts, 'Brothels: Outlaws or Citizens?' (2010) *International Journal of Law in context*, 6:2, 151-166 at 151.

²³ *Ibid* at 154.

²⁴ *Brothels Legislation Amendment Act 2007*, No 29, NSW accessed at <http://www.legislation.nsw.gov.au/sessionalview/sessional/act/2007-29.pdf> on 28 September 2011.

²⁵ Penny Crofts, 'Brothels: Outlaws or Citizens?' (2010) *International Journal of Law in context*, 6:2, 151-166 at 156.

Council discrimination – low compliance, dangerous to sex workers

Discriminatory council practices are dangerous for sex workers.

Inappropriate council policy may:

- restrict sex industry businesses to industrial zones, which isolates workers and clients by segregating the sex industry into poorly lit, under-resourced and unsafe areas.
- prohibit private sex workers from working from residential areas or require a Development Application (DA) that publically ‘outs’ sex workers to neighbours. This can lead to the harassment of individual sex workers, driving sex workers underground.
- require sex industry businesses to be less visible by only approving premises above ground level. This makes sex services less accessible to people with a disability.
- excessively restrict sex industry business signage resulting in customers being unclear on location and knocking on the wrong door.
- Include anti-clustering laws, which forbid sex industry businesses from being located close to one another, act to limit networking and support among sex worker businesses.

Discriminatory decision-making by local councils has a number of negative effects. Discriminatory council practices make it difficult for brothel owners to operate legally. Sex industry businesses may be unwilling to make applications for approval fearing, that as evidence demonstrates, it is likely they will be rejected by the local council. If their application is rejected, to avoid closure they must embark on expensive and lengthy appeal procedures in the LEC with no guarantee of success. SWOP NSW has advised the Private Workers Alliance that most of the larger, ‘authorised’ brothels in NSW have won their DA through the LEC, with costs ranging from \$15,000 - \$100,000.²⁶ Appeals to the Land and Environment Court because of discriminatory local council decisions are wasteful of resources and place high expense on the rate payer and sex industry business owners.

As Penny Crofts writes, ‘these highly restrictive regulations do not encourage brothel owners to seek authorisation, particularly if they have been operating without authorisation and without complaint. A development application would draw attention to their existence. This compels many brothels to operate outside the law.’²⁷ Discriminatory council practices provide no incentives for sex work businesses to comply with the law; rather, they necessitate businesses breaking the law so they can protect their livelihoods, leaving them vulnerable to corruption by council officers and other standover tactics.

So while councils make it difficult to comply with onerous or discriminatory regulations, media hysteria surrounds council non-compliant brothels. Media attention to these brothels, incorrectly referred to as ‘illegal brothels’, then provokes further government surveillance, compliance and enforcement activities that ultimately do not serve to assist sex workers at all. Instead of guiding councils in implementing decriminalisation, the state government then becomes complicit in continuing discrimination. As Christian Vega writes from Victoria, ‘When the government gloats about shutting down illegal brothels ... who are these efforts helping?’²⁸

Despite the intention of decriminalisation to make brothels a legitimate land use, the NSW Ministerial Taskforce on Brothels in 2001 noted that restrictive planning and zoning regulations

²⁶ Erica Red and Saul Isbister, ‘Why Sex Workers Believe Smaller is Better: The Faulty Implementation of Decriminalisation in NSW’ *HIV Australia*, Volume 3 No. 3, March-May 2004.

²⁷ Penny Crofts, ‘Brothels: Outlaws or Citizens?’ (2010) *International Journal of Law in context*, 6:2, 151-166 at 154.

²⁸ Christian Vega, ‘Scared and Misguided: The Crackdown on ‘Illegal Brothels’ is Not What it Seems’, *Australian Sex Party Media Release*, 1 February 2011, accessed at <http://www.sexparty.org.au/index.php/news/local-news/958-media-release-scared-and-misguided-the-crackdown-on-illegal-brothels-is-not-what-it-seems> on 29 September 2011.

mean instead that 'it can be difficult for brothel operators to operate legally.'²⁹ Some local councils prohibit brothels from existing in commercial zones and require them to re-locate to industrial areas, which can be an expensive, inconvenient and dangerous burden upon sex workers and sex industry businesses. Some may have operated in mixed-use and commercial zones without amenity impacts for many years and find they are unable to submit a DA as this land use is no longer permissible in the zone they are located in. As Scarlet Alliance and NAUWU say, 'These businesses, due to limited suitable zoned and available land, coupled with the perceived dangers of locating their businesses in industrial zones and the prohibitive cost of fit-out of former warehouse spaces; remain outside of the regulatory system.'³⁰

In Queensland where sex work is licensed, the Prostitution Licensing Authority Annual Report for 2010 shows that 204 towns have legally been granted the right to refuse Development Applications for brothels by the Minister for Police.³¹ Similar discrimination is evidenced by experiences in NSW - the Issues Paper notes that the City of Sydney and Marrickville councils accounted for two-thirds of sex services premises approvals between 1996-2007, and that eleven councils had not approved *any* brothels. Apart from Sydney or Marrickville, in the 19 other councils where approved brothels were operating, 50 per cent were approved by the Land and Environment Court.³²

Julie Bates and Saul Isbister note that when local councils fail to consult with the sex industry when developing planning controls, there are harmful implications:

What happens when it is set up so most sex industry premises... find themselves in an industrial wasteland devoid of activity and a magnet for theft? What happens then when you operate without appropriate consent and know that condoms will be used as part of the evidence to prove you are a [sex industry business]?³³

Discriminatory decision-making among local councils creates a multi-tiered system which undermines the intention of decriminalisation. When sex industry businesses operate illegally there are implications for sex workers' access to health, safety and human rights. By failing to recognise sex industry businesses as legitimate businesses, local council practices hinder occupational health and safety (OHS) supports and sex workers' access to services. In their final report to the Minister of Planning, the Sex Services Premises Planning Advisory Panel noted that local council decisions act to increase underground activity while reducing sex workers' access to health services:

A strong incidence of councils preparing controls which are overly restrictive on sex services premises, again not particularly based on significant planning grounds, nor equitable in nature... Restricting types of premises available for such activity reduces options for workers and also for their clients and increases underground activity with implications for adequate access to health services.³⁴

Julie Bates and Saul Isbister note that there has been insufficient monitoring of local government policy by the health sector. They state, 'A failure by the health sector to adequately monitor local council policies has led to a failure to address deficits in the implementation of better practice public health principles and policy at the local government level.'³⁵

²⁹ Brothels Taskforce, *Report of the Brothels Taskforce*, NSW Department of Planning, 2001, 9.

³⁰ Scarlet Alliance and Nothing About Us Without Us, *Submission to Shadow Attorney General Chris Haatcher on Sex Industry Regulation in NSW*, September 2010, at 7-8.

³¹ Prostitution Licensing Authority, *Annual Report 2000-10*, Queensland Government, 30.

³² Kirby Institute, 2012, p41-42, cited in NSW Government, Better Regulation Office, *Issues Paper: Regulation of Brothels in NSW*, September 2012, 32.

³³ Julie Bates and Saul Isbister, 'Implementation of NSW Sex Industry Legislation/Regulation at local Government Level', Presented at Sex Worker Outreach Project Policy NSW Meeting, Australasian Society for HIV Medicine, 9 September 2011.

³⁴ Confidential Report to the NSW Minister for Planning on the Sex Services Premises Planning Guidelines, 6, cited in Scarlet Alliance and Nothing About Us Without Us, *Submission to Shadow Attorney General Chris Haatcher on Sex Industry Regulation in NSW*, September 2010, at 12.

³⁵ Julie Bates and Saul Isbister, 'Implementation of NSW Sex Industry Legislation/Regulation at local Government Level', Presented at Sex Worker Outreach Project Policy NSW Meeting, Australasian Society for HIV Medicine, 9 September 2011..

Anti-clustering laws

Sex industry businesses are further treated differently by anti-clustering laws, which restrict sex industry businesses from being located close to one another. Anti-clustering provisions are rarely based on evidence of any amenity impacts, and act to limit networking and support among sex worker businesses. The NSW Sex Services Premises Planning Guidelines state that 'It is inappropriate to apply an anti-clustering provision unless genuine impacts emerge from the clustering of commercial sex services premises.'³⁶ The Guidelines identify a number of disadvantages of anti-clustering controls. They note that clustering creates a level of tolerance and understanding in the community, allowing sex workers to access other local businesses such as pharmacies, doctors and shops. Anti-clustering laws mean that 'like' businesses cannot congregate. This minimises opportunities for sex industry businesses to have similar opening hours that support safety objectives by providing casual surveillance. The Guidelines further note that the numerical separation distances are arbitrary and often do not relate to the impact of a use upon the surrounding area.³⁷

Councils are appropriate regulators

What would be the advantages or disadvantages of requiring councils to permit sex services premises in their local area?

What would be the advantages or disadvantages of the State placing restrictions on the location of sex services premises?

Local councils are the appropriate regulators of sex industry businesses. Moving regulation away from police or licensing bodies into the jurisdiction of local councils is an integral part of decriminalisation. Where sex industry businesses are regulated like other businesses, sex work is treated as legitimate work, and this brings transparency, accountability and access to services.

This review should not use council mismanagement as an excuse to take away the best-practice model of decriminalisation. Using council failure to end 17 years of decriminalisation would only punish sex workers for council discrimination and corruption. Maintaining councils as regulators of the NSW sex industry brings a range of benefits. When fairly regulated in accordance with decriminalisation, council regulation means: a high rate of voluntary compliance, low amenity impacts, low levels of complaints, reduced appeals to the Land and Environment Court, improved public health outcomes, minimal opportunities for corruption, and improved safety for sex workers.

Sex workers need local councils to step up and proactively apply decriminalisation, and councils need State support and guidance. Recommendations are given below as to how councils can best be assisted in performing their regulatory role.

Implementing the Sex Services Premises Planning Guidelines

Should the principles outlined in the Sex Services Premises Planning Guidelines be incorporated into Government Policy?

³⁶ Sex Services Premises Planning Advisory Panel, *Sex Services Premises Planning Guidelines*, NSW Department of Planning, 2004, 37, cited in Scarlet Alliance and Nothing About Us Without Us, *Submission to Shadow Attorney General Chris Haatcher on Sex Industry Regulation in NSW*, September 2010, at 11.

³⁷ *Ibid.*

The Principles outlined in the Sex Services Premises Planning Guidelines should be formally endorsed and incorporated into Government Policy.

The Guidelines were developed in 2004 by the NSW Sex Services Premises Planning Advisory Panel and aimed to assist local government decisions and outline what constitutes better practice – ‘achieving occupational health and safety objectives and minimising the potential for corruption and the impact of premises upon neighbourhood amenity and the environment.’³⁸

The NSW State Government must show leadership to local councils in best-practice planning for sex industry businesses. Julie Bates and Saul Isbister write that an ‘absence of guidance leads to councils behaving badly’.³⁹ Where states do not provide guidance for local councils on best practice sex industry planning, councils introduce development control plans that make it impossible for sex industry businesses to survive. Julie Bates and Saul Isbister cite Sutherland Council’s admission of how they deliberately create barriers to sex industry businesses gaining approval:

[T]he LEP may permit a form of development that the council opposes (e.g. brothels) so the council will make development control plan provisions that are so restrictive that no proposal could satisfy the requirements. Should an applicant choose to submit an application obstacles would be created to frustrate the applicant. Should the proposal then come before the council it would be refused so that the applicant was forced to appeal to the Land and Environment Court.⁴⁰

The appointment of a sex industry liaison officer within NSW planning department is necessary to assist local councils in abiding by the Planning Guidelines.⁴¹ Scarlet Alliance recommends the development and funding of an education program to inform councillors of the rationale behind decriminalisation; explain the legislative framework; explore the impact on OHS, competition and economic outcomes for the sex industry; explore the reality of amenity issues; review councils’ range of controls, remedies and powers; and review case law and costs relating to LEC cases.⁴²

Touching Base and Urban Realists suggest that governments should be providing factsheets for council websites, advising people why council is involved in planning for sex services premises and educating on the benefits of council involvement.⁴³ Such resources should be available in multiple languages to reflect the multi-cultural nature of sex work.⁴⁴ These measures would assist in sex work being viewed and treated as a legitimate form of work and eliminating discrimination against sex industry businesses by governments, councils and communities alike.

The Guiding Principles in the Guidelines include a recognition that planning regulations and enforcement have direct implications on the health and safety of workers, and that reasonable, rather than restrictive, planning controls are likely to result in compliance.⁴⁵ The Guiding Principles are relevant to all states and territories to assist in local government decision-making. They state:

- Appropriate planning for [sex industry businesses] can provide councils with greater control over their location, design and operation;
- Planning regulations and enforcement actions have direct implications for the health and safety of workers and their clients;

³⁸ Sex Services Premises Planning Advisory Panel, *Sex Services Premises Planning Guidelines*, NSW Department of Planning, 2004, i.

³⁹ Julie Bates and Saul Isbister, Open Letter to All NSW Parliamentarians and Director-Generals of Relevant Departments, 2 August, 2011.

⁴⁰ Sutherland Council, Submission to the Standing Committee on State Development, 2009, cited in Julie Bates and Saul Isbister, Open Letter to All NSW Parliamentarians and Director-Generals of Relevant Departments, 2 August, 2011.

⁴¹ Scarlet Alliance and Nothing About Us Without Us, *Submission to Shadow Attorney General Chris Haatcher on Sex Industry Regulation in NSW*, September 2010, at 9.

⁴² *Ibid.*

⁴³ Touching Base Inc and Urban Realists, *Submission in Response to the Draft Sydney Local Environmental Plan 2011*, April 2011, 5 8.

⁴⁴ Sex Services Premises Planning Advisory Panel, *Sex Services Premises Planning Guidelines*, NSW Department of Planning, 2004, 54, cited in *Ibid.*, 9.

⁴⁵ Sex Services Premises Planning Advisory Panel, *Sex Services Premises Planning Guidelines*, NSW Department of Planning, 2004, cited in Touching Base Inc and Urban Realists, *Submission in Response to the Draft Sydney Local Environmental Plan 2011*, April 2011, 5.

- [Sex industry businesses] should be treated in a similar manner to other commercial enterprises, and planning provisions should acknowledge a types of [sex work] and ensure that controls relate to the scale and potential impact of each [kind];
- Reasonable, rather than unnecessarily restrictive, planning controls are likely to result in a higher proportion of [sex workers and sex industry businesses] complying with council requirements, with corresponding benefits to council, the local community and health service providers;
- Provision and consideration of sound information enables appropriate policy and decision-making processes; and
- Engaging the community, including the sex industry, and developing professional strategies can assist the community and professionals to understand the nature of [sex work and sex industry businesses] and recognise that they are a legitimate land use to be regulated through [state and territory] planning systems.⁴⁶

Treating sex work as legitimate work and planning appropriately for sex industry businesses has a number of tangible positive effects on the community. As Penny Crofts writes, perceiving sex work as legitimate ‘imports an existing legal framework, with associated accountabilities, rights and responsibilities. This shift in conception results in people viewing sex services premises differently, experiencing them differently and regulating them differently.’⁴⁷ Recognising sex work as legitimate work reduces stigma and improves the health, safety and rights of sex workers.

Trafficking is not characteristic of the NSW sex industry

Do you have any information about trafficking or organized crime more broadly and its association with the sex industry?

While mainstream media coverage has resulted in a high level awareness of trafficking in NSW this awareness is dangerously, generally based on misinformation, stereotypes and sensationalist media and conflates sex work and trafficking. This level of misinformation is particularly dangerous from a policy point of view as there is high impetus to ‘do something’ but little interest in the evidence compared to the media-driven understanding of the issues and the people involved.

There is a distinct lack of community understanding of migrant sex worker issues in NSW. This lack of awareness is exacerbated by inaccurate media representations of sex workers and the high number of brothel raids by the then Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) now Department of Immigration and Citizenship (DIAC) and the Australian Federal Police during which media accompanied these agencies during sex industry business ‘raids’. On most of these occasions people detained were detained for visa breaches or until their right to work was clarified. However, the resulting media gave the impression publically that raids were uncovering trafficking cases in the sex industry, and Asian sex workers were shown on camera, portrayed as sex slaves.

Trafficking is not characteristic of the NSW sex industry. The LASH study, cited in the Issues Paper, found no evidence of recent trafficking of female sex workers in the Sydney brothel survey. Upon her visit to Australia in December 2011, United Nations Special Rapporteur on Trafficking, Joy Ngozi Ezeilo, states that ‘the issue of trafficking in persons in Australia is sexualized and often conflated... There is a need to move away from over-sexualizing the discourse on trafficking’.⁴⁸ Scarlet Alliance

⁴⁶ Sex Services Premises Planning Advisory Panel, *Sex Services Premises Planning Guidelines*, NSW Department of Planning, 2004, 1.3 Planning Guidelines.

⁴⁷ Penny Crofts, ‘Brothels: Outlaws or Citizens?’ (2010) *International Journal of Law in context*, 6:2, 151-166 at 151.

⁴⁸ United Nations, Office of the High Commissioner of Human Rights, ‘Australia/Trafficking: UN Expert Calls for Greater Focus on the Rights and Needs of Victims’, accessed at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11668&LangID=E> on 21 March 2012.

Migration Project Manager, Jules Kim, stated in Hansard to the federal Senate Legal and Constitutional Affairs Legislation Committee Inquiry into the *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012* in August 2012:

Most people understand trafficking only as a media driven concept and not an evidence based reality. The evidence is this: anti-trafficking interventions have been widely disproportionate to the extent and nature of trafficking in Australia. Despite enormous surveillance, millions of dollars in funding and heavy police investigation, only 14 people have been successfully convicted under Australia's anti-trafficking legislation. These relate to charges obtained in nine cases, with seven relating to the sex industry. It is not our belief that this is due to difficulties in prosecution or to the laws being inadequate.

Of the cases relating to sex work, *all* people had *consented* to sex work and *knew* they would be a sex worker. Some had sex worked previously. None of the cases involved deception or trickery of the fact they would be sex working.

Extensive research conducted by and with migrant sex workers shows migrant sex workers are diverse, many having previously travelled and worked throughout the region.⁴⁹ Consistently government statistics support our organisations' and memberships' evidence that trafficking and exploitation is not the experience for most migrant sex workers in Australia.⁵⁰ Studies detailing the age, life experience, language skill, and education level of migrant sex workers in Australia show that they are diverse. Many have previously travelled and worked throughout the region. Some anticipate returning to Australia, with the majority of those researched showing a high level of knowledge of industrial rights. Evidence-based research by migrant sex workers demonstrates that their rights and wellbeing are best protected by policies focusing on prevention of exploitative conditions rather than increased surveillance.

Migrant sex workers in NSW enjoy a decriminalised sex industry framework. However, in NSW, migrant sex workers are still treated as criminals by police and governments, and continue to face racism and discrimination. Elaine Pearson writes in GAATW's report *Collateral Damage*:

Government attention to trafficking, as far as sex workers are concerned, has meant increased immigration raids on brothels, harassment of Asian sex workers in particular and disruption of their work. Three sex worker organizations providing outreach to migrant sex workers stated that non-trafficked migrant sex workers working legally in Australia have been wrongly detained in raids at workplaces under the suspicion that they are trafficked. Sex workers who are Australian citizens of Asian descent have also been subjected to increased harassment.⁵¹

⁴⁹ Elena Jeffreys and Roberta Perkins, 'Sex Work, Migration, HIV and Trafficking: Chinese and Other Migrant Sex Workers in Australia' *Intersections: Gender and Sexuality in Asia and the Pacific*, Issue 26, August 2011, accessed at <http://intersections.anu.edu.au/issue26/jeffreys.htm> on 31 August 2011; Di Surgey, *SIREN's Story*, The Sexual health, Information, Resources and Education for Non-English speaking sex workers (SIREN) Project, Prostitutes Collective of Victoria and Department of Human Services and Health, 1994; Global Alliance Against Traffic in Women, Empower Foundation and Sex Workers Outreach Project, *Research Report: Thai Background Sex Workers in Sydney*, Bangkok, 2000; Pell et al., 'Demographic, Migration Status, and Work-Related Changes in Asian Female Sex Workers Surveyed in Sydney, 1993 and 2003' (2006) in *Australian and New Zealand Journal of Public Health*, 30:2 157-162; Roberta Perkins and Elena Jeffreys, 'Trafficking: Chinese and Other Migrant Sex Workers in Australia', *The Asia Pacific Journal of Anthropology* 2011, publication pending, also accessible at <http://www.scarletalliance.org.au/library/chinesesexworkerposter0607>; Elena Jeffreys (Scarlet Alliance), 'Migrant Sex Workers Research in Australia' Presentation to the 4th Australian National Symposium on Sex Work: Nothing About Us Without Us, 2008; Pell et al., 'Demographic, Migration Status, and Work-Related Changes in Asian Female Sex Workers Surveyed in Sydney, 1993 and 2003' (2006) in *Australian and New Zealand Journal of Public Health*, 30:2 157-162.

⁵⁰ Australian Government, *Trafficking in Persons: The Australian Government Response*, 1 May 2009 – 30 June 2010, The Second Report of the Anti-People Trafficking Interdepartmental Committee, Commonwealth of Australia, Canberra, 2010, 25.

⁵¹ Elaine Pearson, 'Australia', *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights Around the World*, Global Alliance Against Traffic in Women, October 2007, 52.

In NSW, Australian Federal Police Human Trafficking Team (HTT) has had a disproportionate focus on the sex industry. Compliance activities are commonplace with various agencies conducting visits regularly to Asian sex industry workplaces. Regular anti-trafficking operations, and extremely high levels of compliance checking of Asian sex workers in visible brothels and massage parlours, have forced sex workers to adapt and change the way we work and have acted to force the industry 'underground'. Studies with migrant sex workers found that anti-trafficking responses in Australia were causing an increase in private, escort and lower-profile work to avoid the impact of raid activity in brothels.⁵² International human rights organisations increasingly report that the greatest threat to the health, safety and human rights of migrant sex workers is government anti-trafficking policy.⁵³

The 2011-13 Australian Policing Strategy to Combat Trafficking in Persons identifies the mechanisms and commitments in place between AFP and NSW police. Moreover, the federal Human Trafficking Team (HTT) have a strong presence in NSW as is evidenced by the extensive policing of the sex industry in NSW. In addition to this DIAC has a network of compliance officers very active in the NSW sex industry. We have received a number of reports from Asian brothels of repeated visits by DIAC and police in the past year. Both HTT and DIAC officers are specifically trained to identify possible indicators of human trafficking during their compliance activities.

It is not the role of local councils to detect human trafficking. Regulatory problems have occurred when councils have overstepped their roles in relation to regulation of the sex industry. Janelle Fawkes notes that addressing organised crime is the role of police, addressing migration compliance is the role of DIAC, and addressing corruption is the role of ICAC.⁵⁴

Bilingual peer educators providing outreach services to migrant sex workers in a support and educational capacity are the best placed to offer support and appropriate referrals. Migrant sex workers are significantly more likely to trust and turn to sex worker peer educators that speak their first language for support. It is difficult for sex workers to equate police, immigration or council officers conducting visa and sex industry compliance as the people to turn to for support. This is exacerbated by the fact many sex workers come from countries where sex work is actively criminalised and sex workers are routinely harassed and arrested by authorities. Despite the success of peer education in reaching migrant sex workers, funding for culturally and linguistically diverse (CALD) peer education is severely under resourced. There is also inadequate funding for production and translation of materials by and for migrant sex workers. Scarlet Alliance Migration Project have produced resources that were identified as needed by migrant sex workers and CALD peer educators. These were translated into 3 key languages and include information on laws, visas and a guide to dealing with immigration, police and taxation officers in the workplace all of which have proved to be incredibly popular. Despite the obvious need for the resources, no funding exists to update the information and to fill further, identified resource gaps.

⁵² Elena Jeffreys, 'Migrant Sex Workers Research in Australia', Presentation to the 4th Australian National Symposium on Sex Work: Nothing About Us Without Us, 2008 at 8; Jeffrey Dabhadatta et al., 'Changes in Migration Status and Work Patterns in Asian Sex Workers attending a Sexual Health Centre', 2008, 43; Scarlet Alliance, *Submission to Commonwealth Attorney General's Department*, 2004, 4.

⁵³ Jeffrey Dabhadatta et al., 'Changes in Migration Status and Work Patterns in Asian Sex Workers attending a Sexual Health Centre', 2008, 43; Scarlet Alliance, *Submission to Commonwealth Attorney General's Department*, 2004, 4; Elaine Pearson, 'Australia', *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights Around the World*, Global Alliance Against Traffic in Women, October 2007, 52; Busza, Castle et al., (2004) 'Trafficking and health', *British Medical Journal* 328: 1269-1371.

⁵⁴ Janelle Fawkes, Planning in NSW – 'Sex Workers Deserve Safe Workplaces', Australian Institute of Urban Studies 2012 Seminar Series – Planning and Brothels, April 2012.

No further laws should be introduced at a state level. Currently a federal Bill is under review that would increase police powers, introduce heightened surveillance, lower the thresholds of offences, lower burdens of proof, criminalise more activities and people, fund law enforcement instead of victim compensation, and increase the federal Government's abilities to increase prosecution statistics. Introducing further state laws is unnecessary.

Almost a decade of dedicated compliance and surveillance activity in the NSW sex industry and the anecdotal evidence from migrant sex workers and sex worker organisations demonstrates that trafficking is not characteristic of the sex industry. The main concern expressed by migrant sex workers has not been the presence of exploitation but in the over surveillance and policing in search of perceived trafficking cases. If trafficking were to occur, there are already mechanisms in place to police and prosecute. Recognising that enforcement of a crime has no place in the regulation of a legitimate industry will result in better outcomes, including for those who wish to access justice. Research has demonstrated that within a decriminalised framework, sex workers, including migrant sex workers are far more likely to engage with authorities in the case of a crime. Over regulation of sex workers will only serve to drive more marginalised groups further underground.

There is no evidence of association between sex work and organised crime

Do you have any information about whether crime is relatively more prevalent in the sex industry compared to other businesses, taking account of the circumstances of sex businesses (such as whether they are operating at night)?

There is no evidence that organised crime is associated with the sex industry, or that crime is relatively more prevalent in the sex industry compared to other businesses. Yet there is a continuing misconception that brothels have, as Penny Crofts says, a 'corrupting' effect in generating criminality: 'The assumption is that people who work in or go to a brothel are immoral and engaging in unlawful activities, and are thus likely to break other moral and legal codes.'⁵⁵

There is also no evidence of any link between trafficking and organised crime. Fiona David writes in her report on Organised Crime and Trafficking in Persons that 'It is frequently assumed that organised criminal groups are heavily implicated in trafficking in persons. However, this assumption remains relatively untested.'⁵⁶

Material presented in the Issues Paper supports this: Penny Crofts states that 'there is nothing inherently criminogenic about premises used for sex services.'⁵⁷ NAUWU note that in *Martyn v Hornsby Council*, the Senior Commissioner of the LEC noted that 'there is no evidence that brothels in general are associated with crime or drug use.'⁵⁸ And the ACT Police state that the sex industry was not 'a provenance of significant criminality in this jurisdiction'.⁵⁹

Unjustified fears continue to be borne out through laws that prohibit brothels from operating within view of a school, church or hospital, or places frequented by children or cultural activities. These laws are unfounded, and curtail sex workers' freedom of movement and choice of work. The

⁵⁵ Penny Crofts, 'Brothels: Outlaws or Citizens?' (2010) *International Journal of Law in context*, 6:2, 151-166 at 160, 159.

⁵⁶ Fiona David, 'Organised Crime and Trafficking in Persons', *Trends and Issues in Crime and Criminal Justice*, Number 436, March 2012, Australian Institute of Criminology, accessed at http://www.aic.gov.au/documents/F/3/2/%7BF32BB053-07A7-4698-BED7-47DA99F09BBD%7Dtandi436_001.pdf on 23 October 2012.

⁵⁷ Crofts, P, *The Proposed Licensing of Brothels in NSW*, 17 LGLI 3, page 5, cited in NSW Government, Better Regulation Office, *Issues Paper: Regulation of Brothels in NSW*, September 2012, 39.

⁵⁸ Nothing About Us Without Us, 'North Sydney Council Prohibits Home Occupation (Sex Services) in All Zones under the New Draft LEP', accessed at <http://nothing-about-us-without-us.com/tag/urban-realists/> on 18 July 2011.

⁵⁹ *Issues Paper: Regulation of Brothels in NSW*, September 2012, 21.

assumption remains that the mere *visibility* of brothels leads to crime, disease and corruption. These prohibitions create a need for invisibility that poses difficulties for outreach workers when sex workers are forced underground.

Stereotypes associating the presence of sex industry businesses with increased criminality are clearly illogical. Sex workers and businesses are rendered illegal by restrictive legal and political frameworks, which force us underground to protect our confidentiality, rights and safety. Council practices of imposing onerous requirements on sex industry businesses, and State licensing requirements, do not protect communities from criminality or violence, but ironically put sex workers in more dangerous working environments, with negative effects on our health, safety and rights. Evidence clearly illustrates that it is sex workers who are in need of protection (from bad planning decisions and licensing), not communities in need of protection (from sex work or sex workers).

Sex worker protection and human rights

Do you have any information that can contribute to the Review Team's understanding about the issues that impact on sex worker protection?

The approach to 'protection of sex workers' in the Issues Paper is flawed and paternalistic. As discussed above, 'protectionist' policies have historically been used to introduce harmful legislation that disadvantages sex workers under the guise of 'protecting' sex workers. When governments decide what is 'best' for sex workers, instead of listening to and without consultation with sex workers, they implement policies that inevitably place sex workers in danger. Instead of 'protecting' us, these laws harm us.

If the Government is interested in protecting sex workers, they should be creating an enabling legal environment to ensure sex workers can access human rights, industrial rights, and occupational health and safety mechanisms. Government should be ensuring that sex workers have choice and opportunity to decide for ourselves what kind of sex work is best suited to our needs and safety. Proposals for registration and licensing inevitably restrict sex workers' choice over our working conditions. They give sex workers less options, reduced choice and greater danger of police corruption, prosecution, isolation and stigma.

There are a number of issues relevant to sex worker protection that are not given sufficient weight in the Issues Paper. A better approach to protection would be to proactively ensure sex workers can access these rights and services, by maintaining an enabling legislative framework (decriminalisation). Sex worker human rights are intrinsically linked to sex workers' ability to negotiate with clients, and to access essential services and satisfactory workplace conditions. Licensing and registration undermine sex workers' basic human, civil and industrial rights.

The NSW Government should ensure that sex workers are afforded equal treatment and protection under the law, have the right to free choice of employment and just and favourable conditions of work, and recourse to anti-discrimination protections for discrimination we face in access to goods and services, housing and accommodation, employment opportunities and in access to justice. There are numerous issues that continue to threaten sex worker safety and pose barriers to OHS, and these include discriminatory council approaches, the criminalisation of our workplaces (particularly street-based sex work), and limited access to legal remedies due to stigma and prejudice.

Discrimination comes from private, public and government spheres. When these practises are not held into account, social stigma is reinforced and cycles of discrimination are perpetuated. The United Nations report on Sex Work and the Law states, 'sex workers are entitled to legal protections

of their human rights, consistent with international law and human rights norms, and that strengthening these protections will reduce HIV vulnerability.”⁶⁰

Public health – sex workers as safer sex educators

Do you have any information that may help to explain the level of health outcomes associated with the sex industry in NSW?

Do you have any information that may help compare public health outcomes across States and Territories?

The Issues Paper recognises the high rates of testing and 99% condom use and the importance of maintaining the ‘high level of public health outcomes currently being achieved in NSW across the sex industry’.⁶¹ The Paper recognises that the Government ‘has a responsibility to ensure the regulations and controls for the sex industry provide a safe environment for clients and workers’.⁶²

The Issues Paper states that sex workers have rates of STIs/HIV that are ‘comparable to’ the general population.⁶³ The Kirby Institute’s 2012 Report states that sex worker levels of mental health are ‘comparable to’ the general population and that sex worker rates of STIs are ‘at least as low as’ the general population. However, as outlined below, epidemiology across Australia consistently suggests that across Australia sex worker rates of STIs/HIV are *lower than* the general population.

Australian sex workers practice safe sex as a fundamental occupational health and safety practice. Our communities are often better informed on safe sex practices than the broader community. Sex workers share low rates of STIs largely as a result of peer education, outreach and health promotion. Both the Sixth National HIV Strategy 2010-2013 and the Second National STI Strategy 2010-2013 note that ‘the incidence of HIV/STIs in sex workers in Australia is among the lowest in the world. This is largely because of the establishment of safe-sex as a norm, the availability of safe-sex equipment, and community-driven health promotion and peer-based interventions.’⁶⁴

The LASH (Law and Sex worker Health) report to the NSW Health Department in 2011 found that condom use at work approaches 100% in Sydney brothels.⁶⁵ High rates of condom use and low rates of STIs is also the case across other states and territories. The LASH Report on the Sex Industry in Western Australia in 2005 also found close to 100% rate of condom use at work in Perth brothels.⁶⁶ A Canberra Sexual Health Centre study demonstrates low rates of STIs amongst sex workers.⁶⁷ In their Victorian study, David Wilson et al. support the claim that sex workers have lower rates of STIs than the general community.⁶⁸ The Kirby Institute (formerly the National Centre in HIV Epidemiology

⁶⁰ UNAIDS, UNFPA, UNDP, *Sex Work and the Law in Asia and the Pacific*, 2012, UNDP Thailand, accessed at <http://www.snap-undp.org/elibrary/Publications/HIV-2012-SexWorkAndLaw.pdf> on 23 October 2012, page 12.

⁶¹ *Issues Paper: Regulation of Brothels in NSW*, September 2012, 8, 12.

⁶² *Issues Paper: Regulation of Brothels in NSW*, September 2012, 9.

⁶³ *Issues Paper: Regulation of Brothels in NSW*, September 2012, 5.

⁶⁴ Australian Government Department of Health and Ageing, *Sixth National HIV Strategy 2010-2013*, Commonwealth of Australia, Canberra, 2010, 16; Australian Government Department of Health and Ageing, *Second National STI Strategy 2010-2013*, Commonwealth of Australia, Canberra, 2010, 16. Comparatively low rates of STIs among Australian Sex Workers are also cited in NSW Health, *STI Strategy Environmental Scan*, 2006.

⁶⁵ Basil Donovan, C Harcourt, S Egger, L Watchirs Smith, K Schneider, JM Kaldor, MY Chen, CK Fairley, S Tabrizi, *The Sex Industry in New South Wales: A Report to the NSW Government*, Kirby Institute, University of New South Wales, Sydney, 2011, vii, Preliminary findings presented at the Sex Workers Outreach Project Policy Meeting, Australian Society for HIV Medicine, 9 September 2011.

⁶⁶ Basil Donovan, C Harcourt, S Egger, K Schneider, J O’Connor, L Marshall, MY Chen, CK Fairley, (2010). *The Sex Industry in Western Australia: a Report to the Western Australian Government*. Sydney: National Centre in HIV Epidemiology and Clinical Research, University of New South Wales, vii.

⁶⁷ Christine J Sturrock et al., ‘Community-Based Sexual Health Care Works: A Review of the ACT Outreach Program’, *Sexual Health*, 2007, 4, 201–204 at Table 1 and Table 3.

⁶⁸ D Wilson, K Heymer, J Anderson, J O’Connor, C Harcourt and D Donovan (2009), ‘Sex workers can be screened too often: a cost-effective analysis in Victoria, Australia’, *Sexually Transmitted Infections*, October 2009.

and Clinical Research) Annual Surveillance Report for 2011 shows that Australia-wide the Chlamydia rate was the lowest among female sex workers, that testing rates were highest among female sex workers, and that HIV prevalence remained low among women self-identifying as sex workers, with or without a history of injecting drug use.⁶⁹

This is supported by studies Australia-wide. A recent study by The Kirby Institute (formerly the National Centre in HIV Epidemiology and Clinical Research) used data from 21 sexual health services across Australia to study Chlamydia positivity among new patients seen at sexual health services participating in ACCESS (the Australian Collaboration for Chlamydia Enhanced Sentinel Surveillance). This study found that female sex workers enjoyed far lower rates of Chlamydia than other women.⁷⁰

Sex workers – both migrant and non-migrant – have far higher rates of condom use than the general population. By comparison, the Australian and New Zealand Journal of Public Health published a 2003 study conducted by the Australian Research Centre in Sex, Health and Society at La Trobe University, Victoria, which identified that of a representative sample of 19,307 adults surveyed, only 20% had used a condom on their most recent sexual encounter.⁷¹

Migrant sex workers have similarly low rates of STIs/HIV and high rates of condom use. This is recognised in the Issues Paper (40). A Sydney Sexual Health Centre study of Asian female sex workers surveyed in Sydney demonstrated that 92.5% of Thai sex workers had consistent condom use with clients for vaginal sex in 2003.⁷² In 2007, a survey by Zi Teng (Hong Kong) and Scarlet Alliance of Chinese sex workers in Sydney, Adelaide, Melbourne and Canberra demonstrated that 97% of Chinese sex workers always use condoms.⁷³ In 2010, a study from the National Centre in HIV Epidemiology and Clinical Research, Sydney Sexual Health Centre, UNSW Faculty of Law and School of Population Health at the University of Melbourne stated that:

Condom use by the Asian women is now similar to resident sex workers (Figure 1) and the prevalence of sexually transmissible infections is at an historic low; for example, the incidence of gonorrhoea has fallen from 440 per 100 woman years in 1980-1981 to 0.24 per 100 woman years in 2004-2006 among brothel-based workers in Sydney. Less than 1% of these women arrive with HIV infection and to date there are no documented cases of HIV transmission to or from these women resulting in their work from Australia.⁷⁴

Sex workers – both migrant and non-migrant – have far higher rates of condom use than the general population. By comparison, the Australian and New Zealand Journal of Public Health published a 2003 study conducted by the Australian Research Centre in Sex, Health and Society at La Trobe

⁶⁹ Kirby Institute, HIV, Viral Hepatitis and Sexually Transmissible Infections in Australia Annual Surveillance Report, University of New South Wales, p8, Figure 46, Figure 34.

⁷⁰ Table: Number of new patients seen at sexual health services participating in ACCESS, number (percent) tested for chlamydia and number (percent) tested positive with chlamydia in 2009, Source: Australian Collaboration for Chlamydia Enhanced Sentinel Surveillance – Sexual Health Services Network <http://www.access-study.org/>, table results provided by Dr Hammad Ali, Kirby Institute.

⁷¹ <http://www.ncbi.nlm.nih.gov/pubmed/14696715>.

⁷² C Pell, J Dabhadatta, C Harcourt, K Tribe, 'Demographic, migration status, and work-related changes in Asian female sex workers surveyed in Sydney, 1993 and 2003', *Australian and New Zealand Journal of Public Health*, 30:2, 2006, 157, Table 1.

⁷³ Zi Teng and Scarlet Alliance, Chinese Sex Workers in Australia: 2006-2007 Survey, <http://www.scarletalliance.org.au/library/chinesesexworkerposter0607>.

⁷⁴ Basil Donovan, Christine Harcourt, Sandra Egger and Christopher Fairley, 'Improving the health of sex workers in NSW: Maintaining Success', *Public Health Bulletin*, 21 (3-4), 2010, 74 at Figure 1 and 75.

University, Victoria, which identified that of a representative sample of 19,307 adults surveyed, only 20% had used a condom on their most recent sexual encounter.⁷⁵

Sex worker access to health providers and outreach is best supported by decriminalisation. 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 workers are the safer sex educators of our clients, peers and the wider community. Sex worker health affects public health. The Issues Paper notes that clients come from 'a diversity of ethnic and cultural backgrounds. Clients are primarily male, and married or in stable relationships. Research indicates that 50 per cent are between 26 and 40 years of age and a large portion are middle aged or elderly. Around 40 per cent have children'.⁷⁶ If the Government wants to protect public health, they must protect the decriminalisation of sex work.

Voluntary testing supports public health outcomes

Voluntary testing remains the optimal approach to STI and HIV testing in Australia as outlined in the National Strategies. The National STI Strategy recommends voluntary patient-initiated testing as a successful approach to detecting STIs, and warns that mandatory testing has 'potential to limit access to services for higher risk groups'.⁷⁷ The National HIV Strategy states that 'principles for informed consent and confidentiality underpin high rates of voluntary testing'.⁷⁸ Importantly, research illustrates that despite more frequent testing in Victoria, STI prevalence is uniformly low among sex workers in Sydney and Perth where screening is voluntary and negotiated between the worker and their clinician on an individual basis.⁷⁹ In New Zealand, the New Zealand Prostitutes Collective stated that since decriminalisation, nearly 97% of sex workers have voluntary sexual health checks.⁸⁰

State laws

Do different regulatory regimes in NSW, Victoria and Queensland and the ACT have any impacts on sex services premises and communities in NSW towns on either side of relevant borders?

Different regulatory regimes certainly have impacts on communities and towns on either side of borders. Licensing models in both Queensland and Victoria restrict the kind of sex work that can be done, and each state varies from the other state making it difficult for sex workers to know their legal rights and responsibilities across borders. Transitory or 'touring' sex workers are likely to not know or ignore the laws in the state they are working in because of the complexity of variations.

Councils can do better – evidence of successful council regulation

What opportunities are there to ensure an improved and consistent planning approach for sex service premises across local government?

⁷⁵ <http://www.ncbi.nlm.nih.gov/pubmed/14696715>.

⁷⁶ *Issues Paper: Regulation of Brothels in NSW*, September 2012, 12.

⁷⁷ Australian Government, Department of Health and Ageing, *Second National Sexually Transmissible Infections Strategy 2010-2013*, Commonwealth of Australia, 2010, 6.2.

⁷⁸ Australian Government, Department of Health and Ageing, *Sixth National HIV Strategy 2010-2013*, Commonwealth of Australia, 2010, 6.2.

⁷⁹ D Wilson, K Heymer, J Anderson, J O'Connor, C Harcourt and D Donovan (2009), 'Sex workers can be screened too often: a cost-effective analysis in Victoria, Australia', *Sexually Transmitted Infections*, October 2009.

⁸⁰ New Zealand Prostitutes' Collective, Australasian Society for HIV Medicine Conference, 2010.

Decriminalisation is recognised globally as a best practice approach to sex industry regulation. The United Nations recently provided renewed support for decriminalisation of sex work across Asia and the Pacific:

Removing legal penalties for sex work assists HIV prevention and treatment programmes to reach sex workers and their clients. Decriminalization enables sex workers to organize within their communities and register their organizations, obtain identification documents so that they can fully access services and entitlements, engage in advocacy and respond to the health and safety needs of their peers.⁸¹

It is clear that decriminalisation as a model can be successful when effectively implemented. One aspect of the model relies on local councils effectively regulating, against planning principles the location of sex industry businesses. Janelle Fawkes notes that there is evidence in NSW of councils misunderstanding their role in the implementation of decriminalisation and either taking a 'not our responsibility approach' or attempting to investigate other factors not in the remit of local council but which would be best referred to DIAC, police, or ICAC.

There are clear opportunities to ensure an improved and consistent planning approach for sex service premises across local government. The City of Sydney provides evidence that significant numbers of sex industry businesses can be regulated and integrated effectively when planning and zoning considerations permit various types and scales of sex service premises in their natural locations (for example, brothels in commercial and mixed-use zones and home-based services in residential zones).⁸² Armidale Dumaresq council in 2008 also adopted the planning principle of equity in their LEP.⁸³ Crofts notes that the City of Sydney council, which includes Kings Cross, has nuanced planning principles that cater to various kinds of sex industry businesses and permit individual private sex workers to work at home without development consent:

The planning principles differentiate between sex services premises types based on size, nature and potential amenity impacts rather than the 'catch-all category' of brothel. Specific regulations are developed for different business types of brothels, safe house brothels, sex on premises venues, swingers' clubs, bondage and discipline parlours and sex services (home occupations) premises.⁸⁴

The Land and Environment Court has found in favour of approving sex industry business applications where they have been refused DAs or permits on the basis of a moral objection (for example in NSW, *Sunny SK Liu v Fairfield City Council* No 10384 of 1996; *Linda v Cameron Willoughby City Council* 10603 of 1996; *Cherie Finlay v Newcastle City Council* No 10385 of 1997.)⁸⁵ In the case of *Cresville Pty Ltd v Sutherland Shire Council* the LEC refused to apply the council's regulations separating brothels from 'facilities that serve alcohol' by a distance of 50 metres because there was no link to adverse amenity impacts.⁸⁶ Sex services premises have co-existed in neighbourhoods including proximity to licensed premises without incidence, and there is no evidence to suggest there is a case to regulate the distance between the two.⁸⁷ In 2010 Janelle Fawkes and Saul Isbister cited the areas City of Sydney, Canada Bay and Armidale Dumaresq and note that 'A significant

⁸¹ UNAIDS, UNFPA, UNDP, *Sex Work and the Law in Asia and the Pacific*, 2012, UNDP Thailand, accessed at <http://www.snap-undp.org/elibrary/Publications/HIV-2012-SexWorkAndLaw.pdf> on 23 October 2012, page 29-30.

⁸² Scarlet Alliance and Nothing About Us Without Us, *Submission to Shadow Attorney General Chris Haatcher on Sex Industry Regulation in NSW*, September 2010, at 6.

⁸³ Armidale Dumaresq LEP 2008, cited in Touching Base Inc and Urban Realists, Planning and Health Consultants, Submission in Response to the Draft Sydney Local Environmental Plan 2011, April 2011, 4.

⁸⁴ Penny Crofts, 'Brothels: Outlaws or Citizens?' (2010) *International Journal of Law in context*, 6:2, 151-166 at 157.

⁸⁵ SWOP and ACON, *Unfinished Business: Achieving Effective Regulation of the NSW Sex Industry*, 2000, accessed at <http://www.scarletalliance.org.au/library/swop-acon02> on 2 February 2012.

⁸⁶ *Cresville Pty Ltd v Sutherland Shire Council* [2005] NSWLEC 498 cited in Penny Crofts, 'Brothels: Outlaws or Citizens?' (2010) *International Journal of Law in context*, 6:2, 151-166 at 154.

⁸⁷ Scarlet Alliance and Nothing About Us Without Us, *Submission to Shadow Attorney General Chris Haatcher on Sex Industry Regulation in NSW*, September 2010, at 13.

number of sex workers operate lawfully, discreetly and most importantly – anonymously, as exempt and complying developments in various and diverse local government areas.⁸⁸

To improve planning decisions:

- Sex work should be treated as legitimate work and sex industry businesses should be treated as legitimate businesses by states and local councils.
- Local councils should be guided by the planning principle of equity.
- Sex workers and sex work businesses should not be subject to special provisions that set them apart from other businesses.
- There must be consistency and continuity in local authority planning decisions.
- Local councils must provide reasons and evidence why a business is not suitable in a certain locality based on pre-determined criteria that apply to all enterprises.
- Sex industry businesses should be permitted in all business zones where other commercial premises are.
- Home-based sex workers should be permitted as exempt development in all zones where other home occupations are permitted to avoid discrimination and protect safety of sex workers, and private sex workers should be able to work individually, in pairs, small groups or co-ops.
- Councils should not have excessive zoning restrictions or anti-clustering references in their plans.
- Councils should support the location of brothels or parts of brothels at ground floor level to ensure they are accessible to people with disability.

Enforcement and compliance

Do you have any information about whether the current level of enforcement of the sex services industry is proportionate to the risk involved?

Do you have any information about how regulators could improve their compliance and enforcement activities in relation to sex services premises?

Do you have any information about how regulators associated with the sex industry could improve their ways of working together?

Historically the level of enforcement of sex services industry has been wildly disproportionate to the risks involved. This continues to be the case in states where sex work is criminalised or licensed. In NSW in the areas of visa compliance and council compliance the level of compliance checking has been disproportionate to the risk but also out of step with the significant barriers put in place by local government. A shift in approach by local council to the effective implementation of decriminalisation would significantly reduce non-compliance and therefore the level of compliance checking necessary. Should the shift incorporate a move toward removing unnecessary barriers to compliance for sex industry businesses (excessive requirements and unsafe zoning and moral instead of planning decisions) and private sex workers (DA requirement etc) toward an approach that promotes compliance it would result in both a significant saving of local government resources currently wasted in LEC disputes and a manageable level of enforcement activity.

The Scarlet Alliance presentation to the Australian Institute of Urban Studies 2012 Seminar Series – Planning and Brothels noted this destructive cycle occurring in NSW.

⁸⁸ Ibid at 8.

Councillors see opposing sex industry business applications as a vote winner; development applications are refused on moral grounds; non-compliant sex industry businesses are created; council staff must act on non-compliance (unethical behaviour = private investigation/corruption); local media play up the concept of non-compliant brothels being less safe and providing unsafe services.⁸⁹

The presentation also referred to local councils in NSW regularly misunderstanding their role in the regulation of the sex industry. Scarlet Alliance referred to statements by the Hornsby Council Mayor that indicated they were aiming to investigate organised crime, illegal immigrants and corruption in the sex industry rather than referring those matters to the appropriate body (police, DIAC, ICAC).

The Issues Paper recognises that in NSW Police have the role of both 'prosecuting crimes that may occur in a sex work setting (for example, harassment, sexual servitude or sexual assault)' as well as simultaneously 'assisting other regulators in conducting compliance visits'.⁹⁰ It should be noted that police must also incorporate the role of protecting sex workers as members of community when harassment is experienced, like that created when sex workers are unnecessarily outed to the community. The expectation that police will successfully manage the varied roles as both prosecutors and protectors is demonstrated to be unrealistic and particularly fraught. The Issues Paper recognises 'the 1995 Wood Royal Commission evidence showing a clear nexus between police corruption and the operation of brothels' was a catalyst for decriminalisation of sex work.⁹¹ Scarlet Alliance does not believe that police should be the regulators of the industry, and rather that they should only play a role if a criminal offence is committed.

Policing practices, fear of prosecution, stigma and forced invisibility have acted as barriers to safer sex practices, human rights, OHS and the management of blood-borne viruses (BBVs) and STIs. Police corruption and violence towards sex workers has been consistently documented.⁹² Elena Jeffreys writes that for street-based sex workers, 'Experiences with police range from disappointing to horrific.'⁹³ She cites research from NSW to show that in NSW, 2006, street based workers questioned in a survey said half of their contact with police included police harassment.⁹⁴

Licensing increases sex worker contact with police, as police become the regulators of the larger non-compliant section of the industry, which means that sex workers – predominantly women, men who have sex with men, and sex and gender diverse communities – are then regulated by a predominantly cis-male, 'straight', conservative authoritarian police force. As one sex worker writes, 'Historically and globally, police have been the source of continued abuse, rape, violence and harassment of sex workers. They are not our protectors.'⁹⁵

In criminalised regimes, such as Western Australia, Harcourt et al. have found that individual sex workers' ability to seek information, support and health care is 'severely limited by the risk of prosecution.'⁹⁶ Street-based workers are often harassed and further marginalised in the interests of keeping sex work invisible, while health professionals and outreach organisations face obstacles in

⁸⁹ Janelle Fawkes, Planning in NSW – 'Sex Workers Deserve Safe Workplaces', Australian Institute of Urban Studies 2012 Seminar Series – Planning and Brothels, April 2012.

⁹⁰ *Issues Paper: Regulation of Brothels in NSW*, September 2012, 13.

⁹¹ New South Wales Government (1997), Royal Commission into the NSW Police Service: Final Report – Corruption, 13.

⁹² Reuters, 'Police Violence: Policemen in Paris Found Guilty of Gang Raping Albanian Sex Workers', Sex Workers' Rights Advocacy Group, 7 September 2007, accessed at <http://swannet.org/en/node/896> on 31 August 2011; Zi Teng Newsletter, Message From the Editor, Issue 37, June 2011, accessed at http://www.ziteng.org.hk/newsletter/37_e.pdf on 31 August 2011.

⁹³ Elaine Dowd, 'The Impact of Western Australian Legislation on Street Based Sex Workers', *Outskirts*, University of Western Australia, 2002, cited in Elena Jeffreys, 'Street-based Sex Workers' in *Provision: The Whore Stigma*, Issue 2, Scarlet Alliance, 2007, 28.

⁹⁴ A Roxburgh, L Degenhardt and J Copeland, 'Post-Traumatic Stress Disorder Among Female Street-Based Sex Workers in the Greater Sydney Area, Australia', *BMC Psychiatry*, 6:24, 2006, cited in Elena Jeffreys, 'Street-based Sex Workers' in *Provision*, Issue 2, *The Whore Stigma*, Scarlet Alliance, 2007, 28.

⁹⁵ Because I'm a Whore, 'An Open Letter to Australian Feminists Concerned about Sex Worker Exploitation', *Feminaust: Contemporary Australian Feminism*, 20 August 2011, accessed at <http://feminaust.org/2011/08/20/open-letter-to-australian-feminists-concerned-about-sex-worker-exploitation/> on 31 August 2011.

⁹⁶ Christine Harcourt et al., 'Sex Work and the Law', *Sexual Health* 2(3) 121–8 at 123.

identifying workers due to our invisibility.

In contrast, in New Zealand where sex work, including street based sex work, is decriminalised, the New Zealand Prostitutes' Collective (NZPC) report that instead of legislating against street sex workers, the Prostitution Law Review Committee has found that 'Local Authorities should invest in street cleaning, lighting, and city ambassador schemes, and provide adequate rubbish bins and toilet facilities in and around street sex work areas.'⁹⁷ In one New Zealand case study, one sex worker complained that a police officer was pressuring her into providing sexual services to the police officer for free. She approached NZPC who supported her to lay a complaint with the police. Police charged him with misusing his authority to get sex from a sex worker. He was convicted and imprisoned for 2 years.⁹⁸ This incident illustrates that decriminalisation clearly provides sex workers with opportunities for access to justice that criminalisation does not.

There is still an identified need for effective training of agencies conducting compliance operations in sex industry workplaces. Numerous incidents have been reported to Scarlet Alliance and our member organisations of agencies displaying a lack of knowledge of issues that affect sex workers and an absence of knowledge on how to relate to migrant sex workers especially. Agencies must be trained by migrant sex workers on sex worker and cultural sensitivities to facilitate appropriate and effective interactions with migrant sex workers.

Registration has low compliance and puts sex workers in danger

If there was a registration system for sex services premises, do you have any information about whether the relevant businesses would choose to register?

Do you have any information about who should have access to a register of sex services premises?

The issues paper asks these two questions in relation to the registration of owners and operators of sex services business and explicitly states Option 2 does not include registration of home based sex workers, but it is unclear whether private sex workers working from apartments/houses rented for the purpose of sex working would be registered or two workers working together would be registered. It also does not expand on the purpose of this option.

Considering the expense and considerable evidence demonstrating barriers and significant levels of low compliance involved in registration, Option 2 would be unlikely to provide positive outcomes against any of the three objectives identified in the issues paper and is therefore unworkable.

The purpose of Option 2 is further unclear as it suggests one of the potential groups to maintain the register could be the Sex Workers Outreach Project, SWOP, focussing on health outcomes. There is no evidence to support the notion that registration of owners and operators of sex industry businesses would have any public or other health benefit. There is on the other hand strong evidence that health promotion, including peer education delivered to sex workers in sex industry workplaces, by community-based sex worker organisations delivers very strong public health outcomes and contributes to low rates of HIV and STIs amongst sex workers.⁹⁹

⁹⁷ New Zealand Prostitutes' Collective, Australasian Society for HIV Medicine Conference, 2010.

⁹⁸ Ibid.

⁹⁹ Christine Harcourt et al., 'The Decriminalisation of Prostitution is Associated with Better Coverage of Health Promotion Programs', *Australian and New Zealand Journal of Public Health*, 34:5, 2010, 482; Australian Government Department of Health and Ageing, *Sixth National HIV Strategy 2010-2013*, Commonwealth of Australia, Canberra, 2010, 16; Australian Government Department of Health and Ageing, *Second National STI Strategy 2010-2013*, Commonwealth of Australia, Canberra, 2010, 16.

Although registration of individual sex workers is not listed in the Issues Paper options, it is of great concern to Scarlet Alliance and our membership that the negative impacts of individual sex worker registration is fully understood. Registration represents a significant threat to sex workers' human rights, confidentiality and health promotion. In jurisdictions where sex workers are required to register on a police database or with a government body, there is low compliance.

The obligation to register a legal name and proof of address means that, in effect, sex workers are singled out for surveillance and acquire a criminal record when required to register with Police, which affects opportunities for employment, further education and access to justice. Sex workers' registered work has been brought up as evidence of poor character in court, or negatively taken into account in demonstrating what is considered a reliable witness.¹⁰⁰ Sex worker Whoretic reports that her criminal record from sex work can restrict her movement between countries and ability to work in different areas.¹⁰¹ Others fear being deemed an unfit parent in custody cases where their work is disclosed.¹⁰² As Harcourt et al. write, 'Registered sex workers are socially labelled, acquiring an official history that is not readily buried if their circumstances change. Depending on the severity of the regime, licensed sex workers may have their movements restricted, their travel documents identified and their choice of medical care limited to approved clinics.'¹⁰³ Registration erects a barrier to people working legally (there is often low compliance) and affects the quality of health advice received because workers may not be candid with our health professional for fear of 'outing' ourselves, or may actively avoid health services for fear of prosecution.¹⁰⁴ As Ally Daniel writes,

The police register acts similarly to a criminal database and once a person's name is listed it can never be removed, even after they have left the sex industry. The stigmatisation of this lasts a lifetime and sex workers, past and present, may avoid health professionals for fear of being discriminated against or of having to disclose their name.¹⁰⁵

Registration does nothing to improve the OHS of sex workers, but rather violates human and civil rights to privacy, to work in an occupation of choice and to live and work free from harassment and discrimination, whilst detracting resources from wider public health projects.¹⁰⁶ In the Northern Territory, having a drug conviction excludes sex workers from being able to register. Yet unregistered sex workers face further isolation from support and safety mechanisms. Although a sex worker with a former drug conviction is able to work privately, unregistered, it is illegal for us to work with another person, including hiring security or a driver. Sex workers with former drug convictions then are cornered into more dangerous working conditions – effectively punished for our drug use and sex work status. Such legislation acts to marginalise sex workers and plainly acts as an obstacle to support. Further, law enforcement by police means that workers are less likely to seek police assistance in unsafe situations.¹⁰⁷

Permanent registration is a serious danger considering the average person can expect to change careers several times in a lifetime. Australian Bureau of Statistics Data show that of the 11.4 million Australians working in February 2012, 2.3 million Australians had been with their employer/business for less than 12 months.¹⁰⁸ Research studies predict that Generation Z will have an average of six

¹⁰⁰ Anonymous, 'My Wrath-Inducing Experience of Institutional Misogyny and Whore-Hatred', *Provision: The Whore Stigma*, Issue 2, Scarlet Alliance, 2007, 8.

¹⁰¹ Scarlet Alliance and the AFAO, *Unjust and Counter-Productive: The Failure of Governments to Protect Sex Workers From Discrimination*, Sydney, 1999, 19, accessed at <http://www.scarletalliance.org.au/library/unjust-counterproductive> on 19 May 2011 at 15.

¹⁰² Scarlet Alliance, Scarlet Alliance, *Submission to the National Consultation on Human Rights in Australia*, June 2009 at 5.

¹⁰³ Christine Harcourt et al., 'Sex Work and the Law', *Sexual Health* 2(3) 121–8 at 124.

¹⁰⁴ Jan Jordan, *The Sex Industry in New Zealand: A Literature Review*, Ministry of Justice, 2005.

¹⁰⁵ Ally Daniel (2010) 'The Sexual Health of Sex Workers: No Bad Whores, Just Bad Laws', *Social Research Briefs*, NSW Health, 19, 1.

¹⁰⁶ Scarlet Alliance Executive Committee, *Sex Worker Registration: Privacy and Ethical Concerns*, Australian Federation of AIDS Organisations, accessed at http://health.groups.yahoo.com/group/AIDS_ASIA/message/561 on 11 May 2011.

¹⁰⁷ Ibid.

¹⁰⁸ Australian Bureau of Statistics, Labour Mobility, February 2012, accessed at [http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/2FA4E52A56A995FFCA257A6E001877F8/\\$File/62090_febbruary%202012.pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/2FA4E52A56A995FFCA257A6E001877F8/$File/62090_febbruary%202012.pdf) on 18 October 2012.

careers in their lifetime.¹⁰⁹ Current unacceptable levels of stigma and discrimination can result in negative impacts on sex workers and past sex workers when seeking additional work or different career paths. Sex workers in other states of Australia have had evidence of past sex work experience subpoenaed and used against them in legal cases including custody cases.¹¹⁰

A community-based sex worker project or organisation could not maintain a register of sex workers without this action having a serious negative impact on the project/organisations effectiveness. This approach is likely to distance the sex worker community from the project/organisation resulting in reduced engagement with the health promotion messages. There is no possible positive benefit in the registration of sex industry business owners/operators with SWOP or any other body.

Private sex workers

A considerable percentage of NSW sex workers operate privately. This includes sex workers who are home-based (owning or renting a property), those sex workers that rent a property or own a property for the purposes of doing sex work. Some private sex workers work in pairs or small co-ops or collectives to cover costs and for peer support etc.

Scarlet Alliance welcomes the Government's commitment in the Issues Paper that 'single sex workers operating from home will not be captured' by the review of the regulatory system.¹¹¹ However, we are concerned that individual sex workers not operating from home will be directly impacted. We also note that councils regularly ban sex workers from working from homes – in the recent local government elections, prohibiting home-based sex work was a policy platform for a Marrickville Mayoral candidate. Government must take steps to prevent councils from discriminating against home-based sex workers if Government expects sex workers to disclose individual earnings comply with tax requirements.

For private, independent sex workers, local planning laws can have significant effects on our anonymity and security. Individual sex workers offering sex services may still be classed as a 'brothel' by law and may find our business prohibited in residential zones. In council areas which permit working from home, sex workers may be required to apply for a DA which can include placing signage outside of the home, effectively 'outing' sex workers to other residents and passers by, and/or the publication of the sex workers name in local papers, which leads to further harassment and stigma. In September 2011, all other types of home occupations were permitted as exempt developments across all councils in NSW. This means that they did not require development approval from council.¹¹² As Crofts notes, this process of requiring a DA from home-based sex workers can put sex workers in danger:

[M]any councils require applicants to place a sign outside the front of their property, explaining the nature of the proposed development... [this can] excite a great deal of community opposition and may well place the sex worker in danger. These kinds of planning requirements make it virtually impossible for [private sex workers] to apply for, let alone receive, development consent. This is problematic because it is estimated that [private sex workers] make up at least 40% of the sex industry (Brothels Taskforce, 2001). Accordingly, these planning regulations and principles ensure that a large proportion of the industry remains outside the law; that is, outlaws.¹¹³

¹⁰⁹ McCrindle Research, *Australia in 2020: A Snapshot of the Future*, accessed at <http://mccrindle.com.au/ResearchSummaries/Australia-in-2020-A-Snapshot-of-the-Future.pdf> on 18 October 2012.

¹¹⁰ *Issues Paper: Regulation of Brothels in NSW*, September 2012, 11.

¹¹¹ *Issues Paper: Regulation of Brothels in NSW*, September 2012, 8.

¹¹² State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 under the *Environmental Planning and Assessment Act 1979*, Part 2, sub division 22.

¹¹³ Penny Crofts, 'Brothels: Outlaws or Citizens?' (2010) *International Journal of Law in context*, 6:2, 151-166 at 155.

Touching Base Inc and Urban Realists, Planning and Health Consultants, note that ‘there are no known advantages in requiring a DA from private sex workers, only disadvantages.’¹¹⁴ They cite the Sex Services Premises Planning Guidelines that ‘there is no evidence that a home-based sex worker has any more impact than other home occupations, e.g. an architect working from home, and accountant, tax agent, photographer, etc.’¹¹⁵ Touching Base and Urban Realists note that ‘many clients with disability prefer to access the services of home-based sex workers.’¹¹⁶

Yet where private sex work is prohibited, evidence from the Private Workers Alliance and the Sex Workers Outreach Project reports men posing as council officers demanding free sexual services in return for not disclosing their home business.¹¹⁷ Saul Isbister and Erica Red state that ‘the decriminalisation process in NSW has been both consciously and inadvertently undermined, resulting in a policy that favours large sex establishments and drives small-scale and home-based businesses underground.’¹¹⁸

In 2007 the Standard Local Environment Plan redefined the term ‘sex services premises’ to mean a ‘brothel’ and changed its meaning to explicitly exclude ‘home occupations (sex services)’. This meant that instead of referring to ‘sex services premises’ as a range of scales and types of premises, home-based sex work became a new category whereby sex work permitted could not include more than two permanent residents. This is contrary to the way in which all other home occupations are permitted to have an unlimited number of permanent residents unless they impact on residential amenity. Sex work is the only work in which the number of workers is regulated because of the work, rather than the amenity.

Private sex workers should be permitted to work together, without the requirement for a DA and in pairs and small collectives. It should be noted that New Zealand allows five sex workers to work together and this has not resulted in amenity impacts. Home based sex workers should be permitted as exempt developments across all councils in NSW, and there should not be a limit to the number of sex workers who are permitted to work together.

Licensing is ineffective, expensive and unworkable

Do you have any information about the likely effectiveness of a sex service premises licensing system, particular with regards to sex worker protection?

Evidence from Victoria and Queensland demonstrates that licensing models have consistently failed in Australia, and that licensing is ineffective, expensive and unworkable, creating a two tiered sex industry where a small percentage of the industry can meet compliance requirements while the majority of the industry cannot and is forced to operate outside of the legal framework. The attachment Appendix 1 illustrates how unworkable these models are, and Appendix 2 details the enormous costs required by Government for a system that is not self-sustaining. The LASH (Law and Sexual Health) report to the NSW Health Department in 2011 recommend that the licensing of sex work should not be regarded as a viable legislative response. They state:

For over a century systems that require licensing of sex workers or brothels have consistently failed – most jurisdictions that once had licensing systems have abandoned them. Under licensing systems

¹¹⁴ Touching Base Inc and Urban Realists, Planning and Health Consultants, *Submission in Response to the Draft Sydney Local Environmental Plan 2011*, April 2011, 5.

¹¹⁵ Sex Services Premises Planning Advisory Panel, *Sex Services Premises Planning Guidelines*, NSW Department of Planning, 2004, 54, cited in Touching Base Inc and Urban Realists, ‘Submission in Response to the Draft Sydney Local Environmental Plan 2011’, April 2011, 5.

¹¹⁶ *Ibid* at 6.

¹¹⁷ Sex Services Premises Planning Advisory Panel, *Sex Services Premises Planning Guidelines*, NSW Department of Planning, 2004, 54, cited in Touching Base Inc and Urban Realists, ‘Submission in Response to the Draft Sydney Local Environmental Plan 2011’, April 2011, 5.

¹¹⁸ Erica Red and Saul Isbister, ‘Why Sex Workers Believe Smaller is Better: The Faulty Implementation of Decriminalisation in NSW’ *HIV Australia*, Volume 3 No. 3, March-May 2004.

most sex workers remain unlicensed, so criminal codes remain in force, leaving the potential for police corruption. Licensing systems are expensive and difficult to administer, and they always generate an unlicensed underclass. That underclass is wary of and avoids surveillance systems and public health services: the current systems in Queensland and Victoria confirm this fact. Thus, licensing also represents a potential threat to public health.¹¹⁹

While Scarlet Alliance welcomes the commitment that home-based sex workers will not be covered if a licensing model was introduced, it is unclear whether private individual sex workers (working individually or in pairs or groups) will be required to apply for a licence, or whether private sex workers working collectively will be treated as a brothel. In some jurisdictions, private sex workers are interpreted as constituting a brothel or are prohibited from working together, and such requirements reduce sex workers opportunities for mentoring, peer education, and enhancing safety.

The Issues Paper is misguided as to how a licensing model would operate in NSW. The Paper states that under the proposed model, 'Fees would be charged for the licences, possibly on a full recovery basis'.¹²⁰ Evidence demonstrates this is unrealistic at best. In Queensland it has cost nearly \$7 million in Government contributions to operate a licensing authority over a ten year period, and is still does not self-sustain through licensing fees.¹²¹ This cost is in addition to the cost of operating a specialised Prostitution Enforcement Task Force (PET-F) within the Queensland Police Force to regulate the larger illegal (non-compliant) sector of the industry. The excessive legislative and regulatory requirements of a licensing model mean that large segments of the industry, both private and commercial, are forced to operate outside of the legal sector, maintaining their underground status. In Queensland the cost of licensing, both in licensing fees and in maintaining premises during a lengthy application process when the business is not open, is a significant barrier to becoming licensed. A study of why potential applicants did not apply for a license showed *because of the information required, privacy invasion and fees too expensive* as the top three reasons to not apply.¹²² Information in the Issues Paper demonstrates that in 2010, the application fee for a brothel licence in Victoria was \$3,999.50 and the annual licence fee was \$2,285.40 per year (22-3). In Queensland in 2001-2 the average time to process a brothel license application was 231 days.¹²³ The Issues Paper already recognises the administrative difficulties of a licensing system - 'an average business size of six sex workers would represent a more difficult scenario to achieve full cost recovery than an industry dominated by a few large businesses'.¹²⁴ The danger here is that licensing systems will preference big businesses and create difficulties for smaller businesses and individual sex workers.

Licensing models require enormous administrative capacity but have extremely low compliance. Police have now replaced Consumer Affairs in Victoria as key regulators of the sex industry. The Issues Paper recognises that the Government has responsibility to 'allow businesses to conduct their affairs without the burden of unnecessary and onerous regulation' (9). However, licensing is essentially over-regulation. Sex workers and businesses avoid licensing because of the onerous burdens involved. In Queensland, 11 years of licensing has resulted in only 24 brothels being registered, while the majority of workplaces operate outside the licensing system.¹²⁵ In Queensland, councils are granted permission to refuse brothel development applications. Within two years of implementation, 201 towns in Queensland 'banned' brothels, forcing them to operate outside the

¹¹⁹ Basil Donovan et al, *The Sex Industry in New South Wales: A Report to the NSW Ministry of Health*, Kirby Institute, 2012.

¹²⁰ *Issues Paper: Regulation of Brothels in NSW*, September 2012, 43.

¹²¹ Prostitution Licensing Authority, Queensland, *Annual Reports 2001-2011*, Statements of Financial Performance. When calculated, the Government Contributions across each year in the first ten years of licensing have added to \$6,959,000. In 2010-11, the PLA received \$561,565 in licensing fees, but the total expenditure for that year was \$1,339,663.

¹²² Prostitution Licensing Authority, Queensland, *Annual Report 2001-2*, Table 9, page 63.

¹²³ Prostitution Licensing Authority, *Annual Report 2001-2*, Queensland, 15, accessed at <http://www.pla.qld.gov.au/Resources/PLA/reportsPublications/annualReport/2002/documents/annualReport2002.pdf> on 21 March 2012.

¹²⁴ *Issues Paper: Regulation of Brothels in NSW*, September 2012, 44.

¹²⁵ Prostitution Licensing Authority Queensland, *Licensed Brothels*, <http://www.pla.qld.gov.au/brothels/licensedBrothels.htm> accessed on 8 September 2011.

licensing system.¹²⁶ Under the Victorian licensing model, there were 95 licensed brothels and up to 70 unlicensed brothels in 2006.¹²⁷ Fifty per cent of Victorian sex workers still operate illegally in 2012.¹²⁸

A licensing model, and the associated regulations, also have negative outcomes for the health and safety of sex workers. Sex workers avoid licensing because it may require working alone (reducing access to support), disclosure of our legal names to clients or the public (increasing risk of harassment), forced medical testing (impinging human rights, confidentiality and privacy), unworkable advertising restrictions, excessive limitations on work locations, legal in industrial areas but not from own home, (posing a threat to our safety), requiring registration on a government or police register (limiting ability to travel).

Sex workers in Victoria face mandatory STI and HIV testing under a licensing model. Victorian studies indicate that current testing rates are excessive¹²⁹, placing an unnecessary burden on sexual health clinics which are already beyond capacity. It costs over AU\$90,000 in screening costs for every chlamydia infection averted. Comprehensive Victorian studies state that 'screening intervals for sex workers should be based on local STI epidemiology and not locked by legislation'.¹³⁰ Studies show that the use of resources in screening and providing certificates to sex workers could be better spent.¹³¹ Sex workers living with HIV or working with an STI are criminalised in Victoria, increasing isolation, discrimination and stigma. Private sex workers are required to register their legal names and address on a permanent register, and there are over 2000 names recorded on the register, despite that many of those sex workers are no longer working.¹³² Sex workers report that some agencies refuse to employ them if they have an existing individual license, creating a lack of incentive to obtain a licence. Private sex workers can only work with a maximum of one other person, reducing sex workers' opportunities for peer education and reducing control over working conditions and safety. In comparison to NSW where 'decriminalisation has helped to ensure that the benefits gained in one sector are not denied to people working in less well-tolerated sectors',¹³³ Harcourt et al. argue that the 'one-size-fits-all' approach is 'inappropriate'.¹³⁴ Chen et al. report from their Melbourne study, 'As long as a licensing system persists, promotion of sexual health among women in this sector is likely to face hurdles.'¹³⁵

Licensing inevitably creates a criminal underclass. Although the Issues Paper states that the options proposed by this review are offered 'within the context of sex work remaining legal' (9), licensing implicitly makes certain kinds of sex work *illegal*. Keeping sex work legal cannot genuinely be the intention if a licensing model is being proposed. There is no evidence of a large number of 'illegal' brothels in NSW and plenty of evidence that licensing has created a large number of 'illegal' brothels in Victoria and Queensland. A Licensing model inherently creates a two tiered industry- the minority who can comply with the excessive regulations and the majority that cannot and are therefore considered "illegal". The 2012 Kirby Institute to the NSW Ministry of Health estimates that 90% of the Queensland sex industry and 50% of the Victorian sex industry operate illegally under a licensing

¹²⁶ Prostitution Licensing Authority, Queensland, *Annual Report 2001-2*, 15.

¹²⁷ Chen MY, Donovan B, Harcourt C, Morton A, Moss L, Wallis S, Cook K, Batras D, Groves J, Tabrizi SN, Garland S, Fairley CK, 'Estimating the number of unlicensed brothels operating in Melbourne (2010), *Australia and New Zealand Journal of Public Health* Vol 34(1), 67.

¹²⁸ Donovan B, Harcourt C, Egger S, Watchirs Smith L, Schneider K, Kaldor JM, Chen MY, Fairley CK, Tabrizi S (2012) *The Sex Industry in New South Wales: a Report to the NSW Ministry of Health*, Kirby Institute, UNSW.

¹²⁹ D Wilson, K Heymer, J Anderson, J O'Connor, C Harcourt and D Donovan (2009), 'Sex workers can be screened too often: a cost-effective analysis in Victoria, Australia', *Sexually Transmitted Infections*, October 2009.

¹³⁰ Ibid.

¹³¹ A Samaranyake, M Chen, J Hocking, C Bradshaw, R Cumming and C Fairley (2009) 'Legislation requiring monthly testing of sex workers with low rates of sexually transmitted infections restricts access to services for higher risk individual' *Sexually Transmitted Infections*, 85:7, 540 – 542.

¹³² Business Licensing Authority, *Prostitution Control Act 1994*, Information, 6 February 2006.

¹³³ Christine Harcourt et al., 'Sex Work and the Law', *Sexual Health* 2(3) 121–8 at 126.

¹³⁴ Ibid at 125.

¹³⁵ Marcus Chen, B Donovan, C Harcourt, A Morton, L Moss, S Wallis, K Cook, D Batras, J Groves, S Tabrizi, S Garland, CK Fairley, 'Estimating the Number of Unlicensed Brothels in Melbourne', *Australian and New Zealand Journal of Public Health*, 34:1, 2010 at 67.

framework.¹³⁶ Licensed brothels creates a group of ‘*clandestinas*’, members of whom fall outside health interventions and miss targeted health programs¹³⁷ – ‘usually they “capture” only a minority of sex industry workers.’¹³⁸ Sex workers working within the larger illegal sector of the industry are not covered by anti-discrimination law.

Licensing is an excuse by Government to control populations it sees as undesirable and would like to keep invisible. This is clearly recognised in the Issues Paper. The Paper states that legalisation is ‘where the sex industry is controlled by government, generally to keep it limited to certain areas where it will not offend the wider population’.¹³⁹ The Issues Paper also states that ‘Licensing is seen as a way of excluding criminal and other unsuitable persons from owning, managing or working in the sex industry’¹⁴⁰ and that ‘Applicants would be vetted for their suitability based on their history’.¹⁴¹ The implications of this are that sex workers, who often have criminal records from working in jurisdictions where sex work is criminalised, are unable to run sex industry businesses, and then as face double criminalisation, because ‘businesses or workers without the necessary permits are subject to criminal penalties’.

Licensing is essentially a form of social engineering, by which governments and dominant groups control the behaviour and choices of minority groups, discouraging, punishing and invisibilising behaviour, people and sexual practices they view as undesirable. This intention is made clear in the Issues Paper, which specifically states:

The sex industry in NSW consists of a variety of premises and services established to meet the different needs of clients. Sex workers make choices about which parts of the industry they will work in and their decisions are affected by the *incentives* provided by the regulatory environment. Thus, although focused on the regulation of sex services premises, the review will consider the possible impacts that such regulation may have on other parts of the sex industry (for example, street-based work), including how it may *shift the supply of sex services* and the subsequent implications for public policy outcomes.¹⁴²

Licensing will limit sex workers choices over their working environment and style of work, by providing ‘incentives’ and punishments to effectively coerce sex workers into Government-approved work. Licensing will mean reduced options for sex workers and reduced control over working environments and safety.

Licensing creates ‘Illegal brothels’ and facilitates council corruption

One of the catalysts to this review is a desire to address unapproved brothels in NSW. However, licensing inevitably creates illegal brothels. As part of a crackdown on unlicensed brothels in Victoria, local councils have hired undercover private investigators to solicit sex from sex workers, and then shut down their brothels.¹⁴³ Operators of brothels in ‘leafy, residential’ streets such as Fairfield have faced civil and criminal charges for operating without a permit.¹⁴⁴ In 2008, the Victorian state government assisted local councils in discriminating against sex industry businesses, by introducing new laws to allow councils to close down unlicensed brothels where they could prove sexual services

¹³⁶ Basil Donovan, C Harcourt, S Egger, L Watchirs Smith, K Schneider, JM Kaldor, MY Chen, CK Fairley, S Tabrizi, *The Sex Industry in New South Wales: A Report to the NSW Ministry of Health*, Kirby Institute, University of New South Wales, Sydney, 2012, Table 1.

¹³⁷ Christine Harcourt et al., ‘Sex Work and the Law’, *Sexual Health* 2(3) 121–8 at 125.

¹³⁸ *Ibid* at 126.

¹³⁹ *Issues Paper: Regulation of Brothels in NSW*, September 2012, 19.

¹⁴⁰ *Issues Paper: Regulation of Brothels in NSW*, September 2012, 19.

¹⁴¹ *Issues Paper: Regulation of Brothels in NSW*, September 2012, 43.

¹⁴² *Issues Paper: Regulation of Brothels in NSW*, September 2012, 9.

¹⁴³ Julia Adler, ‘Agents Go Undercover to Snare Northcote Prostitutes’, *True Local News*, 11 November 2008, accessed at <http://northcote-leader.whereilive.com.au/news/story/agents-go-undercover-to-snare-northcote-prostitutes/> on 29 September 2011.

¹⁴⁴ *Ibid*.

were *offered*, regardless of whether they were actually provided.¹⁴⁵ As *The Age* suggested, 'Instead of entering a suspected illegal brothel, council officers or hired investigators could sit across the road from a premises and note the number and gender of visitors' to draw their conclusions.¹⁴⁶ In 2009 the Victorian *Consumer Affairs Legislation Amendment Bill* proposed that people entering or leaving buildings suspected of being illegal brothels could be forced to answer questions by investigators or risk hefty fines up to \$1000.¹⁴⁷ The Bill proposed to double the maximum penalty for operating an illegal brothel to more than \$140,000 and meant operators could face five years imprisonment.¹⁴⁸ Contrary to all epidemiology and evidence, Consumer Affairs Minister Tony Robinson said these 'tougher penalties' were aimed 'to protect the community from the health and safety risks of unregulated sex work'.¹⁴⁹

Christian Vega writes that campaigns to close down 'illegal brothels' are misguided, and 'take advantage of the confusion and lack of understanding of the sex industry'.¹⁵⁰ He writes that in Victoria what is considered an 'illegal brothel' in a licensing framework is largely arbitrary:

The law only allows for a small number of opportunities to do sex work... If it doesn't occur in a licensed brothel, escort agency or as a registered private worker going to a client's premises, then sex work is considered illegal...There are many circumstances that would be considered an illegal brothel...

It seems ridiculous that it is perfectly legal for a private escort to see a client in a hotel room, but if that same hotel room is booked in the name of the escort, it is suddenly considered an illegal brothel.¹⁵¹

Vega writes that local council concern over 'illegal brothels' could be eliminated with 'simple amendments to legislation and planning regulations' that make it easier for sex industry businesses to operate.¹⁵² Instead, the stringent requirements imposed upon sex industry businesses under Victoria's licensing model effectively *create* illegal brothels and then support local councils in closing them down.

Formally oppose the Swedish Model

The Government should formally oppose the Swedish Model as a viable model of sex work legislation, in Australia or internationally. Calls are increasing in Australia for the criminalisation of the purchase of sexual services but not the selling of sexual services. This model reflects the inaccurate assumption that clients are perpetrators and sex workers are victims of violence. Not only does this approach deny the agency of sex workers, but it has acted to endanger the lives and working conditions of sex workers. By categorising sex work as 'violence against women' this model also denies the existence of sex workers who are not female. Swedish sex worker Pye Jacobsson notes that in Sweden this has marginalised male and sex and gender diverse sex workers.¹⁵³ Research from Sweden illustrates that the 'Swedish model', as it is sometimes referred, has no effect

¹⁴⁵ Melissa Fyfe, 'Sex Called Off in Hunt for Illegal Brothels', *The Age*, 19 October 2008, accessed at <http://www.theage.com.au/national/sex-called-off-in-hunt-for-illegal-brothels-20081018-53nx.html> on 29 September 2011.

¹⁴⁶ *Ibid.*

¹⁴⁷ M Marshall, 'State Crackdown on Illegal Brothels' *True Local News*, 8 December 2009, accessed at <http://maroondah-leader.wherelive.com.au/news/story/state-crackdown-on-illegal-brothels/> on 29 September 2011.

¹⁴⁸ *Ibid.*

¹⁴⁹ *Ibid.*

¹⁵⁰ Christian Vega, 'Scared and Misguided: The Crackdown on 'Illegal Brothels' is Not What it Seems', *Australian Sex Party Media Release*, 1 February 2011, accessed at <http://www.sexparty.org.au/index.php/news/local-news/958-media-release-scared-and-misguided-the-crackdown-on-illegal-brothels-is-not-what-it-seems> on 29 September 2011.

¹⁵¹ *Ibid.*

¹⁵² *Ibid.*

¹⁵³ Interview with Pye Jacobsson, 'A Swedish Sex Worker on the Criminalisation of Clients', accessed at <http://www.youtube.com/watch?v=7D7nOh57-I8> on 30 August 2011.

in reducing the size of the sex industry.¹⁵⁴ Instead, laws that criminalise everyone around sex workers act to isolate us and force us into unsafe working conditions. As sex worker Audry Autonomy said at the Melbourne Feminist Futures Conference in 2011, in response to Greens candidate Kathleen Maltzan's assertion that this model does not criminalise sex workers, 'When you criminalise my clients, you criminalise me.'

Models that criminalise the clients of sex workers act as a barrier to sex worker health and safety. Petra Ostergren and Susanne Dodillet report that in Sweden they have found 'serious adverse effects of the Sex Purchase Act – especially concerning the health and well-being of sex workers – in spite of the fact that the lawmakers stressed that the ban was not to have a detrimental effect on people in prostitution.'¹⁵⁵ An interview with Swedish sex worker Pye Jacobsson describes this condescending attitude towards sex workers, 'We want to save you! And if you don't appreciate it, you will be punished!'¹⁵⁶ The Prostitution Licensing Authority (PLA) Queensland reports that the prohibition on the purchase of sexual services in Sweden has 'driven the sex industry underground'.¹⁵⁷ The PLA reports, 'sex workers feel less secure and consider themselves at greater risk of violence.'¹⁵⁸ With predominantly clients of street-based workers being targeted, sex workers are then denied the choice and autonomy that comes with selecting one's own work and clients.¹⁵⁹ Fearful of losing their client base, street-based sex workers have been spatially displaced, forced into more isolated, poorly-lit industrial and outdoor areas where they are more vulnerable.¹⁶⁰ Further, the Penal Code prevents the use of private apartments for sex work, requiring a landlord or tenant to terminate the tenancy or move out if premises are being used for sex work.¹⁶¹ The overall effect of these laws has been to reduce sex workers' control over their workplace. As Susanne Dodillet and Petra Ostergren reflect:

The overall implications of these laws is that no one can operate a brothel, rent an apartment, room or hotel room, assist with finding clients, act as a security guard or allow advertising for sex workers. This in turn implies that sex workers cannot work together, recommend customers to each other, advertise, work from property they rent or own or even cohabit with a partner (since that partner is likely to share part of any income derived from sex work).¹⁶²

Sex worker blogger Vi writes:

[W]hile the legislation does not specifically criminalise the sex worker, it criminalises everyone *around* the sex worker... Sex workers cannot work together or they risk being charged with pimping each other, which dramatically decreases our opportunity to look out for each other's safety, reduce

¹⁵⁴ Susanne Dodillet and Petra Östergren, 'The Swedish Sex Purchase Act: Claimed Success and Documented Effects', Conference paper presented at the International Workshop: *Decriminalizing Prostitution and Beyond: Practical Experiences and Challenges*. The Hague, March 3 and 4, 2011, accessed at <http://xa.yimg.com/kq/groups/2834953/1982978694/name/Claimed%20Success%20and%20Documented%20Effects%2E%20Dodillet%20%26amp%3B%2> on 13 August 2011.

¹⁵⁵ Susanne Dodillet and Petra Ostergren, 'The Swedish Sex Purchase Act: Claimed Success and Documented Effects' Conference paper presented at the International Workshop *Decriminalizing Prostitution and Beyond: Practical Experiences and Challenges* The Hague, March 3 and 4, 2011, page 3, accessed at <http://www.petraostergren.com/upl/files/54259.pdf> on 17 May 2011.

¹⁵⁶ Interview with Pye Jacobsson, 'A Swedish Sex Worker on the Criminalisation of Clients', accessed at <http://www.youtube.com/watch?v=7D7nOh57-I8> on 30 August 2011.

¹⁵⁷ Bob Wallace (Principal Policy Officer), *The Ban on Purchasing Sex in Sweden*, Office of the Prostitution Licensing Authority Queensland, 19 accessed at <http://www.pla.qld.gov.au/Resources/PLA/reportsPublications/documents/THE%20BAN%20ON%20PURCHASING%20SEX%20IN%20SWEDEN%20-%20THE%20SWEDISH%20MODEL.pdf> on 11 May 2011.

Ibid at 19.

¹⁵⁹ Christine Harcourt et al., 'Sex Work and the Law', *Sexual Health* 2(3) 121–8 at 123.

¹⁶⁰ 'Michelle' cited in 'Sex Ban Puts Us at Greater Risk', *The Guardian*, 27 May 2009, cited in B Wallace, *The Ban on Purchasing Sex in Sweden*, Office of the Prostitution Licensing Authority Queensland, 19 accessed at <http://www.pla.qld.gov.au/Resources/PLA/reportsPublications/documents/THE%20BAN%20ON%20PURCHASING%20SEX%20IN%20SWEDEN%20-%20THE%20SWEDISH%20MODEL.pdf> on 11 May 2011 at 15.

¹⁶¹ Susanne Dodillet and Petra Ostergren, 'The Swedish Sex Purchase Act: Claimed Success and Documented Effects' Conference paper presented at the International Workshop *Decriminalizing Prostitution and Beyond: Practical Experiences and Challenges* The Hague, March 3 and 4, 2011, at 4.

¹⁶² Ibid 4.

overhead costs, and establish peer support networks, which are known to be our most effective method of reducing the STI rate.¹⁶³

Moreover, Vi notes that laws which prohibit anyone 'living off the earnings of prostitution' have been used to charge sex workers' children with pimping, where they have been living with their parents and not paying rent.¹⁶⁴ The Swedish Government has also denied access to the methadone treatment program to sex workers unless they leave sex work.¹⁶⁵ Elena Jeffreys writes that the Swedish model has proven to be 'a decade-long failure' and that those proposing to implement it in Australia are 'showing wilful ignorance to the harms of criminalisation, and are ignoring sex workers' actual needs.'¹⁶⁶ Compared to decriminalisation, which is the harm-reduction model, and which evidence shows does not increase the size of the sex industry, Jeffreys writes that the Swedish model 'ultimately hurts sex workers; decreasing sex workers' human rights, income, health, dignity, increasing corruption and creating barriers for sex workers to access justice if crimes occur.'¹⁶⁷

The Issues Paper recognises that under the Swedish Model 'sex workers feel less trust in social authorities, police and the legal system. The prohibition prevents sex workers from seeking help and because they are less visible, sex workers are also more difficult for health and support services to reach'.¹⁶⁸ The Paper acknowledges that 'Most observers suggest that there has been a reorganisation of the sex industry in Sweden so that both sex workers and their clients are choosing less visible ways of making contact... Most reports also conclude that the prohibition does not deter clients or affect their behaviour, with research finding that the decision about whether to purchase sex is generally linked to issues other than it being illegal.'¹⁶⁹ Opposition to the Swedish model as a viable model for sex work legislation should be formally opposed by Government.

Decriminalisation is best-practice, UN recommended model

Which of the options for regulating sex services premises would best meet the Government's objectives for the proposed regulatory system (protection of residential amenity, protection of sex workers and safeguarding public health)? Please advise your reasons and highlight any impacts of specific types of sex services businesses such as home-based sex work and street-based sex work. You are welcome to propose an alternative regulatory model for consideration.

Decriminalisation has brought improved work safety, high rates of safer sex practice and low rates of sexually transmissible infections and no evidence of organised crime. A decriminalised framework – where sex work businesses are treated like other businesses, subject to existing regulatory mechanisms, and the police are not involved as regulators unless there is a breach of law – is the only model to adequately provide for the safety and wellbeing of sex workers and the wider community. Decriminalisation is the only model to protect and promote sex workers' human rights, industrial rights and civil rights. Decriminalisation has been consistently evidenced to support sex workers in our role as peer educators, partners in health promotion and the primary safe sex educators of Australia. It is crucial to ensuring reduced corruption, high compliance and a sustainable approach that is consistent with the Commonwealth's *National HIV and STI Strategies*.

NSW has enjoyed a partially decriminalised system since 1995 with positive outcomes upon sex worker health, safety and rights. The NSW model has not been a complete success, still criminalising street based sex work in certain areas, and experiencing discriminatory local council planning

¹⁶³ Vi, 'On the Swedish Model' *Feministe*, 23 July 2011, accessed at <http://www.feministe.us/blog/archives/2011/07/23/on-the-swedish-model/> on 13 August 2011.

¹⁶⁴ *Ibid.*

¹⁶⁵ *Ibid.*

¹⁶⁶ Elena Jeffreys, 'Don't Use the Swedish Model for ACT Sex Workers', *The Canberra Times*, 19 May 2011, accessed at <http://nothing-about-us-without-us.com/tag/swedish-model/> on 13 August 2011.

¹⁶⁷ *Ibid.*

¹⁶⁸ *Issues Paper: Regulation of Brothels in NSW*, September 2012, 20.

¹⁶⁹ *Issues Paper: Regulation of Brothels in NSW*, September 2012, 20.

practices. Total decriminalisation must include introducing comprehensive human rights and anti-discrimination protections for sex workers to be fully effective. The Department of Health and Ageing Sixth National HIV Strategy 2010-2013 states that 'Australia's approach to HIV/AIDS has demonstrated the protection of human rights to be compatible with and *essential to* the effective protection of public health.'¹⁷⁰

Research clearly illustrates that decriminalisation is the most effective model for promoting public health objectives and the best practice model for the prevention of HIV and STIs.¹⁷¹ In New South Wales where sex work is partially decriminalised, there are very low rates of HIV and STIs. 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), in Sydney, where sex work was decriminalised, the outreach organisation had the 'greatest financial support' and the 'best access to brothels for its outreach workers'.¹⁷² Of all three states, the Sex Workers Outreach Project (SWOP) NSW was the only organisation to promote peer education and provide staff with Asian language skills and conduct outreach during the evenings. In comparison Perth, where brothels were operating illegally, had the lowest health and safety levels.¹⁷³ In Melbourne, although prescriptive licensing rules had delivered greater availability of condoms, dental dams and lubricant, these 'positive health and safety outcomes' were 'heavily biased toward the licensed sector'¹⁷⁴ supporting sex worker organisation claims that the licensing model creates a two-tiered sex industry.

The Issues Paper already recognises that decriminalisation does not mean the sex industry is unregulated,¹⁷⁵ that a number of government departments, Acts and local authorities regulate sex work in NSW. Decriminalisation means that workers can better assert occupational health and safety (OHS) rights. Without the threat of criminal sanctions, sex industry businesses in a decriminalised framework have greater capacity to develop comprehensive OHS policies.¹⁷⁶

Research evaluating the impact of decriminalisation in New Zealand, five years after the enactment of the Prostitution Reform Act 2003, provides strong evidence that decriminalisation does not lead to an increase in the size of the sex industry. The New Zealand Prostitution Reform Committee, noting that the purpose of the Act was to decriminalise prostitution, safeguard the human rights of sex workers, promote the welfare and occupational health and safety of sex workers and contribute to public health, found that the public fear about an expanding sex industry failed to manifest – rather the numbers of sex workers in Christchurch had stayed approximately the same between 1999 and 2006 despite the decriminalisation of sex work.¹⁷⁷ In NSW, the Law and Sexual Health (LASH) report shows that the number of sex workers in Sydney brothels in 2011 was similar to estimates from 20 years ago.¹⁷⁸ This supports the assertion that decriminalisation does not increase the incidence of sex work.

¹⁷⁰ Australian Government Department of Health and Ageing, *Sixth National HIV Strategy 2010-2013*, Commonwealth of Australia, Canberra, 2010 at 6.4, emphasis added.

¹⁷¹ Australian Government Department of Health and Ageing, *HIV Strategy* at 6.4; G Abel, L Fitzgerald, C Healy, and A Taylor (eds) (2010), 'Taking the Crime out of Sex Work: New Zealand Sex Workers' Fight for Decriminalisation', Bristol, Policy Press; C Harcourt, S Egger, B Donovan (2005), 'Sex Work and the Law', *Sexual Health* 2(3) 121–8; B Donovan, C Harcourt, S Egger, C Fairley, (2010), 'Improving the Health of Sex Workers in NSW: Maintaining Success', *NSW Public Health Bulletin* 21(3-4) 74–7; E Jeffreys, K Matthews, and A Thomas, (2010), 'HIV Criminalisation and Sex Work in Australia', *Reproductive Health Matters* 18(35): 129–36.

¹⁷² *Ibid.*

¹⁷³ Christine Harcourt et al., 'The Decriminalisation of Prostitution is Associated with Better Coverage of Health Promotion Programs', *Australian and New Zealand Journal of Public Health*, 34:5, 2010, 482–485.

¹⁷⁴ *Ibid.* at 486.

¹⁷⁵ *Issues Paper: Regulation of Brothels in NSW*, September 2012, 9.

¹⁷⁶ Occupational Health and Safety Working Group, *A Guide to Best Practice: Occupational Health and Safety in the Australian Sex Industry*, Scarlet Alliance, accessed at <http://www.scarletalliance.org.au/library/bestpractice> on 11 May 2011.

¹⁷⁷ New Zealand Government, *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003*, Ministry of Justice, Wellington, 2008, 13.

¹⁷⁸ Basil Donovan, C Harcourt, S Egger, L Watchirs Smith, K Schneider, JM Kaldor, MY Chen, CK Fairley, S Tabrizi, *The Sex Industry in New South Wales: A Report to the NSW Ministry of Health*, Kirby Institute, University of New South Wales, Sydney, 2012..

Add new category to the *Anti-Discrimination Act (NSW)* to protect sex workers from discrimination

Sex workers require anti-discrimination protection in NSW. Anti-Discrimination protection for sex workers is recommended by United Nations bodies. United Nations Secretary General Ban Ki-Moon states that 'In most countries, discrimination remains legal against women, men who have sex with men, sex workers, drug users, and ethnic minorities. This must change.'¹⁷⁹ Former Australian High Court judge the Hon. Michael Kirby AC CMG states that 'We will insist on human rights for all, including for sex workers. Nothing else is acceptable as a matter of true public morality.'¹⁸⁰ UNAIDS and the United Nations Population Fund state that it is essential for governments to create an enabling legal and policy environment which insists upon universal rights for sex workers and ensures our access to justice.¹⁸¹

In 1999 a National Survey was conducted by Scarlet Alliance and the Australian Federation of AIDS Organisations to identify discrimination in the employment conditions and personal lives of sex workers in Australia. Their subsequent report, *Unjust and Counter-Productive: The Failure of Governments to Protect Sex Workers From Discrimination*, found that sex workers experienced discrimination on the basis of their occupation in a number of areas.

Sex workers reported discrimination in their access to personal and professional goods and services, such as when attempting to access credit or loans, due to 'banks not applying the same business standards as they would to other service industries.'¹⁸² Applications for credit cards often sought information about the applicant's occupation rather than their income, and sex workers reported having their applications refused despite no evidence of bad credit rating or unstable or low income. In loan applications, banks often required business records covering a longer period for sex workers than other occupations.¹⁸³ Similarly, sex workers documented discrimination in securing home, contents and mortgage insurance against loss of income, despite proven good credit ratings. They reported being refused private health insurance or facing higher superannuation premiums due to an assumption they were at greater STI/HIV risk, despite evidence that sex workers in Australia enjoy lower rates of STIs/HIV than the general population. Mobile phone companies had denied sex workers applications for phones because their income and address was not considered stable.¹⁸⁴ These restrictions to banking and business facilities continue to prevent sex workers from access to small business opportunities and hinder the development of workplace safety mechanisms.

When accessing housing or accommodation, the survey revealed that sex workers experienced difficulties in obtaining rent agreements or housing once their occupation was known, regardless of whether they intended to be working from the premises. Sex workers had experienced eviction from hotels as well as private rental accommodation, rude treatment by accommodation staff, and council staff informing landlords about their occupation. The majority of respondents indicated they would 'never put my occupation because I feel sure my application will be rejected.'¹⁸⁵

Stigma surrounding sex work continues to affect the decisions of employers when recruiting and dismissing staff. A number of high profile cases illustrate that discrimination against sex workers,

¹⁷⁹ UNAIDS, Joint United Nations Program on HIV/AIDS, UNAIDS Guidance Note on HIV and Sex Work, Geneva, 2009, 2.

¹⁸⁰ UNAIDS and UNFPA, Building Partnerships on HIV and Sex Work: Report and Recommendations from the first Asia and the Pacific Regional Consultation on HIV and Sex Work, 2011, 14.

¹⁸¹ Ibid at 13.

¹⁸² Scarlet Alliance and the Australian Federation of AIDS Organisations, *Unjust and Counter-Productive: The Failure of Governments to Protect Sex Workers From Discrimination*, Sydney, 1999, 19, accessed at <http://www.scarletalliance.org.au/library/unjust-counterproductive> on 19 May 2011.

¹⁸³ Ibid at 19.

¹⁸⁴ Ibid at 19-20.

¹⁸⁵ Scarlet Alliance and AFAO, *Unjust and Counter-Productive: The Failure of Governments to Protect Sex Workers From Discrimination*, Sydney, 1999, 19, accessed at <http://www.scarletalliance.org.au/library/unjust-counterproductive> on 19 May 2011 at 20.

particularly in occupations such as teaching or policing, is ongoing. When applying for jobs outside the sex industry, sex workers are reluctant to inform potential employers about our work history for fear of discrimination throughout the interview process. Navigating this discrimination means that sex workers may then have gaps on our resumes or have trouble explaining skills we have acquired during our working lives.

Sex workers are subject to systemic vilification, including severe ridicule and serious contempt, which is largely accepted and endorsed by media, policy and laws. As one sex worker writes, we experience 'years of overt, systemic, structural, ongoing, accepted, supported, celebrated discrimination.'¹⁸⁶ Stigma is exacerbated by vilification of sex workers in television, films and newspapers and by some organisations, where sex work is perpetually portrayed as dangerous and sex workers as dead or degraded victims without families or support. Continuing discrimination against sex workers damages Australia's whole-of-government approach to Social Inclusion, which aims to ensure that all Australians will have the resources, opportunities and capability to connect with people, use their local community's resources and 'have a voice so that they can influence decisions that affect them.'¹⁸⁷

Current protections for sex workers are inconsistent and insufficient. There is no anti-discrimination protection for sex workers in NSW. Although Queensland protects people from discrimination on the basis of 'lawful sexual activity', this protection is limited to people working legally, and does not cover street-based sex workers, private workers operating together or sex workers operating out of unlicensed agencies or brothels. Some protections also exist in Tasmania and Victoria, however the continuing criminalisation of many aspects of sex work renders the use of a 'lawful' sexual activity category inadequate. In addition, in Victoria, while lawful sexual activity is a protected attribute, sex workers are specifically singled out as an *exception*, so it remains lawful to discriminate against people engaging in *commercial* lawful sexual activity (but not people engaging in other lawful sexual activity) when providing accommodation. Although the Australian Capital Territory protects people from discrimination on the basis of 'profession, trade, occupation or calling' this does not include people who experience discrimination because of their involvement in alternative or stigmatised sexual communities, or people who trade sex in kind but do not identify as a sex worker. NSW needs immediate consultation and action on how to best protect sex workers from discrimination at a legislative level.

Improvements in planning

The NSW Government should support and fund the development of a sex worker run education program to inform councillors of the rationale behind decriminalisation; explain the legislative framework and Standard LEP; explore the impact on OHS, competition and economic outcomes for the sex industry; explore the reality of amenity issues; review councils' range of controls, remedies and powers; review case law and costs relating to court cases; provide resources in multiple languages; and educate on best-practice approaches to sex industry planning.

A sex industry liaison officer should be appointed within the Department of Planning. This position would require a demonstrable understanding of the NSW sex industry and the intent and justification of decriminalisation. Their role would be to assist Councils to abide by the guiding principles for sex industry planning identified in the SSPPG.

¹⁸⁶ Because I'm a Whore, 'An Open Letter to Australian Feminists Concerned about Sex Worker Exploitation', *Feminaust: Contemporary Australian Feminism*, 20 August 2011, accessed at <http://feminaust.org/2011/08/20/open-letter-to-australian-feminists-concerned-about-sex-worker-exploitation/> on 31 August 2011.

¹⁸⁷ Australian Government, 'Overview of the Social Inclusion Agenda', accessed at <http://www.socialinclusion.gov.au/SI/Agenda/Pages/Overview.aspx> on 26 May 2011.

Discriminatory provisions against sex workers should be removed from the standard LEP. The existing SSPPG should be revised, updated and applied as an ongoing resource for councils.

Repeal the advertising restrictions from the *Summary Offences Act (1988)*: Section 18

What would be the advantages or disadvantages of repealing the current advertising restrictions on the sex industry?

The Government should repeal the current advertising restrictions on the sex industry. The restrictions are inconsistent with a decriminalised sex industry. The Issues Paper notes, 'It appears the broader community does not object to this advertising given the lack of complaints.' Advertising publishers would still be able to exercise editorial control to ensure sex industry advertisements meet the publication's standards for content.

Sex workers in NSW continue to face discriminatory advertising policies. Sex workers report newspapers refusing to accept advertising for sexual services, publishers failing to place advertisements or making unapproved changes to pre-paid advertising, regularly changing policy, and creating special conditions applying to sex industry advertising such as advance payment, higher fees, limits on running length or having to place the advertisement in person rather than by telephone.¹⁸⁸ Despite often being small business owners and sole traders, sex workers are regularly charged disproportionately to advertise our services, facing fees that are much higher than if we were to advertise in other sections of the newspaper. Discriminatory advertising costs has been consistently raised as an issue at Scarlet Alliance annual National Forums, and in their investigation Triple J radio's Hack program have noted that the NSW *Daily Telegraph* was one of the papers that charged several times more for sex worker advertisements.¹⁸⁹ These arbitrary discretions and conditions appear to apply to sex workers solely by virtue of our occupation.

Current advertising restrictions must be repealed in combination with the introduction of anti-discrimination protection for sex workers.

Decriminalise street-based sex work in NSW

Currently NSW has only partial decriminalisation. Some forms of street-based sex work remain illegal, where it occurs within view of a hospital, church, dwelling or school. There is no evidence to suggest that sex workers or our clients pose any level of danger to hospitals, churches, children or residents from proximity. Many sex workers (and our clients) are parents, siblings, children and families. The basic premise that proximity causes harm is not supported by evidence. To achieve full decriminalisation, street-based sex work in all locations must be decriminalised.

The Issues Paper inaccurately states that 'indoor environments are generally safer for sex workers because they are subject to a range of controls that reduce the likelihood of violence'.¹⁹⁰ Indoor environments are not necessarily safer for sex workers. What is safe for sex workers is having the opportunity to choose what methods of work are best and safest for ourselves. The Issues Paper recognises that what creates risk for street-based sex workers is 'their criminal status' and 'absence of legal protection'.¹⁹¹

¹⁸⁸ Ibid at 17.

¹⁸⁹ Scarlet Alliance Media Release, 'International Whores Day 2009: Sex Workers Take to the Streets to Fight Discrimination; Sex Workers Paying Too Much For Their Box; Bonking Not Good Enough for Banks', 2 June 2009, accessed at http://www.scarletalliance.org.au/media/News_Item.2009-06-01.2711 on 26 May 2011.

¹⁹⁰ NSW Government, Better Regulation Office, *Issues Paper: Regulation of Brothels in NSW*, September 2012, 5.

¹⁹¹ NSW Government, Better Regulation Office, *Issues Paper: Regulation of Brothels in NSW*, September 2012, 23.
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Roberta Perkins' interviews with sex workers in private and brothel workplaces reveal that most private and brothel workers have also worked on the streets at some time.¹⁹² Elena Jeffreys argues that street-based sex workers often have greater independence, autonomy and freedom in our workplaces:

There's a high degree of independence, control over one's own prices, low overheads and flexible work hours. It's perfectly suited to sex workers who do short stints in the industry and is also good for longer term sex workers who build up regulars and become known in an area. Unlike brothel work, where shifts are determined by the brothel, street based sex workers can come and go as they please and don't have to share earnings with management.¹⁹³

Street-based sex work makes up only 2% of the Australian sex industry, and yet street-based sex workers are often the most targeted by legislation that seeks to make us invisible or eradicate us entirely. Elena Jeffreys notes that contrary to the *Pretty Woman* stereotype of the street-based sex worker who is 'rescued' out of her 'situation', street-based sex work can be seen as a symbolic feminist response to the public/private distinction:

To work on the street is to challenge oppressive notions of women being good girls if they stay indoors and don't venture out unless accompanied by a male chaperone. By working out of doors we are taking our financial and sexual independence into a public space. Far from being downtrodden, working on the streets is a way to gain money on our own terms – on our own time and without anyone telling us when or how to work.¹⁹⁴

Street-based sex workers challenge hetero-normative assumptions about sex as a private act. Policies, laws and attitudes that corner sex to the private domain have acted to marginalise and render invisible many queer sexualities, practices, bodies and iconographies. Law and order crackdowns to 'clean up' gay beats, red light districts and spaces of cultural significance to non-heterosexual communities have meant that only certain kinds of (conservative, monogamous, heterosexual) sexualities are allowed validation and representation in the public sphere. Moreover, street-based sex workers have been at the forefront of community health initiatives and safer sex education:

Many street based workers talk of working with dignity and pride in public settings, negotiating with clients independently and having close relationships and camaraderie with fellow workers in the same area. Street based workers were also among the first Australian sex workers to enforce condom use as a response to HIV, challenging the public perception of street based sex workers as disempowered and caring little for their health and safety.¹⁹⁵

¹⁹² Roberta Perkins and Francis Lovejoy, 'Addiction and Indulgence', *Call Girls*, University of Western Australia Press, 2007, 88-95, cited in Elena Jeffreys, 'Street-based Sex Workers' in *Provision: Stigma*, Issue 2, Scarlet Alliance, 2007, 28.

¹⁹³ Elena Jeffreys, 'Street-based Sex Workers' in *Provision: Stigma*, Issue 2, Scarlet Alliance, 2007, 28.

¹⁹⁴ Ibid.

¹⁹⁵ Elena Jeffreys, 'Street-based Sex Workers' in *Provision: Stigma*, Issue 2, Scarlet Alliance, 2007, 28.

New Zealand experience

New Zealand has had a successful experience of decriminalisation. However in New Zealand, there are other special provisions and controls that Scarlet Alliance does not recommend to be introduced as part of Option 1 to improve the current regulatory system in NSW.

In New Zealand, applicants must be a citizen or permanent resident of New Zealand or Australia to be eligible for a brothel operator certificate. If this was introduced in NSW for either owner/operators or private sex workers, those on student or temporary visas would be immediately rendered illegal, subject to penalties, experience reduced access to health services and increasingly marginalised. In New Zealand, operators of sex work businesses must adopt and promote safe sex practices, and ensure that sex workers and clients must adopt safer sex practices. The Issues Paper notes that there have been 2 prosecutions for a sex worker or client failing to adopt safer sex practices. Mandatory safer sex laws act as a barrier to health promotion, increase the potential for police corruption, criminalise sex workers for practices that are legal for non-sex workers, and are not evidenced by epidemiology.

NSW Government should not follow the tattoo parlour licensing model

The NSW Government should not follow the path of the *Tattoo Parlours Act 2012*. This Act is not evidence-based and provides for the finger printing and palm printing of licence applicants. The requirement for finger and palm printing of sex work licence holders will further stigmatise sex workers, due to the implication of criminality insinuated by such a practice. This is not an appropriate pathway for the regulation of sex work in NSW.

Scarlet Alliance Recommendations

- Decriminalisation of sex work be maintained in NSW (removal of police as regulators, removal of specific laws for the sex industry, sex work regulated like any other business);
- A new category be added to the *Anti-Discrimination Act (NSW)* to protect sex workers from discrimination;
- Advertising restrictions be repealed from the *Summary Offences Act (1988)*;
- Street-based sex work be fully decriminalised;
- The Government formally oppose registration as a viable model of sex work regulation;
- The Government formally oppose licensing as a viable model of sex work regulation;
- The Government formally oppose the Swedish Model as a viable model of sex work regulation;
- The Government must ensure sex workers can work privately alone, in pairs, in small co-ops or collectives, from home or elsewhere without licence, registration, development application or criminalisation;
- Police and licensing authorities play no role in regulating the sex industry;
- The Government formally recognise that trafficking is not characteristic of the NSW sex industry and that there is no evidence that organised crime is associated with the sex industry;
- The Government formally recognise that epidemiology sex worker rates of STIs/HIV are *lower than* the general population and among the lowest in the world *because of* decriminalisation, community-driven health promotion and peer-based interventions;
- The Guiding Principles outlined in the Sex Services Premises Planning Guidelines should be formally endorsed and incorporated into Government Policy;
- The standard LEP should be amended to adhere to the Sex Services Premises Planning Guidelines and the basic definition of 'brothel' should be removed so that councils must differentiate between business proposals based on specific amenity impacts;
- A sex industry liaison officer be appointed within the Department of Planning;
- Discriminatory provisions against sex workers be removed from the standard LEP;
- The existing SSPPG be revised, updated and applied as an ongoing resource for councils
- Government support and fund the development of a sex worker run education program to inform councillors of the rationale behind decriminalisation;
- Funding for sex worker organisations, peer education and translation of resources;
- Sex workers be recognised and consulted as the key stakeholders in this reform process.



APPENDIX 1

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Why licensing will not work in NSW

22nd March, 2012

Scarlet Alliance does not support a licensing model of sex industry regulation for NSW. The Queensland and Victorian licensing models have provided comprehensive evidence of the model's failure.

After ten years implementation, the Queensland licensing model:

- has resulted in extremely high levels of non-compliance. Only 23 legal brothels in ten years in Queensland;ⁱ
- is inherently expensive and requires long-term commitment by Government to resource the Licensing Authority. In 2002, approximately 80% of the Prostitution Licensing Authority (PLA) income was provided by Government grants. In 2006, approximately 45% of the Prostitution Licensing Authority was still carried by Government grants. Annual reports show more than \$6million of tax payer's funds have been spent on the cost of the Licensing Authority alone;
- although the Queensland Government had expected the cost of maintaining the licensing model to be covered by sex industry licensing fees, this has never been realised;
- has required the development of a Police Prostitution Enforcement Taskforce (PET-F). In 2005, 74% of complaints received by the PLA were referred to PET-F for response. Police are now the regulators of a large section of the Queensland sex industry. Scarlet Alliance has consistently received complaints from sex workers about police treatment;
- requires a high level of police involvement in regulation of the industry, maximising corruption risk. Note: the NSW model of regulation was decriminalised in response to high levels of Police corruption and is recognised to have reduced corruption;
- requires a high level of administration and compliance function as the model is complex and does not promote compliance;
- has created a two-tier sex industry; the legal sector or those that can comply, and the illegal sector made up of the majority who are unable to meet the excessive conditions of compliance. By 2005 only 15 brothels had been approved. In 2012 only 25 brothels are legal;
- does not support best practice occupational health and safety for sex workers (number of rooms, private workers unable to work in pairs, escort agencies illegal, street based sex work illegal, etc.);
- is extremely costly to the licence applicant and creates extreme barriers to compliance. In 2001-2 the average time to process a brothel licence application was 231 days. During this time the property has to be leased or owned and have planning permission. A study of why potential applicants did not apply for a license showed *because of the information required, privacy invasion and fees too expensive* as the top three reasons to not apply;ⁱⁱ and
- banning of brothels by councils remains a barrier to sex industry businesses operating within the legal, licensed systems. Within two years of implementation, 201 towns or areas were granted permission to refuse brothel development applications.

The issues represented here remain consistent barriers to the success of licensing models to regulate the sex industry. In 2012, licensing has been in place in Queensland for more

than 10 years and there are still only 23 legal brothels leaving the majority of sex industry businesses operating illegally.ⁱⁱⁱ

Under the Victorian licensing model:

- there were 95 licensed brothels and up to 70 unlicensed brothels in 2006;^{iv}
- 50% of Victorian sex workers still operate illegally in 2012;^v
- sex workers face mandatory STI and HIV testing. Victorian studies indicate that current testing rates are 'excessive'^{vi}, placing an unnecessary burden on sexual health clinics which are already beyond capacity;
- it costs over AU\$90,000 in screening costs for every chlamydia infection averted. Comprehensive Victorian studies state that 'screening intervals for sex workers should be based on local STI epidemiology and not locked by legislation';^{vii}
- Studies show that the use of resources in screening and providing certificates to sex workers could be better spent;^{viii}
- licensing in Victoria has created a group of 'clandestinas', who fall outside health interventions and miss targeted health programs;^{ix}
- sex workers living with HIV or working with an STI are criminalised in Victoria, increasing isolation, discrimination and stigma;
- private sex workers are required to register their legal names and address on a permanent register, interfering with privacy, limiting ability to travel, and affecting access to justice in court;
- private sex workers can only work with a maximum of one other person, reducing sex workers' opportunities for peer education and reducing control over working conditions and safety;
- there are over 2000 names recorded on the register, despite that many of those sex workers are no longer working;^x
- sex workers report that some agencies refuse to sign them up if they have an existing individual license, creating a lack of incentive to obtain a licence;
- police have now replaced Consumer Affairs as key regulators of the sex industry following the Inquiry into People Trafficking for Sex Work. Anti-trafficking was used as a platform to push this change despite substantial evidence that police are inappropriate regulators of the sex industry; and
- the LASH (Law and Sexual Health) report in 2012 recommends that the licensing of sex work should not be regarded as a viable legislative response. It states that licensing is a 'threat to public health'.^{xi}

ⁱ Queensland Prostitution Licensing Authority, *Annual Report 2010-11*, Queensland. Accessed on 22nd March, 2012 at <http://www.pla.qld.gov.au/Resources/PLA/reportsPublications/annualReport/2011/documents/The%20environment%20in%20which%20we%20operate.pdf>.

ⁱⁱ Queensland Prostitution Licensing Authority, *Annual Report 2001-2*, Queensland. Accessed on 22nd March, 2012 at <http://www.pla.qld.gov.au/Resources/PLA/reportsPublications/annualReport/2002/documents/annualReport2002.pdf>.

ⁱⁱⁱ Queensland Prostitution Licensing Authority, *Annual Report 2010-11*, Queensland, *above n1*.

^{iv} Chen MY, Donovan B, Harcourt C, Morton A, Moss L, Wallis S, Cook K, Batras D, Groves J, Tabrizi SN, Garland S, Fairley CK, 'Estimating the number of unlicensed brothels operating in Melbourne (2010), *Australia and New Zealand Journal of Public Health* Vol 34(1), 67.

^v Donovan B, Harcourt C, Egger S, Watchirs Smith L, Schneider K, Kaldor JM, Chen MY, Fairley CK, Tabrizi S (2012) *The Sex Industry in New South Wales: A Report to the NSW Ministry of Health*, Kirby Institute, UNSW.

^{vi} D Wilson, K Heymer, J Anderson, J O'Connor, C Harcourt and D Donovan (2009), 'Sex workers can be screened too often: a cost-effective analysis in Victoria, Australia', *Sexually Transmitted Infections*, October 2009.

^{vii} D Wilson, K Heymer, J Anderson, J O'Connor, C Harcourt and D Donovan (2009), 'Sex workers can be screened too often: a cost-effective analysis in Victoria, Australia', *Sexually Transmitted Infections*, October 2009.

^{viii} A Samaranyake, M Chen, J Hocking, C Bradshaw, R Cumming and C Fairley (2009) 'Legislation requiring monthly testing of sex workers with low rates of sexually transmitted infections restricts access to services for high risk individual' *Sexually Transmitted Infections*, 85:7, 540 – 542.

^{ix} Christine Harcourt, S Egger, B Donovan (2005), 'Sex Work and the Law', *Sexual Health* 2(3) 121–8 at 125.

^x Business Licensing Authority, *Prostitution Control Act 1994*, Information, 6 February 2006.

^{xi} Basil Donovan, C Harcourt, S Egger, L Watchirs Smith, K Schneider, JM Kaldor, MY Chen, CK Fairley, S Tabrizi, *The Sex Industry in New South Wales: A Report to the NSW Ministry of Health*, Kirby Institute, University of New South Wales, Sydney, 2012, Recommendation 2.

Appendix 2

Cost of Licensing in Queensland			
Figures taken from Queensland Prostitution Licensing Authority Annual Reports			
Statements of Financial Performance			
Year	User charges and fees	Government contributions	Total expenses from continuing operations
2000-1	34,500	1,059,000	647,888
2001-2	177,361	871,000	883,152
2002-3	205,425	755,000	1,015, 185
2003-4	281, 272	653,000	1,074,710
2004-5	341,171	806,000	1,009, 459
2005-6	380,733	376,000	1,070, 538
2006-7	502,743	574,000	1,050,443
2007-8	797,743	405,000	1,146,549
2008-9	842,228	590,000	1,396,819
2009-10	733,598	429,000	1,317,300
2010-11	561,565	441,000	1,339, 663
Total	4, 577, 067	6, 959,000	7,516,861

Appendix 2