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21 April 2006

**Submission in Response to the Regulatory Impact Statement, Proposed Prostitution Control Regulations 2006**

Dear Mr Myers,

I am writing on behalf of Scarlet Alliance, the Australian Sex Workers Association Inc. Formed in 1989 Scarlet Alliance represents sex workers and Australian State based sex worker community organisations and projects at a national level. Through its objectives, policies and programs Scarlet Alliance aims to achieve equality, social, legal, political, cultural, health and economic justice for past and present workers in the sex industry. It is within this context that we are providing this input into the Proposed Prostitution Control Regulations 2006.

The comments contained in the attached Scarlet Alliance submission are based on nearly 20 years of working with various legislation models in Australia and an in-depth understanding of the design and impact of many international models. Using evidence direct from our state and territory based membership of the impact of various legislative models, we have provided you with evidence based feedback on what has been successful legislation across Australia.

We thank you for the opportunity to comment and look forward to a workable legislation which is in the best interest of sex workers and places their occupational health & safety needs as primary concern to any legislative reforms.

Please do not hesitate contacting Scarlet Alliance should you wish to discuss this submission. We are available to attend face to face discussions should the possibility arise.

Yours Sincerely,

Alina Thomas  
President



**Submission in Response to the Regulatory Impact  
Statement**

**Proposed Prostitution Control Regulations 2006**

## **SCARLET ALLIANCE OBJECTIVES**

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

These objectives include:

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

# **Submission in Response to the Regulatory Impact Statement**

## **Proposed Prostitution Control Regulations 2006**

Scarlet Alliance is concerned (1) that the review has been conducted in isolation from Acts other than the Prostitution Control Act 1994 and (2) that the proposed changes to the Prostitution Control Regulations continue a punitive and discriminatory approach towards sex workers and the sex industry.

In addition, the benefit/cost analysis appears to be inconsistent in scope and depth, such that major benefits and cost have simply been overlooked, and not factored into the RIS. This creates gaps of such magnitude that the RIS becomes unreliable as a means of evaluating the regulations.

Scarlet Alliance urged in our submission last year:

There needs to be a broader review of how the regulations work within the context of other Acts, such as the Privacy Act and the Occupational Health and Safety Act (2004). It is impossible within the framework given by this discussion paper to fully explore the real tensions here between the Prostitution Control Act, and the regulations, in relation to these later pieces of legislation.

We understand that undertaking a broader review would be time consuming and expensive; however in any other industry, comparative studies would surely be explored during the course of a regulatory review. Instead of detailing how similar industries are treated in regulations in Victoria, the review limits its scope to the sex industry.

Service industries, such as food preparation, therapeutic services, medical services, home care for the elderly or people with disability, and small businesses including graphic design, hairdressing, self-employed IT professionals, computer or domestic repair professionals who offer services on location, and many other occupations, workers and small business operators are regulated in Victoria. It is these regulations too which should have been of interest in this review.

The lack of comparative information suggests that an unspoken premise of the review is that the sex industry is not like other industries. Such a premise contributes to acceptance of discrimination against the sex industry, for it is not like other industries, therefore warrants special and often punitive regulatory approaches. The changes proposed to the Prostitution Control Regulations have the potential to be discriminatory, punitive, unnecessarily invasive, and exclude sex workers from the usual privacy protection that is afforded to all other individuals. No other industry is subject to similar regulations. We strongly oppose ongoing regulation via criminal penalties when other similar industries are regulated by non-specific legislation and voluntary codes that apply across a range of industries and occupations.

Scarlet Alliance does not support increased attention to sex worker STI testing, as there is no epidemiological evidence to support the need for this approach, and other models, including peer health education combined with voluntary testing have achieved best practice public health outcomes.

Scarlet Alliance wrote in their submission last year:

Sex workers are being singled out for measures that invade their privacy, have no benefits to themselves, their clients or their population group, and simply increase health risks through creating a false sense of security amongst their clients. Sex workers have better sexual health than the general population. However, the Prostitution Control Act and regulations treat sex workers as though they are at increased risk of STIs or HIV, and in need of monitoring by an external

party. This is archaic and does not match the outcomes achieved elsewhere in Australia where less intrusive and self-managed approaches are supported and have proven more than adequate.

This approach is inconsistent against other health measures in other occupational settings. There are numerous infectious diseases capable of being transmitted in occupational settings (eg: Hepatitis A in catering and food preparation), and yet no category of offences have been created for either accidental or “knowingly” working whilst infected with such a disease in other occupational settings. Why retain this approach to sex work, when there is low or no risk of transmission, and the epidemiology would indicate that the risks are static (low or no risk)?

In addition, the best outcomes have been achieved through prevention education and the maintenance of access to services.

**The proposed reinforcement of STI related regulations for sex workers only is not supported by epidemiological evidence.**

Sex workers in Victoria have not experienced an increase in STIs, and should not be subject to ongoing, invasive, expensive and unnecessary STI testing regimes. The research indicates a high level of safe sex practice within the sex industry, and an extremely low prevalence of STIs contracted in workplace settings, thus making repetitive regular testing a burden to sex workers, industry operators, and the health system, whilst having no benefits to public health outcomes.

The RIS Benefit/cost analysis has not made mention of the real costs of 4 comprehensive STI screens per year, plus 2 HIV anti-body tests for the thousands of brothel based sex workers who are required to provide evidence of attendance for prescribed STI screening.

Preventative methods such as quality peer education and commitment to increased recognition of good workplace practices will have a better outcome for sex workers’ sexual health, and public health outcomes.

Scarlet Alliance questions the success attributed to testing regimes alone. Testing regimes can only ever be one factor of many contributing to good sexual health. For testing to be successful it needs to be part of a broad campaign including peer education, increased information sharing among sex workers in relation to STI prevention, and reward and recognition for the high levels of condom use in the workplace.

**Scarlet Alliance challenges the assertion that sex workers within the regulatory framework have better sexual health than those outside of it.**

Research by the Melbourne Sexual Health Centre proposes that sex workers within the regulated system had lower rates of STIs than those outside the system. However sex workers who decide to work in the non-regulated system are not subject to routine health checks, and are therefore more likely to present for testing if they have symptoms, or experienced a risk episode such as condom breakage or slippage. This is not to say that sex workers outside the regulatory system do not present for routine health checks – they do, however they would choose to do so less frequently than their regulated counterparts, based on informed decision-making relating to risk episodes. Scarlet Alliance endorses this practice, and further, believes the current regime of enforced checks via brothels attempting to protect themselves from s19 and s20 of the Act is overzealous and unnecessary, forcing regulated sex workers into unfair and invasive testing that is neither protecting nor improving their sexual health.

**Sex workers in the non-regulated states of South Australia and Western Australia enjoy low rates of STIs and HIV.**

We refer to research findings in Western Australia and South Australia. Sex workers in these states also have lower rates of STIs than the general community and are outside any regulatory regime, as sex work is ostensibly illegal in both of these states. Across Australia, including Victoria, prior to regulation, sex workers enjoyed lower rates of STIs and HIV than the general population, and were the first Australian community to take up condom use when HIV became

prevalent. Now, years after national and state HIV education campaigns, sex workers were still more likely to use condoms than sexually active females of the same demographic and age. This clearly is in opposition to the assertion by both the Regulatory Impact Statement and Melbourne Sexual Health Centre that sex workers outside a regulatory regime experience a higher incidence of STIs.

### **Sex workers can work safely when infected with an STI and HIV.**

Scarlet Alliance opposes the criminal penalties for sex workers who work with an STI. Sex workers provide a variety of services, many of which do not have any risk of passing on or contracting STIs. The Commonwealth Health Department publication, *STD Handbook, 2003* details safe sex and safer sexual activities that may be offered by sex workers as STI transmission prevention strategies. Over 30,000 copies of this publication have been distributed by sex worker projects and organisations in Australia since 1998, and there is no recorded case of HIV transmission in a sex industry setting in Australia.

In NSW, where HIV prevalence is higher than in other states, there is no barrier to working as a sex worker (or being a client, for that matter) whilst infected with an STI or HIV, provided informed consent to the risk is negotiated between client and sex worker. Nor is there significant evidence of STI transmission in the NSW sex industry. Safe sex is the basic premise of sex work practices, and thus transmission prevention and good public health outcomes are effected, without the need for punitive legislation.

### **Criminal penalties will marginalise sex workers with STIs and HIV**

Scarlet Alliance does not believe that penalties for working with an STI will have the desired outcome of regulating STIs. However, it will have the unintended outcome of marginalising sex workers who have STIs away from health clinics who may become aware that the individual is a sex worker. Sex workers will not desire anyone who is aware of their work in the sex industry to have knowledge of their STI status, for they will want to avoid any evidence that they have an STI and are working at the same time (even if they are engaging in totally safe activities, as described in the *STD Handbook*). Thus sex workers with STIs will not have the freedom to attend clinics for STI treatment when they have an STI symptom. Clinics who grant sex workers certificates for brothel work will therefore see lower rates of STIs than actually exist in the sex worker community, because when infective, those sex workers are forced by the criminal penalties to go somewhere else. These outcomes ALREADY occur in Victoria as a result of the criminal regulation of STIs and HIV among sex workers:

The practical application of these regulations has resulted in:

- sex workers being pursued by employers to provide evidence of attendance at clinics or face suspension
- disclosures of health status
- inaccurate assumptions about health status
- suspensions, unfair dismissals or resignations.

Sex workers will be able to obtain health certificates regardless of the laws. Scarlet Alliance is already aware from anecdotal evidence that health certificates are traded and obtained among individuals in order to avoid ongoing and invasive testing.

### **The Benefit/Cost Impact Analysis did not assess the need for peer education for the effective implementation of these laws, and has under costed their rating.**

Changing regulations on paper will have no effect on the behaviour of individual sex workers unless peer education delivers the information to them. The cost of peer education was totally overlooked in the Regulatory Impact Statement. Given the under-resourcing of peer education in Victoria, and the vast numbers of sex workers who operate in total isolation from targeted health education messages, the changes in the laws will at best only impact upon the behaviour of sexual health physicians! This is hardly the desired outcome.

**Better resourced peer education will lead to more sustainable outcomes for sex workers in general.**

Scarlet Alliance strongly questions the Benefit/cost Impact Assessment determined for 5.3.1 Prescription of STDs. The cost of NOT properly resourcing peer education in Victoria was not taken into consideration. As we have asserted, prevention, education and strong peer networks are proven and lasting methods to ensure best practise among sex workers in relation to a range of issues, not just STIs. That peer education was not included in the Benefit/cost Impact Assessment is an oversight that renders the entire assessment meaningless.

Increased regulation in relation to safety issues in legal brothels is not an effective approach. The sex industry should be treated in the same manner as other industries in relation to Occupational Health and Safety, and supported to develop appropriate voluntary Guidelines.

**Safety is a universal issue, and should not be taken out of context.**

Safety is an issue for workers in ANY workplace, and it is no different for sex workers. Scarlet Alliance supports the incorporation of Occupational Health and Safety guidelines (within a civil rather than criminal framework) for the sex industry. Scarlet Alliance opposes the increased criminalisation of workplace practises in relation to safety.

Occupational Health and Safety is an outcome of good industrial rights and workplaces practises.

Scarlet Alliance and AFAO jointly wrote A Guide To Best Practise: Occupational Health and Safety In The Sex Industry utilising the expertise of a working group of peer educators from all over Australia who were experienced in issues relating to sex industry OH&S.

Since the release of this OH&S guide, the New Zealand Government has wholeheartedly adopted the Scarlet Alliance guide and approach, amended to fit the specifics of the New Zealand sex industry. The government worked in consultation with New Zealand sex workers including the New Zealand Prostitutes Collective (NZPC). This guide reflects the industrial rights and workplace approach the Scarlet Alliance takes to this issue.

**Worksafe Victoria have an important role in Occupational Health and Safety**

Worksafe Victoria with Vic Health are the lead agencies to ensure Occupational Health and Safety in the Victorian Sex industry. The model used in NSW has been effective in delivering a voluntary, yet effective set of outcomes for OH&S in a diverse sex industry, and across statewide settings.

In NSW, WorkCover NSW funded a two year project based at the Sex Workers Outreach Project, to review the Health and Safety Guidelines for Brothels in NSW , produce education and training packages and programs, and develop a set of educational resources aimed at sex workers and the owners and operators of these workplaces. Over 35 workshops were held in NSW, with a high level of voluntary compliance being the outcome of this project. The project was cost effective in delivering significant OH&S outcomes across the state for an industry with some 6,000 sex workers, 2,000 support staff and 40,000 client visits per week.

**Scarlet Alliance supports the use of Occupational Health and Safety measures to regulate sex industry workplaces.**

Scarlet Alliance concurs with the Alternative methods to achieve objectives (pg 4, Regulatory Impact Statement) to adopt Occupational Health and Safety Guidelines. Peer education, best practise standards, supportive work environments and strong networks among sex workers in workplaces who are able to ensure hazards are addressed as they arise are also components of methods worth considering.

Scarlet Alliance noted in their submission last year:

The best practice approach is a combination of activities to increase knowledge and understanding of the manner in which cycles of risk management need to be implemented in a workplace- an approach which is not captured in the current regulations .

### **Advertising Controls**

The Sex Industry should be subject to the same advertising regulations as like businesses. Scarlet Alliance recommends that restrictions on advertising should be removed .

### **Private Sex Workers:**

Proposed Regulation 10, concerning private sex workers

Scarlet Alliance has previously written:

Scarlet Alliance does not support models of regulation that depend upon the registration of individual sex workers. The distinction in the Act (1994) between larger and small scale operators has not brought any benefits or advantage to these small operators, and is insensitive to their needs. These regulations create a barrier to compliance, as too many other parties must be involved in approvals and permissions required by the prescribed particulars, creating privacy issues for the applicant. The regulations fail to acknowledge that stigma and discrimination are major issues for sex workers, and that, in reality, the regulations require individual self-employed sex workers to disclose the nature of their work to a range of parties who may pose a direct health and safety risk. These include their building owner or landlord and local council staff. These parties do not need to know of other self-employed businesses of a similar scale and with limited or no amenity impacts. The business name, address and phone number should be sufficient for the granting of an exempt PCA number, whilst neither the identity and residential address of the individual sex worker, nor their approvals and permits should be required for privacy and safety reasons.

### **Other means of Achieving the Objectives;**

#### Adopting Occupational Health and Safety Guidelines, Voluntary Code Of Practice

Scarlet Alliance believes that the Regulatory Impact Statement has been blinkered by the lack of comparative studies. It is clear that the scope of the review was not to review the Prostitution Control Act in itself, however, the lack of comparative studies to explore other means of achieving the objectives of the regulations and the legislation has meant that significant evidence has not been reported.

In addition, the benefit/cost analysis appears to be inconsistent in scope and depth, such that major benefits and cost have simply been overlooked, and not factored into the RIS. This creates gaps of such magnitude that the RIS becomes unreliable as a means of evaluating the regulations.