

National Forum for Sex Worker Organisations & Projects

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1st March, 2004.

Emma Gunn
Department of Justice
15 Murray St
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Tasmania

RE: Tasmanian Sex Industry Regulation Bill 2004

I am writing on behalf of the Scarlet Alliance, the Australian National Forum for Sex Worker Projects/Organisations Inc. Formed in 1989 Scarlet Alliance represents Australian State based sex worker community based organizations 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 a formal submission to seek input into proposed Tasmanian sex industry legislation.

Tasmania has the opportunity to learn from the mistakes of other States and Territories and introduce a decriminalisation model in order to realise best practice public health outcomes, promoting the health and safety of sex workers and the broader Tasmanian community.

We commend the Tasmanian Attorney General for this draft of the Sex Industry Regulation Bill 2004. In particular, the objective of the Bill clearly indicates the 'welfare and occupational health & safety of sex workers' as of primary importance; the choice of correct and respectful language; the provisions for two 'self employed sex workers to work together' allowing safer working environments; and the avoidance of excessive over-regulation of this industry. However, we would urge the Attorney General to reconsider the areas of this Bill to which we offer comment and our vast experience and knowledge in order to assist Tasmania in avoiding the unnecessary replication of the experiences of other Australian jurisdictions that have enacted sex industry reform at the risk of jeopardized health and safety of some sectors of the sex work community, in this case street based sex workers and private sex workers.

Australia's National Strategy on HIV/AIDS recognises the important role sex worker organisations have played in health promotion and outlines the need for Governments to enhance the capacity of sex worker organisations to design, manage and participate in peer-based health promotion activities, and to participate in the broader partnership response to the epidemic. Australia makes a commitment to involving affected communities, of which sex workers are identified, at every level including planning; delivery and evaluation of HIV programs and policies; the creation of an enabling legal and policy environment for HIV prevention, treatment and care programs; and promotion of voluntary and confidential testing services. As such we urge the Tasmanian Attorney General to recommend the immediate support to develop a sex worker organisation in line with this Strategy and the Ottawa Charter.

We thank you for the opportunity to comment and look forward to 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.

Yours sincerely,

Janelle Fawkes Maria McMahon
President, Vice President,

Tasmania's Sex Industry Regulation Bill 2004
Submission

March 2004

Submission submitted on behalf of Scarlet Alliance's membership.

Membership comprises:

Sex Worker Outreach Project (SWOP) – New South Wales;
Self-health for Queensland Workers In the Sex Industry (SQWISI) – Queensland;
Resourcing Health & education in the sex industry (Rhed) – Victoria;
NT Sex Worker Outreach Project – Northern Territory;
Sex Worker Action Group – Western Australia;
SA Sex Industry Network – South Australia
and Associate Member
ACT Sex Worker Outreach Project – Australian Capital Territory.

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SCARLET ALLIANCE OBJECTIVES

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.

EXECUTIVE SUMMARY

Although Scarlet Alliance applauds the decision to allow individual sex workers to work in pairs with increased safety, we believe the requirement for individuals to register (s.7) seriously undermines the intentions of the Bill. Imposing individual registration requirements on sex workers changes what could have been a win/win situation with 100% compliance into a major deterrent which will result in low compliance. Legislation which ignores the need for sex workers to maintain their privacy is likely to be boycotted for fear of discrimination.

Street based sex workers and youth participating in sex for favours will only be further disadvantaged by criminal penalties. (24.1) A criminal response to a social issue will only create other problems.

Disqualifying offences are used in this Bill to prevent some people with current or past convictions from becoming commercial operators or from being on the premises of a sex industry business for any reason other than as a client. In this Bill having been charged with being a street based sex worker *or for loitering* in a public place will exclude you from working as a sex worker (22.1c) in a sex industry business or from going on to become a commercial operator (22.1a). Excluding a person with a street based sex work conviction or someone who has loitered in a public place from working in other areas of the industry is illogical and discriminatory.

We also have concerns in regard to the wording of sections relating to police powers and would note that providing police with powers over and above those in place to address illegal activity in any business environment will only serve to create the potential for corruption, single out the sex industry for special treatment and further stigmatise.

Individual sex workers in the sex industry should not be kept on a register or list by employers.(s.30) It is unclear to what end this list would serve other than surveillance in which case it is unnecessary and is another example of singling out sex workers and over-regulation. In the event of this list being lost or stolen or information from this list becoming known to others what legislation will protect sex workers?

Current STI rates amongst Australian sex workers are very low. As such laws which suggest there is a need to make safe sex mandatory in legislation are based on myth and misconception. They also show a lack of understanding of the Australian national responses to HIV/AIDS outlined within the recommendations of the National Strategy and current extremely successful education campaigns. If there is one lesson which has been learned from the Australian HIV/AIDS experience it is that education, *not laws*, create safe sex practices.

Planning controls must be based on sound environment impact realities not on myth and morals. Legislation must prevent councils discriminating against self-employed sex workers or sex industry businesses. For example, some Queensland councils have black-banned sex industry premises.

Self-employed sex workers' home based 'sexual services businesses' should be allowed to operate without Council consent in the same way as other home based businesses and occupations. Unless anti-discrimination legislation is introduced, similar to ACT, which makes illegal, any actions which discriminate against a person based on their occupation, the likelihood that sex workers will face unacceptably high levels of discrimination in day to day life is likely. Eg accessing bank loans, renting property, advertisement charges, etc

The success of peer education organizations/projects in Australia has been recognised and acknowledged worldwide and is due to strategic service delivery, the involvement of affected communities in the delivery of prevention and education services and the implementation of a whole of government approach, where health outcomes are not seen as being the sole responsibility of the health department. Tasmania should fund a peer sex worker organization to provide these education services and should not put Commercial Operators (s28.1.b), *often male*, who are not experts in sexual health and HIV/AIDS education in the role of providing health education.

Scenario - How this Bill will affect sex workers in practice.

Scenario One: A Private Sex Worker

Julia has been working part-time as a sex worker for 3 years, she works from an apartment she rents for this purpose with another worker. As she has two small children she does not want to work from her own home and she prefers the company and safety of working in pairs. Julia also works part-time at a tax agent. She knows that new sex industry laws in Tasmania mean she should register but she is concerned about her parents finding out about her work and that her ex-husband might find out and use this against her in the looming custody battle. Late one afternoon she is working at the unit and receives a call on her work mobile – it's a male voice telling her he knows what school her children go to and unless she rewards him she will be sorry.

What actions should Julia take:

- Go to the police to report this threat and risk charges for operating without registering. *Fine not exceeding 500 penalty units or imprisonment for a term not exceeding 5 years, or both. (s.7)*
- Provide this man with sexual favours, money or both so he will leave her alone. *The man now knows it is unlikely Julia to go to the police and he continues to threaten her and demand free sex services.*
- Stop sex work. *As Julia uses her sex work income to supplement her earnings and meet house repayments she is forced to work another job in which she does not have the same control over her work hours and has less time to spend with her children. She still has lingering doubts about the safety of her children and has increased childcare costs.*

If the need for private sex workers ('self-employed sex workers) to register was removed from this Bill, Private sex workers in Tasmania would have the option of working together in pairs for increased safety and operating legally with very little disincentive to operating as part of a legitimate industry. There would be no disincentive to private workers reporting crimes and threats of violence or coercion. Currently, in jurisdictions such as South Australia where sex work remains illegal and underground, fear of prosecution stops many sex workers from reporting criminal activity to the police including when they are victims of crime themselves

Scenario Two: Street-based sex worker

On a Wednesday night Maggie, an occasional street based sex worker, is leaning in the window of a car. She is discussing with the potential client whether the service he wants is one she provides, under what conditions and how much that service would cost. Maggie is setting boundaries (such as the use of condoms for all services) in an environment where she feels relatively safe and able to assess risk by determining whether the potential client has been drinking or is intoxicated and also whether she feels comfortable with the client. She decides she is willing to do the job – jumps in the car on the agreement that they will drive two blocks to a car park she uses to take clients as she knows it is within earshot of a business, and has a light in one corner so she can find her condoms and lube. She makes \$80 and she heads home.

Two weeks later. Maggie hasn't worked since, but now her rent is due, she has to find some other work soon as she is slipping into debt. She doesn't have enough money to cover her rent so decides to go to an area she has worked before and see if there is any work around. She has heard a report on the radio about new laws for the sex industry but knows the very small Tasmanian street based sex work community never even rates a mention and the police usually leave her alone anyway as she is very discreet.

Maggie is standing on the street, she is working and a police car drives past some distance away, then ½ an hour later comes back again and approaches her. The police officers ask her if she is working and she thinks she has spoken to one of them before so says yes. Maggie is charged with Soliciting under s.24.1 of the Sex Industry Regulation Bill 2004.

Scenario Two: *Street-based sex worker (cont.)*

Two weeks later when her rent is due again and she has the added pressure of a soliciting fine Maggie goes out to work. However, this time she wants to avoid being seen by police so she works in a dark side street in an industrial area and stays back in the shadows until a car comes along. The car pulls up beside her and the driver says jump in, she does so immediately without so she wont be seen by police. Now she tries to negotiate with the driver that she will only give oral sex and it must be with a condom and she wants to go to her safe space, she is not feeling in control as he seems drunk and normally she never gets into a car if the driver is drunk - she always susses them out first when she is chatting to them. The driver says he only has twenty dollars and doesn't seem to have ever seen a sex worker before as he wants to kiss when she argues he says if she doesn't want the job he will drop her off here - they are now a several kilometres away from her home. Maggie says she wants to get out - the driver stops and lets her out but grabs her bag as she is leaving the car and drives off. Her arm is badly bruised and she has no money to get home and cannot call the police as she knows they will look at her record and know she is a sex worker. She doesn't report the crime.

Maggie's rent is now overdue and decides to go back to brothel work she has heard the new laws will promote occupational health & safety for sex workers she thinks the conditions might be better now brothels are regulated. She is told by the manager that her soliciting conviction means she is disqualified from working in a sex industry business. They suggest she should go to Centrelink.

5 years later Maggie has been working away at a nest egg and has put herself through business college so that she can open her own business. She contacts the Office of Consumer Affairs and Fair Trading and asks about information on setting up a sex industry business as she knows she has a high level of knowledge about the sex industry and has some ideas on how the workers in the industry if treated well would be loyal and could together create a nice working environment for them all. Maggie is informed that because of her Soliciting conviction 5 years ago she will be unable to register as a Commercial Operator and run a sex industry business. She thinks this is unfair as Joe Smith is running La Plomme in Hobart and has reduced the working girls cut on the job price and increased his own and is well known for sending girls out on escort without ever checking the validity of the booking or providing a driver.

Maggie has been blocked from working at a brothel and/or operating a business in the industry she has most knowledge and skills around. Maggie knows that there are several small brothels which operate outside of the law and finds herself with very few choices. She also feels discriminated against as she has such a wealth of knowledge and good intentions compared to others she has heard of who are currently operating businesses.

Laws which make street based sex work illegal also remove this point of negotiation, risk assessment and setting of boundaries, a strategy developed by sex workers to increase their safety.

When soliciting is illegal this type of negotiation occurs inside a moving vehicle, as sex workers, in an attempt to avoid detection by police must jump into a vehicle as soon as it stops. The worker is much less empowered when making negotiations in this new situation. Street workers may also take greater risks in their work because jobs are harder to get, or they wish to limit time spent on the streets potentially in view of police. They might see clients they feel threatened by, succumb to pressure not to use condoms, and be reluctant to carry condoms in case this is seen as evidence of their intention to commit an offence. Also services may occur in more isolated or "out of sight" places, with the obvious risks to safety.

Laws which prevent persons with prior convictions for soliciting from working in other areas of the industry are discriminatory and illogical. The sex industry is historically a transient and free-flowing industry with many workers moving in and out of the industry and from one sector to another as their circumstances and experience changes. Any legislative attempts to artificially force the industry into a particular form ultimately fail as workers are forced underground in order to circumvent onerous legislative requirements.

Due to the exclusion of people with previous soliciting offences from being able to work in the legal parlour sector, the diversion of street based sex workers into other forms of sex work would

be precluded under this Bill. Thus street based sex workers will be forced to always work outside the regulated framework. (s.24.1, Schedule 1 part 3 Item 2)

Scenario Three - A self employed sex worker

Kaitlyn lives in small apartment complex which she selected because of it's discreet side entry which led straight into the visitors car park area. Kaitlyn works two days a week Tuesdays and Thursdays from her apartment when her friend Simone is able to work as well. Kaitlyn pays tax on her earning and considers herself to be a good business woman. She had worked for a brothel once but didn't like it. Now she only offers massage with a bodyslide and hand-relief and she doesn't have to split her earnings with the brothel owner.

Both Simone and Kaitlyn tell their clients to drive into the small carpark and to always choose one of the end carparks so they will see the path and white gate with a large number two which leads to the enclosed courtyard of their apartment. The clients are concerned about being seen and Kaitlyn doesn't want her neighbours to know what she does which is why she only works two days a week and between 10am and 4pm. That's also why she spends so much time on the phone and asks the client to repeat the address to ensure they have got it right.

She really likes her unit and her neighbours but it would be very hard for her if they didn't like her or treated her badly as in such a small complex she cannot avoid her neighbours when she is watering her garden or sitting on her front patio. For this reason she does not tell them about her work for fear of discrimination.

Simone has chosen to work with her friend as she only offers fantasy services as she likes the control she has over which clients she sees. She is in her mid-thirties and is honest in her advertisement because she doesn't want to attract young clients. Simone can screen her calls refusing drunken clients or those that are after services she doesn't provide. She likes the level of control she has when she is the person describing the service to the client and what they can expect compared to when she had worked for a brothel and a receptionist would describe what was provided.

New laws are introduced into Tasmania so that Kaitlyn and Simone go along to the local council and explain where they live and that they need to get council planning approval. Unfortunately, they are told they can no longer work from Kaitlyn's unit because 180m away, just over two blocks, is a community hall which sometimes holds Saturday night blue light discos and which boy scouts use as a meeting space on Sundays.

Even though Kaitlyn and Simone do not do sex work on the weekends and their clients never come to the unit without an appointment their workplace and livelihood has been negatively effected by the new laws. If they continue to work there they will have to operate illegally and if caught Kaitlyn could be evicted from her home. Simone would have to find another workplace.

As working as sex workers is their livelihood they continue to operate illegally.

INTRODUCTION

Scarlet Alliance was formed in 1989 following the first HIV & Sex Work Conference. Scarlet Alliance is Australia's national peak body of community based sex worker organisations and projects, with membership made up from sex worker organisations and projects in the states and territories. Each year a National Forum and AGM is held at which time key policies are developed, an executive and spokespersons are elected, and workshops on issues for sex workers are conducted.

Scarlet Alliance currently plays an active role in Australia's response to HIV/AIDS and has produced a range of resources in collaboration with AFAO, including: *A Guide to Best Practice, Occupational Health and Safety in the Australian Sex Industry (2000)*, and *Principles for Model Sex Industry Legislation (2000)* (available at www.scarletalliance.org.au). Scarlet Alliance is a leader when it comes to advocating for the health, safety and welfare of workers in Australia's sex industry

Australia has the lowest rate of HIV/AIDS amongst sex workers in the world, due to the work of community based sex worker organisations and projects who make up the membership of Scarlet Alliance along with the response by those working in the sex industry. Scarlet Alliance member organisations and projects have the highest level of contact with sex workers in Australia of any agency, government or non-government. Our projects have close to 100% access to sex industry workplaces in the major cities. Many of our sex worker organisations and projects within Australia also have CALD (Culturally and Linguistically Diverse) or NESB (Non English Speaking Background) Projects employing bi-lingual project workers.

Scarlet Alliance has played a critical role in informing Government at all levels, and informing the health sector, both in Australia and Internationally, on issues affecting sex workers in the Australian sex industry. In addition, Scarlet Alliance has been active in promoting to other countries the models of service delivery which have been most effective in minimising the transmission of HIV and STIs amongst sex workers and their clients.

Scarlet Alliance values direct experience of the sex industry, and constitutionally our member organisations are required to employ a majority of current or former sex workers. Peer Education, where people with knowledge of, or experiences in, the sex industry are employed, is the basis from which our successful service delivery is conducted. Each sex worker organisation/project provides an outreach service to sex industry workplaces, thus offering a high level of personal contact to sex workers and other sex industry staff.

Scarlet Alliance believes that the introduction of new legislation to regulate any industry must be conducted in such a manner as to ensure the smoothest possible transition and highest possible level of compliance in the transition from unregulated to regulated Industry. Legislation to regulate the sex industry should be no different. The aim should be to incorporate those currently working in the sex industry within a framework that is workable and supportive of sex industry occupational health and safety.

The 2002 Annual General Meeting of Scarlet Alliance, attended by all its state member organizations/projects considered the issue of registration of individual sex workers.¹ Those in attendance are experts in their field of sex worker occupational health and safety, sex industry legislative reform and an understanding of government and community concerns relating to the sex industry. As they have considerable experience across all Australian jurisdictions and a comprehensive understanding of the failure and success of various models of law reform applied in Australia over the previous twenty years their input into consideration of this matter was invaluable. The meeting unanimously concurred with existing Scarlet policy ***that the licensing/registration of sex workers is contrary to the best interests of sex workers***, is unworkable and has failed in every jurisdiction it has been enacted. Even though there was also the suggestion of ID cards in Western Australia, which met widespread outcry, this document outlines many concerns relevant to the proposal by Tasmania to register individual sex worker/self-employed sex workers. See attached Appendix one.

¹ Appendix One, Outcomes from the Scarlet Alliance National Forum, November 2002.

Scarlet Alliance urges legislators to consider an inexpensive, workable minimalist structure (such as decriminalisation).

Rather than

- Registration of individual private workers, which will act as a barrier to compliance and
- Criminalisation of the street based sex work industry, which will create problems where none currently exist and further disadvantage the most marginalised sex workers.
- Disqualifying Offences which in this case prevent sex workers from working in brothels if they have a street based sex work charge

We suggest:

- ensuring the safest possible working environments for sex workers in their chosen area of work.eg.
 - two private workers working together or hiring a receptionist,
 - street based sex workers, decriminalised therefore allowing sex workers to report crime or threats without fear of retaliation, removing the unsafe notion that police are only the prosecutors and not the protectors for sex workers.
 - Sex Industry business workers access to safety buzzers in rooms, secure facilities, screening of clients etc.
 - Anti-discrimination legislation (based on choice of occupation) to address the current high level of discrimination faced by sex workers when applying for loans, attempting to rent property etc.

Registration of individual sex workers has generally failed and merely resulted in the creation of a two tiered system of legal and illegal sex work as many sex workers refuse to comply, preferring to work illegally rather than submit to registration requirements as the greatest disincentive to a sex worker is the loss of ownership over who knows about their sex work. This is detrimental to the very aims of law reform as the reason sex industry legislative reform was undertaken are undermined. People who are left to operate outside of the law are unregulated.

Also Private worker operations/home occupations are most common and suitable in regional locations where neither the sex workers or clients wish to be identifiable by being seen entering a known brothel address.

In Summary

Scarlet Alliance believes that although we commend certain aspects of the Sex Industry Bill 2004 including the terminology chosen, the inclusion of an amnesty period and the opportunity for self-employed sex workers to work in pairs we cannot support this Bill in its current form as we believe it will work in opposition to its own objective and will be detrimental to the Occupational Health and Safety of workers in the Sex Industry. The micro-management of the industry through registration is of particular concern. Therefore we offer our submission addressing our comments to the specific areas of the Sex Industry Bill 2004 which are of greatest concern to us.

Scarlet Alliance comments relating to:

PART 1 - PRELIMINARY

Scarlet Alliance commends the Attorney General for the choice of language and terminology used within this Bill when to indicating the sex industry and sex workers as those working in the sex industry. The use of terminology which is accepted and understood by the industry will improve the Sex Industries ability and desire to comply with regulation.

Scarlet Alliance also commends the Attorney General for placing primary importance on this Bill promoting 'the welfare and occupational health and safety of sex workers'. Legislation which does not focus on this as its primary objective will not be adopted by the Sex Industry and low compliance prevails. This outcome is evident in other Australian jurisdictions, where legislation which many in the industry cannot comply with, adds unnecessary cost to the community when police resources are wasted in attempting to enforce compliance with what is essentially poor legislation.

We commend the Attorney Generals proposal that a three month amnesty period providing currently operating 'commercial operators' and 'self-employed sex workers' the opportunity to adhere to legislation which will require processes and implementation of different systems.

Scarlet Alliance recommend that resources are produced and widely distributed, in a manner to target current sex industry businesses and sex workers, which indicate in simple terms the simplest possible procedures to follow in order for commercial operators and sexual services business to comply.

Scarlet Alliance comments relating to:

PART 2 REGISTRATION OF SEXUAL SERVICES BUSINESSES

Scarlet Alliance believes the proposal to require 'self-employed sex workers to register is discriminatory. To single out the sex industry for such an invasion of privacy when a range of other industries are not treated in the same manner is unacceptable. According to the Scarlet Alliance resource document *Principles for Model Sex Industry Legislation* the need for licensed/registered sex workers is clearly unnecessary when sex work is compared to other forms of work, professions or other industries such as, hairdressers, doctors, plumbers, accountants, landscape gardeners etc.

*"Registration when it occurs within other industries tends to apply to professional associations with the purpose of ensuring that the people practicing in that field have the necessary skills. For example, doctors, hairdressers, dentists etc. are not controlled by specific government legislation but are members of their own professional bodies. When registration is applied to sex industry businesses or individual sex workers the intention is usually as a form of government surveillance."*²

Scarlet Alliance fundamentally opposes the licensing or registration of individual sex workers under any circumstance. The following points outline our concerns.

1. **Public Health** - Concerns about public health are often cited as a reason for laws aimed at increasing control over sex workers lives and indeed the description of objectives of the Sex Industry Regulation Bill 2004 includes ..."to safeguard public health". However, recent history has demonstrated that despite the major barriers of criminalisation and stigma, sex workers enjoy higher standards of sexual health than other members of the general community.³ Furthermore, Australia leads the world in HIV education and prevention efforts with sex workers. To date there is no documented evidence of the transmission of HIV in an Australian sex industry context despite international trends of high prevalence of HIV among sex workers and their commercial sexual partners in many Asian and African countries.
2. **Human Rights** - The registration of individual sex workers is a violation of their human and civil rights. Sex workers have a right to privacy, the right to work in an occupation of their choice, the right to live and work free from violence and harassment, the right to live free from discrimination, vilification and stigmatisation⁴. Furthermore when a government singles out individual sex workers for surveillance in excess of how other industries are treated they endorse sex workers being treated differently and the stigma and discrimination which results.
3. **Privacy** - It unnecessarily creates a barrier to individual sex workers working legally. Many Sex Workers fear their identity and profession being known from fear of potential violence, extortion, coercion, family breakdown, discrimination, harassment etc. It raises serious concerns over who has access to the information, how this information is to be secured, confidentiality, privacy and a range of other legal issues.
4. **Over-regulation** - The registration of sex workers is also unnecessary and counterproductive to the aims of controlling the activities of the sex workers and the sex industry. There are a range of other ways in which the professional standards of the sex industry can be maintained - through codes of practice, general criminal laws if required, and other statutory laws. The registration of individuals in the sex industry is perceived to be done for no other reason than surveillance and is in excess of the way in which other industries are regulated. It does not improve the occupational health & safety of sex workers.

² Banach L. (2000) *Principles for Model Sex Industry Legislation*. Sydney. Scarlet Alliance and AFAO (Metzenrath S. ed).

³ STD Control Branch South Australian Health Commission (Epidemiological evidence submitted to the Social Development Committee of the Parliament of South Australia Inquiry into Prostitution)

⁴ Banach, L. (1999) *Unjust and Counter Productive: The failure of Governments to Protect Sex Workers from Discrimination*, Sydney, Scarlet Alliance and AFAO. Edited by S Metzenrath.; Metzenrath S. (1997) "Prostitution law reform: Towards a human rights based model". *Prostitution Law Reform in Queensland: Forum*, Brisbane, SQWISI.

Scarlet Alliance comments relating to:

PART 2 REGISTRATION OF SEXUAL SERVICES BUSINESSES (Cont.)

5. Low Compliance - The outcome of attempts to register Private sex workers/sole operators/'self-employed sex workers' has at best met with low compliance. Unfortunately the incentive to not register and avoid any possible or perceived discrimination associated with the currently high level of stigma attached to working as a sex worker will be greater than a threat of penalties. According to this Bill (s.7) non-compliance will result in a fine not exceeding 500 penalty units or imprisonment for a term not exceeding 5 years or both. Penalties will not stop people working but rather add a criminal record to those who are currently legitimate private sex workers and who may have worked as such for many years.

Research demonstrates that registration systems which essentially split Tasmanian sex workers (all currently legal) into two categories: legal sex workers and illegal sex workers will have the following negative impacts:

- The creation of a two tier system whereby a small number comply and have workplace rights however the majority fear being outed or discriminated against and therefore avoid registration. This larger group of sex workers operate outside of the law, 'underground', where access to health, support and other services is limited. As a result sex workers ability to freely access safe sex equipment would be compromised due to identification fears;
- People whose current livelihood becomes illegal will be susceptible to criminal charges and imprisonment.
- Sex Workers will be less safe. Some people deliberately target unlicensed/illegal sex workers knowing that illegal workers may have less recourse to the justice system.
- Illegal sex workers would be vulnerable to extortion, violence, discrimination, and harassment from sex industry business operators, clients, police and other people in positions of authority and power on the basis of their illegal status. This is in direct contradiction to the objective of removing the current unacceptable level of violence and coercion against sex workers in Tasmania.

The impacts upon sex workers are considerable, however, there also exists a range of concerns and negative outcomes for the broader community. These include:

- The cost associated with the adoption of a registration system would be a considerable imposition upon community and government resources;
- Significant police resources would be devoted to policing an unworkable laws which make historical sex industry working practices illegal rather than focusing upon significant crimes such as rape and assault;
- Costs associated with the prosecution and incarceration of unlicensed sex workers would be significant; and
- Public health initiatives aimed at maximising sexual health among sex workers and their clients would be undermined by commercial sex being pushed further underground.

Scarlet Alliance strongly recommends the removal of the requirement for registration of self-employed sex workers. (S.7)

(S.9)Commercial operator to be fit and proper person.

Scarlet Alliance believes that relying on evidence and information rather than actual record of convictions creates an unnecessary opportunity for corruption and arbitrary decision.

Scarlet Alliance comments relating to:

PART 3 PLANNING CONTROLS

(S.21b)

Sexual Services Businesses

It is unclear why a distance of 200 metres, or, indeed any other distance, has been chosen for location from local neighbourhood amenities, as there is no particular planning issue if the sex industry business is conducted indoors, within an allocated building in a commercial area. Then the proximity to other neighbouring land uses does not appear to be an issue for amenity impact.

An analysis of the scale and relative distances of Tasmania's commercial and industrial zones needs to be investigated before such arbitrary figures are enshrined. For instance, it has been found that in NSW Council planning schemes that the combination of zoning restrictions with conditions relating to distance may eliminate over 50% of the suitably zoned land, leaving few options for brothels to be appropriately located, and therefore creating a proliferation elsewhere. No genuine planning objectives are being met by such mechanisms.

As one of the objectives of this Bill is to 'promote the welfare and occupational health and safety of sex workers' Scarlet Alliance believes that this can not be achieved with planning controls which in effect prevent a sex industry business from operating anywhere in the state, except remote locations. Sex workers are not safe when their workplaces are in areas which tend to be poorly lit, without other businesses open similar hours nearby and without the necessary amenities available. (eg chemists and childcare services)

This idea of excluding sex industry businesses by a particular distance from other businesses and services seems to derive from two myths:

1. The idea that the people that work in a sex industry business (sex workers, drivers, receptionists, managers, cleaners etc) and customers of these businesses are not the same people who also attend Churches, hospital, childcare centres, parks, recreation centres, health care and educational and cultural facilities. People who work at, own or who are customers of, Sex industry business are the mothers, fathers, sisters, brothers who make up our community not 'the other people' which this type of exclusion distance seems to suggest.
2. The belief that the activities which occur behind the closed doors of a sex industry business are somehow different to what occurs elsewhere in the community. It is our understanding that sex also occurs in most homes in every suburb and residential area and the people who live next door whilst sex is occurring don't seem to be effected by it. It must be remembered that what occurs behind the closed doors of a sex industry business is commercial sex between too consenting adults. Along with cleaning, administration, eating and television viewing!

Sex Industry businesses which are forced to operate in unsuitable locales are not financially viable and experience in other jurisdictions has shown smaller illegal operations open up in more suitable locales in order to capture the business. This leaves the legal sex industry businesses seriously disadvantaged and creates an unfair competitive environment.

Scarlet Alliance believes the section of 'Restriction on granting permit' S.21.b.v

'any recreational, health care, educational or cultural facility or other place regularly frequented by children that is not referred to in subparagraph' is excessive and deems this section completely unworkable and open to interpretation therefore leaving sex workers and sex industry businesses open to unfair judgement based on moral belief, rather than sound planning principals.

Self-employed sex workers

The Regulation of the Sex Industry brochure indicates the intent of the Bill is 'Self-employed sex workers may operate in residential areas provided they can comply with any relevant requirements of the local planning scheme.'⁵

However, S.21 will prevent many self-employed sex workers from operating in their current home or in a large percentage of residential areas little option but for those workers to operate illegally.

Privacy concerns will also prevent many private operators from obtaining or adhering to local planning controls. As is the case in NSW where planning controls in essence, require private worker to disclose their occupation and address to both local council and their neighbours in the planning approval process. Privacy concerns and safety concerns prevent the majority of private workers from complying.

Scarlet Alliance believes that self-employed sex workers' home based 'sexual services businesses' should be allowed to operate without Council consent in the same way as other home based businesses and occupations.

At the very least 21.b.v should be removed.

⁵ Regulation of the Sex Industry brochure provided by the Attorney Generals office March 2004.

Scarlet Alliance Comments relating to:

PART 4 OFFENCES

Disqualifying Offences & Schedule 1 - Disqualifying Offences

Scarlet Alliance believes a disqualifying offence which uses a persons involvement in the sex industry to exclude that same person from operating a business in the sex industry purely because of their involvement in that industry is clearly discriminatory, arbitrary and unjust. This section creates a barrier to former sex workers who would seek to be involved in the owning their own business.

Why has the Attorney General drawn a line in the sand distinguishing ex street based sex workers from other sex workers and therefore reducing their right to work in legal sectors of the sex industry or operate a sex industry business thus excluding them from participating legally in their chosen occupation?

Excluding sex workers from ownership and/or participation in sex industry businesses due to past sex industry related charges removes the knowledge and experiences of those people from the legal sex industry in place of those who can afford to operate legal commercial sex industry businesses.

The aim of the reforms should be to encourage the sex workers to work in legal settings so this disqualifying offence seems ill considered.

Recommendation: Remove PART 3, Item 2 which would make soliciting or loitering offences (S.24.1) a Disqualifying offence, deeming the person unable to work in other areas of the industry or from operating a sex industry business in the future.

Scarlet Alliance comments relating to:

PART 4 OFFENCES

S. 24(1)

“A person must not, for the purpose of offering or procuring sexual services, accost any person, or solicit *or loiter*, in a public place.”

Scarlet Alliance questions how the objective of this Bill, to ‘promote the welfare and occupational health and safety of sex worker’s can be met when the most marginalised workers in the Sex Industry, street based sex workers, are criminalized by this Bill and will be forced ‘underground’ into far less safe working environments and be unlikely to report violence etc . This Bill also prevents those persons from working in the other legal sectors of the industry or from operating a sex industry business in the future.

Scarlet Alliance recommends the removal of S.24.1 for the following reasons:

1. Criminalisation of Street based sex workers in other states has resulted in:
 - Workers forced to operate further away from the city in order to prevent detection by police. This has resulted in increased the risk of assault and theft, which street workers are less likely to report for fear of incriminating themselves.
 - Street based sex workers having reduced contact with service providers.
 - The result is street based sex workers are far less visible; have reduced access to support services; are working in far more isolated situations with greater risk of assault and theft; and without any peer support.
2. Penalties are not a deterrent and have failed in every jurisdiction world wide, even when legislation has been aimed at abolishing the sex industry. As Tasmania has reports of youth providing sex for favours in the inner city areas than it is most likely these youth who will be affected by S. 24.1. (refer attached Appendix 2) As such this criminalisation response is excessive and unwarranted and will create problems rather than solve any.
3. Police should have no role in regulating the sex industry. This section will unnecessarily create an opportunity for police corruption. Both Western Australia where a police officer was charged for forcing street based sex workers to trade services for the waiving of charges and in Queensland where the Fitzgerald Inquiry indicated high levels of police corruption in the treatment of sex industry.
4. It is unnecessary to create legislation for loitering within a Sex Industry Bill. There are currently sufficient laws in place to deal with issues that relate to nuisance, criminal behaviour (such as drug sale, violence etc). None of these are specific to the sex industry and should not be placed in sex industry legislation.
5. Prohibition will not prevent a street based industry developing as is shown in all other Australian jurisdictions where street based sex work exists regardless of high levels of criminal disincentives. Currently the Tasmanian street based sex industry is extremely small as such the criminalisation of this sector seems particularly unnecessary.
6. Loitering charges are often included in sex industry legislation as police have indicated they have difficulty in proving that a person in a public place is indeed soliciting. However, it is Scarlet Alliances’ experience that loitering charges can easily be used against other marginalised groups and should not be included. Eg. indigenous people and youth.

The Tasmanian Sex Industry Regulation Bill 2004 seems to anticipate a growth in the street based industry by the inclusion of this section as currently very little street based sex industry exists to this point we would offer the following information should there come a time when the street based sex industry is of a concern and of a size to warrant a specific response.

NSW has developed a model by where street soliciting is legal except in certain places. This has resulted in the creation of safe working areas where street based sex workers are allowed to operate. This has further been supported by the creation of safe houses which have had a major impact in minimising the impact of street-based sex work on the community. It should be noted that NSW (which has largely decriminalised sex work, allowing sex workers choice of area of work) has a far smaller street-based sex industry than Victoria (which has a restrictive licensing system many sex workers have difficulty complying with).

In fact after 8 years of an illegal street based sex work industry in Victoria the Government was faced with an increasing street based sex work sector. This led to an investigation of the issues by the Attorney-General's Street Prostitution Advisory Group made up of residents, traders, street sex workers, welfare agencies and the City of Port Phillip, in addition to key stakeholder groups such as the State Government and Victoria Police. AGSPAG recommendations included:

- Establishment of tolerance areas (otherwise known as safe working areas) in which police resources would not be targeted at persons loitering and soliciting for the purposes of prostitution;
- Establishment of street worker centres (otherwise known as safe houses or safe house brothels): That safe and secure venues be established in the City of Port Phillip for street sex workers to service clients;
- That a comprehensive educative and communications strategy be implemented including the appointment of a police liaison officer, a peer education program for street sex workers, the establishment of a support services coordination group, and the creation of a mechanism through which the community can provide feedback on local street sex issues; and
- That amenity, resource and welfare support services be expanded and enhanced for residents, traders and street sex workers. A comprehensive package of services should offer targeted street cleaning, improved access to public toilets, and a full range of support services (including access to exit and retraining programs) for street sex workers.¹

The results in Victoria, the outcome of more than 8 years of legislation which criminalised the street based sex industry similar to that proposed in Tasmania, indicate the potential to create rather than solve problems. By comparison New South Wales, which has largely decriminalised the sex industry and creation of safe working areas and safe houses, has a much smaller street based sex industry than Victoria, with significantly lower social impact. The lesson is that if a legal system does not make it easy for sex workers to work legally within the mainstream sex industry, an increase in street-based sex work is a consequence and that prohibition has not reduced the Industry.

Criminalizing street work locks vulnerable, marginalised individuals into a cycle of charges and fines often increasing the level of activity.

Scarlet Alliance urges the Attorney General to remove section 24.1 as we can see no gain for sex workers or the general community in this criminal response to what is essentially a social issue.

Furthermore, inclusion of this section as a Disqualifying Offence (Schedule 1 part 3 Item 2) is illogical and discriminatory. Why a piece of legislation which seeks to promote the welfare of sex workers would consider preventing a person charged with soliciting *or loitering* in a public place from finding work in a sex industry business as a sex worker (s.22.1(c) or from becoming a 'commercial operator' (s.22.1(a).of a sex industry business is beyond comprehension!

Recommendation: Scarlet Alliance recommends the decriminalisation of street-based sex work, and the removal of s.24.1 and any offences relating to street-based sex workers and their clients.

Scarlet Alliance comments relating to
[\(s.29\) Mandatory safer sex](#)

Whilst it is recommended that all sex workers and their clients use prophylactics, as is current industry practice, it is unnecessary to make it an offence. It is current National policy to influence behaviour through education campaigns not through the use of criminal sanctions that have been demonstrated to be unworkable. Therefore, we oppose this section for being unnecessary and unenforceable.

Australian sex industry currently has excellent standards in terms of safe sex practices. An example of this is the fact that protected oral sex is widespread within the sex industry, but seldom occurs outside it. Creating an offence related to non-compliance with this standard is unnecessarily punitive, and singles out sexual contact within the industry as inherently more risky than other sexual contact

Mandatory safer sex is not a feature of the Australian National HIV/AIDS strategy⁶ and not the basis of sex industry O H & S which works towards voluntary compliance. For example, WorkCover NSW guidelines do not endorse mandatory safe sex. Education, not law, has been the most effective way to promote safe practices the success of which is evidenced in current very low rates of Sexually Transmissible Infections and HIV/AIDS amongst Australian Sex Workers. These statistics suggest sex workers are actively promoting the use of condoms for commercial sexual services. Any law which inhibits the provision of education and the supply of safe sex products is counter-productive.

Recommendation: Remove s.29 and instead support the funding of peer education services to sex workers in Tasmania in line with the National HIV/AIDS Strategy which outlines the need to “expand sex worker organisations’ capacity to design, manage and participate in the broader partnership response to the epidemic.”

30. List of Sex Workers

30. (1) *A commercial operator is to compile and maintain at all times in accordance with this section a list of all sex workers employed by the commercial operator at the sexual services business.*

Penalty: Fine not exceeding 10 penalty units.....

Scarlet Alliance does not support owners of sex industry businesses keeping or having the right to obtain or keep information on individual employees especially considering the reported exploitation which has been a feature of the Tasmanian Sex Industry.

Sex workers have been threatened with ‘outing’ to family or friends if they did not do as asked by employers.

We would also point out this section as another example of this Bill singling out sex workers and sex industry businesses to laws or regulations in excess of those required of other businesses.

Scarlet Alliance recommends the removal of s.30 and advocates against sex industry premises being singled out by law to keep information about individuals.

⁶ *National HIV/AIDS Strategy 1999-2000 to 2003-2004* Commonwealth Dept. of Health and Aged Care 2000

Comments relating to:

PART 5 – REVIEWS

Scarlet Alliance believes that the intent of attempting to protect sex workers from persons ‘which it might be reasonably inferred that the person constitutes a risk to the safety or health of sex workers or their clients’ within (S.32.4b), by allowing evidence from the Commissioner of Police (or his or her nominee) in respect to whether the person is a fit and proper person, is admirable. However, Scarlet Alliance believes that an opportunity exists for police corruption should the allowed evidence be based on arbitrary information rather than that which has been proven to be the case in a court of law.

Comments relating to:

PART 6 – MISCELLANEOUS

Scarlet Alliance believes that Police should not be provided with additional powers specifically relating to the sex industry, particularly where these powers relate to control, seizure, detention and are generally prohibitive in nature and exclusive to one industry. Instead, we believe that law enforcement agencies should treat the sex industry as any other business. Current police powers are adequate to address issues arising in the sex industry.

We believe the Police primary function in relation to the sex industry should be to protect sex workers from violence and respond to calls for assistance. This is unlikely to occur under a criminalized framework when sex workers are reluctant to access the services of the police for fear of prosecution. Current relationships between sex workers and Police in Tasmania are less than desirable resulting in many sex workers considering Police officers to be ‘prosecutors’ rather than ‘protectors’ this has resulted in an low levels of sex workers reporting crimes perpetrated against them. By providing police with greater punitive powers it is unlikely that this situation will change. In light of evidence that Police Corruption has been a feature of Police regulating the Sex Industry⁷ legislation should attempt to remove any opportunity of police corruption in order to ‘promote the welfare and Occupational Health & Safety of sex workers.

Instead we believe a decriminalised industry is more open to scrutiny as it is more easily accessible, police relationship with sex workers are improved and there is increased levels of reporting of crime. Increasing police powers will not improve the situation of violence against sex workers, particularly under a legislative framework which is likely to result in large underground illegal sex industry where sex workers are unlikely to report crimes of violence and are subject to potential police corruption and control.

In particular we are concerned that (S.33) which allows a police office to arrest if he or she ‘believes a person ...is likely to commit an offence...’ including amongst others ‘solicit or loiter, in a public place’ provides police with powers to arrest a person without any proof that a person has committed an offence. In Western Australia where similarly loosely worded legislation is in place Police admit that the way a person is dressed can be enough to suggest the person is soliciting. Similarly in South Australia the carrying of condoms has been used as proof that the person was soliciting. This type of legislation leaves an unacceptable level of arbitrary decision making in the hands of individual police officers.

Recommendation: Scarlet Alliance strongly urges the Attorney General to ensure and that no powers be conferred as part of this Bill in excess of those police currently hold under common law.

⁷ Commission of Inquiry into Allegations of Police Corruption in the Queensland Police Department 1986-1989. (Fitzgerald Inquiry) 1990). Report Brisbane: Queensland Government Printer.

Services for sex workers

The establishment of a well funded Tasmanian Sex Worker Organisation based upon the best practice principle of peer education is critical to supporting the public health and sex worker occupational health & safety and welfare goals of this Bill.

Australia has led the world in HIV education and prevention initiatives and none have been more successful than those which target sex workers and their commercial sexual partners. This partnership approach between communities and Governments is underpinned by a community based, peer education model of delivering HIV education and prevention services, embedded within a holistic and health promoting framework to communities such as sex workers affected by HIV. Funded sex worker projects/organisations are currently established in every State and Territory except Tasmania and enjoy high status internationally as a best practice approach to health promotion with sex workers.

Building upon peer education as best practice in support and education services to sex workers, Scarlet Alliance instigated a workforce development project known as the National Training Project (NTP) in 2001, funded by the Australian Government. The NTP analysed and evaluated the work of peer educators working with sex workers and from this extensive process developed a customised package of eighteen competencies that reflect the skills and knowledge necessary for peer educators providing high quality education and support services to sex workers. Furthermore, the project has trained 10 nationally accredited trainers and assessors whose skills can assist in the development of a sex worker organisation to deliver quality education and support services to Tasmania's sex worker communities.

Recommendation: The Tasmanian Government immediately act upon its commitment to the Australia's National Strategy on HIV/AIDS by funding a peer education Sex Work Organisation in line with the strategies recommendations to enhance the capacity of sex worker organisations to design, manage and participate in peer-based health promotion activities, and to participate in the broader partnership response to the epidemic.

Recommendations:

1. Scarlet Alliance strongly recommends that convictions for ...soliciting *or loitering* in a public place be removed from the disqualifying offence section. (Schedule1 part3 Item 2)
2. Scarlet Alliance strongly recommends the removal of the requirement for registration of self-employed sex workers. (s.7)
3. Scarlet Alliances recommends the removal of (s.29) and instead support the funding of peer education services to sex workers in Tasmania in line with the National HIV/AIDS Strategy which outlines the need to “expand sex worker organisations’ capacity to design, manage and participate in the broader partnership response to the epidemic.”
4. Scarlet Alliance recommends the removal of s.30 and advocates against sex industry premises being singled out by law to keep information about individuals.
5. Scarlet Alliance recommends removing PART 3, Item 2 which would make soliciting or loitering charges under S.24.1 a Disqualifying offence, deeming the person unable to work in other areas of the industry or from operating a sex industry business in the future.
6. Scarlet Alliance urges the Attorney General to remove section 24.1 as we can see no gain for sex workers or the general community in this criminal response to what is essentially a social issue.
7. Scarlet Alliance recommends the decriminalisation of street-based sex work, and the removal of offences relating to street-based sex workers and their clients.
8. Scarlet Alliance believes that self-employed sex workers’ home based ‘sexual services businesses’ should be allowed to operate without Council consent in the same way as other home based businesses and occupations.
9. Scarlet Alliance strongly urges the Attorney General to ensure and that no powers be conferred as part of this Bill in excess of those police currently hold under common law.
10. Scarlet Alliance recommends the Tasmanian Government immediately act upon its commitment to the Australia’s National Strategy on HIV/AIDS by funding a peer education Sex Work Organisation in line with the strategies recommendation to enhance the capacity of sex worker organisations to design, manage and participate in peer-based health promotion activities, and to participate in the broader partnership response to the epidemic.

Appendix 1

Outcomes from the Scarlet Alliance National Forum, November 2002 on the Western Australian Governments proposal of individual licensing and identity cards.

In November 2002, Scarlet Alliance, the National Forum for sex worker organisations met in Perth. Nine member organisations from every state in Australia attended the forum, with 54 representatives present. These community-based organisations are predominantly funded by their respective Health Departments to deliver services to sex workers. All delegates participated in a workshop commenting on the potential impacts of registering individual sex workers, as was proposed in the Western Australian Bill. A Report on the issues identified follows.

We have included this document as the some of the same issues discussed at the forum are relevant to the proposal by the Tasmanian Sex Industry Regulation Bill 2004 to register individual 'self-employed sex worker'.

The knowledge and expertise gained from the participants represents a clear, comprehensive, evidence-based analysis of the potential impacts of licensing on individual sex workers, and related diminished outcomes in relation to health, privacy, human rights and social cohesion.

WHY SEX WORKERS DON'T WANT AN ID CARD

STIGMA and ID CARDS

Stigma is the biggest issue for sex workers. ID cards will only enforce the stigma of working in the industry. Due to this stigma, the majority of sex workers do not disclose their sex work, so their family and friends may not know that they are in the industry. If a family member or friend were to discover the ID card, it would have a huge negative implication for the sex worker. One of the many results it would lead to is family and relationship breakdown. Our expert representatives spoke of cases where sex workers had become estranged from their families once their occupation was disclosed, leading to isolation for themselves, and their children.

This position is not inconsistent with the referendum results for the introduction of an ID card were unanimously rejected by the Australian public. Sex workers, as members of the general community, are no different in perceiving that an identity card is an invasion of civil liberties.

MALE AND TRANSGENDER SEX WORKERS and ID CARDS

Transgender and male workers may not be out about their sexuality or their work, as may would place them at risk of vilification, harassment and violence due to social attitudes and values. Even within the gay and transgender community, stigma about sex work exists, and if their peers found out it would be a harder struggle for them in their community.

International workers are the most marginalised in the industry, due to cultural and language barriers. They are also the most exploited because they have the least access to information and rights (especially those who are working illegally). If ID cards are brought in, a black market in fake cards will be the only way these international workers (and illegal workers) will have access to work in the industry. The ID cards will become a commodity, sold to international and illegal workers and enable underground conditions to control the industry.

Licensing male sex workers to a particular brothel will keep prices down and give the houses a larger cut, and greater control, artificially regulating the workplace and incomes. Men will be less likely to license or work in an agency because of the practice of price control. Short-term

Outcomes from the Scarlet Alliance National Forum, November 2002 on the Western Australian Governments proposal of individual licensing and identity cards.

...male workers who are unsure about how long they will stay in the industry are unlikely to license, when they don't know how it would benefit them.

YOUNG WORKERS, NEW WORKERS PLACED AT GREATER RISK

Given the major reason sex workers cite for first entering the industry (money and unemployment), very few young or new workers perceive themselves to be entering a long-term career. The average stay in the industry is 2 years, and individuals rarely identify as a sex worker during or after they have engaged in the occupation. The Bill, with its ID cards, will create a sector of the industry which is "fly by night" to avoid detection. Young and new workers will most likely be attracted to such workplaces, and therefore work illegally at first, placing the most vulnerable individuals in the sector of the industry where they will be most at risk in terms of health and safety.

NON-CITY WORKERS and ID CARDS

Smaller, more isolated communities make for greater confidentiality risks with any form of ID card, let alone one which says the carrier is a sex worker.

ID cards/ Licensing is a barrier in regional settings due to:

- *Privacy/disclosure risks, where if cards are lost or stolen, the worker risks violence and stigma*
- *Potential blackmail of workers by clients, partners, etc*
- *Secondary stigma for partners and friends*
- *Huge safety risks due to discrimination and stigma are created for male/transgender workers*

Licensing would drive rural sex workers more underground, making them vulnerable to violence, corruption and abuse, and would reduce access to services and even health and safety procedures (eg local chemist could 'dob' on workers buying condoms). Licensing will create a two-tiered industry, with the 'illegal' sector left in a worse situation than before. Licensed Brothels would become more powerful in a regional setting, with the owners legitimised, but leaving sex workers with fewer options for work. This is because licensed brothel/escort sex workers must work at a licensed brothel, but unlicensed workers would be forced to work alone or at unlicensed brothels/escort agencies.

Businesses having to be Council approved under planning Schedule 3 also removes anonymity for both sex workers and clients, yet the option for sex workers to be licensed as sole operators is also unattractive in a regional setting for all of the reasons above. The experience in NSW and VIC is that the Sex Industry is forced underground by over regulation, particularly in regional settings. Over regulation also brings opportunities for corruption both in Councils and Police.

How will rural workers become licensed? In a regional setting sex workers at present are cut off from health and outreach services due to issues of disclosure and distance. What will be put in place in terms of communication and protocols to ensure these workers will receive the same "treatment" in applying for a license? There is no benefit at all to workers in a regional setting, the risks are too great for no gain. Regional workers will be more likely to not comply and therefore at higher risk of charges. This is simply unjust and un-Australian.

THE STIGMA OF ID CARDS WILL COST THE COMMUNITY MONEY

- *Unlicensed sex workers will be placed outside the system. Violence against sex workers who are not licensed will increase because unlicensed sex workers will be unable to report the crime without incriminating themselves. Clients and others will know that unlicensed workers are less likely to report violence and crime, including sexual assault, robbery, stalking, and blackmail of themselves and their clients.*
- *Licensed workers are also placed at risk of vilification, assault, and other crimes.*

Outcomes from the Scarlet Alliance National Forum, November 2002 on the Western Australian Governments proposal of individual licensing and identity cards(Cont).

- *Family breakdown is likely to occur if an ID card is found in a workers purse or wallet.*
- *It will cost the community money, yet deliver no benefits to either sex workers or the community.*
- *Increased costs to the community will include:
Policing costs- resource intensive operations, and diversion of resources.
Enforcement, detention, Court and Jail costs
Fines will place undue financial strain on sex workers.*
- *All of the complications that sex workers will experience from the requirement to carry an ID card will cost the mainstream community money. Funds will have to go to services such as counselling, court and support services, police services, Legal Aid, family and children's' services such as foster homes, and other costs that result from marginalising a group of people, 90% of whom are women with 24% having at least one dependant child.*

HUMAN RIGHTS AND PRIVACY ARGUMENTS AGAINST THE STIMATISATION OF SEX WORKERS THROUGH REQUIRING ID CARDS

The Australia Card was rejected! Australians recognise that there has to be a balance between state powers and privacy, and also understand the inherent safety and security risks in being required to carry an ID card at all times. Sex workers are Australian citizens too, and share the same understandings as other Australians. Sex workers don't want Governments to collect information and keep records containing their real name associated with sex work. Indeed, sex work is the only occupation where it is automatic to adopt a different name and image in the workplace, in order to protect one's anonymity and privacy.

The Privacy issues of such a proposal are very grave indeed, given the range of agencies and individuals able to access information. Other government authorities such as Taxation, Centrelink and Police will be able to access the information collected by Prostitution Control Board (the Board).

Police will have more powers over sex workers than over people who have committed rape, murder and any other criminal act. The licensing/ID proposal and the PCB resembles the notion of a Paedophile register - as if sex workers are criminals- and yet such a notion has clearly been rejected consistently in Australia on Human Rights and privacy grounds. The proposed penalties for unlicensed sex workers are also extraordinarily harsh. Jail terms should be for people who abuse other people, not those who treat other people with dignity! (and in a consensual, adult, commercial service setting!)

Potentially, the system may impact on sex workers' equity and access to social security supports, housing, future employment, Family Court decisions, Justice within the system, Police treatment and response, relationships with Finance Companies and Banks, and so on.

The ID card offers no tangible positive outcomes for sex workers, such as increased safety, health or dignity. Scarlet Alliance wonders if it is simply a system of tracking sex workers and gathering statistics, or a revenue raiser for the proposed Board. Unlike, say, a Union, the Board will, ironically, be funded by sex workers even though workers will get nothing in return.

INDUSTRIAL RIGHTS LOST FOR SEX WORKERS

The Bill will enable sex workers to be easily monitored and given the sack for, say, working at 2 different premises. Inter-brothel communication on individual sex workers is already an issue, and now the WA government intends to hand over a new tool to the operators of brothels to control "their" workers. The Bill contains no provisions for penalties relating to the exposure of any individual as a license or ID card holder, and doesn't protect the privacy of sex workers in the workplace at all, as the cards must always be carried for "immediate" checking by regulators.

Outcomes from the Scarlet Alliance National Forum, November 2002 on the Western Australian Governments proposal of individual licensing and identity cards.

Transient and Interstate sex workers will not chose to license, thus reducing the options for sex workers from other places, or who wish to travel within WA. These sex workers will be outside the system, with the only option to work illegally, with all of the attendant risks already described.

This legislation will increase street work for marginalised workers (for example non-licensed, young, migrant, drug using or transient workers), as such workers will prefer to take the risks of street work, rather than be caught up in the system. Sex work will simply diversify to allow non-licensed workers to operate. If clients are able to require the presentation of a license, non-licensed workers will be completely exposed to violence, coercion and sexual assault. Non-licensed workers are placed in a bad situation to negotiate safe sex and prices. The penalties for non-compliance, are way too high to considering the person is simply trying to protect their confidentiality.

OH&S RIGHTS, HEALTH AND IDCARDS

This Legislation moves far away from the recommendations of the National AIDS strategy, harm reduction and health promotion models for public health outcomes. Forcing STI testing is widely understood to be a costly, low benefit strategy for sex workers and public health. The Bill ignores the reality of safer sex -that STI transmission is prevented by condom use-whether money changes hands or not. Australian sex workers have the lowest incidence of HIV and AIDS in the world (Chris Puplick, Chair of ANCHARD) and are clearly not placing the public health at risk. This record has been achieved through voluntary compliance with safer sex practices, combined with voluntary health monitoring. Under the proposed laws, sex workers who test positive for an STI may be unable ever to work legally again-which discourages testing, and reduces access to health services. This is hardly an intelligent public health outcome!

An illegal sector has no access to OH&S or IR or any legal cover against incidents that may happen at work. Owners too know that workers have no legal means to justice, and are able to carry out unfair dismissal, suffer long hours, require more risks with clients, and can avoid providing safe sex equipment. Such operators may take a larger cut of the workers money, and are not concerned about workers health.

Workers from overseas will be forced underground, due to the power owners will have to control the movements of their unlicensed workers, and who will have no avenue for access to protection under the law from crimes of violence. Sex workers without a license will be scared to disclose their profession to doctors, and may be forced to "doctor hop" reducing the chance of being identified as a sex worker. Public health outcomes will not be met, as they will not be appropriately screened for STIs, as they will not disclose risk behaviour or occupation. No one stops other people from having sex.

Should the client be tested as well? If sex workers records are to be kept by a Board who will keep names for 7 years and know any relevant medical history, why not require the same of all adults? Health is a right, and a matter of choice and sex workers should have the same rights as workers in other industries, to be free to choose the kinds of health monitoring, tests and treatments they wish to take up.

CONTRADICTIONS between the intention of the Bill and the probable impacts:

Corruption will increase due to the creation of a market in false or duplicated documents such as ID cards. Thus crime involvement increases, due to over-regulation. Under the proposed Bill, a person is not supposed to promote a person in the sex industry. Yet, doesn't an ID card promotion of sex work? Potentially MORE people will know that the person is a sex worker than at present.

Outcomes from the Scarlet Alliance National Forum, November 2002 on the Western Australian Governments proposal of individual licensing and identity cards(Cont).

Clients won't have to produce and carry ID cards or be STI tested. Clients' behaviour in visiting sex workers may be consistent throughout their adult life, while sex workers spend an average of only 2 years in the industry.

The proposed laws will prevent sex workers from running a legitimate business, even though we pay taxes.

NO WINS FOR SEX WORKERS

Losers List:

Clients and their families

Sex Workers and their families

Communities and the Economy

Police because they have more work to do

Tax because it will be funding all of this unnecessary enforcement

Health workers who can't get their real work done

Brothel owners

Winners List:

Underground business

Wealthy women and men who own brothels

Politicians who can claim 'law and order' victory while sex workers rot in jail at a cost to the public

Lots of money and effort for no outcomes, what should the government be putting resources into? Stopping terrorists or controlling sex workers?

LICENSING WILL DIVIDE THE INDUSTRY

A small percentage of workers will be eligible for licenses, all others will be forced to work illegally.

People won't License because:

- *Future job prospects are risked, especially if working for the Justice Department, Lawyers, Police, Paralegals, working with children,*
- *Workers fear the stigma of having their name recorded by the Board. Who will have this information? Who will access it? Ability to have name removed will deter workers - how can you be sure you will ever get your name taken off?*
- *Transient workers - Workers who are opportunistic or may only work for one night, once a year or less will not consider getting a license to be necessary*
- *Seasonal workers -Workers who follow the work through rural areas, mining, fishing, US sailors, picking etc will not have a 'place' of work, so will not be able to license*
- *Indigenous sex workers who will have less access to information about the system and risk stigma and shame from within and without the community*
- *Sex workers who are parents are unsure how it will effect the family - workers may be concerned about Family and Children's Services keeping a closer eye on them because they are licensed*
- *Confidentiality, Identity and Disclosure*
- *Concerned about discrimination*

Intend to carry out International Travel in the future - workers who may want to travel in the future won't license because they will be concerned about how it will affect their ability to travel.

Negative Impact on those who don't License

More marginalised, less access to services, less likely to access safe sex equipment due to fear of being discovered as an illegal worker (higher criminal charges due to the emphasis on licensing)

Clients will deliberately target unlicensed/illegal workers for unsafe sex. Clients know that the particular illegal workers have less recourse to justice and are therefore prepared to take more risks because of their illegal status.

Workers who are illegal will be pressured to take more risks with their health, in order to make more money in less time because of fear about being caught working.

People who will License:

- Jaded workers who feel like they already have no rights or voice.
- Workers who are used to containment "I was registered under containment, they have my name, what can I do"
- Workers under police pressure "If we catch you working again it won't just be a restraining order, it will be before the PCB and get yourself on the register."

Negative Impact on those who DO License:

More takes, brothel owners can set prices and be more exploitative.

Male and Transgender workers experience lower incomes in general, no bargaining power, limited variety of agencies, limited ability to negotiate price

Human rights / Civil rights for sex workers include:

- Individuals have the right to make choices about their occupation
- Rights to protect individual health through needle and syringe exchange and condom use
- Individuals have the right to access health and support services (but restraining orders will stop that)
- Individuals have the right to work in a safe and healthy workplace eg: refuse to provide specific services if they want to
- Individuals have the right to access shelter (housing)
- **Individuals have the right to emotional and mental and physical and spiritual wellbeing and Happiness**
- Rights to family relationships (risked with ID Cards + stigma)
- Rights to self expression without fear (freedom of speech)
- Individuals have the right to fair and due process
- Individuals have the right to privacy and confidentiality (not ID Cards)
- Individuals have the right to live and work free from harm
- Individuals have the right to live/work and play free from harassment and entrapment
- Individuals have the right to access the justice system, and the presumption of innocence.
- Rights to live in a community that dispenses proportionate penalty for criminal offences.
- Individuals have the right to access information and education
- Individuals have the right to live free from discrimination, vilification and stigmatisation

Appendix Two

Exert from 'Response of the Scarlet Alliance to the Community Development Committee's Inquiry into the Regulation of the Sex Industry in Tasmania'. April 1999

“The Scarlet Alliance acknowledges that the issue of young people partaking in sex for favours opportunistically has become a growing concern in every state and territory in Australia and that the number of young people involved in this activity is also growing. As members of the Commonwealth Department of Health and Family Service’s working group on the commercial sexual exploitation of children we support the recommendations of a recently produced document which should be available for release shortly. We would encourage that the Tasmanian government look very closely at that document when it becomes available and institute some of its recommendations. It should be borne in mind that the solutions will need a whole of government approach and be based on harm minimisation principles. Since most state and territories in Australia prevent people under the age of 18 working in the regulated sex industry they tend to be pushed into the most marginal areas of the industry. Most young people who are involved in the industry do not see themselves as sex workers and only engage in the exchange of sex for favours (money, accommodation, food, etc.) on a spontaneous needs basis. The major identified risk factor for young people being involved in sex for favours is homelessness⁸ and as a result policies should be implemented which are focused on prevention. Most young people who find themselves homeless are generally escaping from abusive home environments, therefore the initial point of prevention is to support families in distress. Greater support services should be available for young people including appropriate and variable accommodation.”⁹

⁸ Botka, M and Lyle, M, 1993. *Opportunistic Prostitution on the Gold Coast*, YACCA Special Grants Report, Brisbane.

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