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Mandatory or compulsory testing of sex workers for HIV and/or sexually transmissible infections in the Australian contextⁱ

Despite some 22,000 diagnoses of HIV infection in Australia, which means some 22,000 cases of HIV transmission, Australia has never recorded a single case of HIV transmission from sex worker to client or client to sex workerⁱⁱ. Sex workers have consistently low rates of HIVⁱⁱⁱ (less than 1%), low rates of sexually transmissible infections^{iv} and very high rates of prophylactic use, including condoms.^v

Effective prevention education, access to free and anonymous testing and the strong uptake of condom use by sex workers, are identified as key factors in what is an example of successful engagement of the sex work communities in HIV prevention.

Even though mandatory testing has not been a feature of successful prevention strategies in Australia, it is still entertained as a method of ‘controlling HIV and STIs amongst sex workers’, often to allay community fears around public health. This points to the implementation of mandatory testing being motivated by perception, rather than evidence, or the best interests of sex worker health and safety.

Currently a range of different laws and regulations in Australian states and territories cause sex workers to receive mandatory or compulsory testing. In some cases this is a result of regulations which require brothel owners to collect certificates from sex workers working in legal brothels, as part of their licensing requirements.^{vi} In other States, the laws shift responsibility for proof of testing away from sex workers and onto the owners of sex industry businesses, who must prove they have taken all reasonable measures to ensure employees of their business do not have an STI or HIV.^{vii} Individual sex workers must also show a ‘regular’ testing regime as a defence to charges of ‘knowingly’ infecting a client with an STI or HIV.

Laws and policies which promote or enforce mandatory or compulsory testing:

- are in opposition to best practice models of voluntary testing and self regulation of sexual health amongst sex workers;^{viii}
- are not evidenced by current epidemiology in Australia;^{ix}
- endorse a false sense of security in the form of a ‘certificate,’ which, due to window periods, doesn’t actually confirm a sex workers’ sexual health status;
- create an expensive, unnecessary cost burden on public health funds;
- overload sexual health services denying access to sex workers with symptoms or who have experienced a condom breakage and need to access sexual health services quickly;^x
- result in reduced quality of sexual health services to sex workers;^{xi}
- leads to sex workers hiding their profession from medical experts or avoiding the health system altogether;
- and has the unintentional consequence of endorsing stigma and the misconception that sex workers are ‘vectors of disease’.

The Australian Government^{xii}, sexual health professionals^{xiii} and non-government organisations^{xiv}, including Scarlet Alliance^{xv}, acknowledge that voluntary testing is the optimum approach to sexual health testing for sex workers in Australia. In 2005, research by Donovan and Harcourt found that, "When sex workers are compelled to attend health services in jurisdictions that attempt to regulate prostitution, the often cursory or inhuman treatment they receive within these services can be counter productive".^{xvi} Laws requiring mandatory testing (along with registration) may actually drive sex workers away from health services.

Donovan and Harcourt surmise: "While most health workers try to assist [sex workers] in a hostile policy environment, sex workers consistently demonstrate that capacity to protect themselves and their clientele if the basic resources for health promotion are available".^{xvii} Commonwealth HIV and STI strategies concur: "Despite the occupational risks, the incidence of STIs in sex workers in Australia is among the lowest in the world. This has largely been achieved through the adoption of voluntary health policies implemented by the sex industry."^{xviii}

The long term effectiveness of mandatory testing, compared with systemic sexual health education, must also be considered. At best, mandatory testing reduces sexual health to a mere condition of employment. At worst, it can place the individuals privacy at risk, and enforce unnecessarily frequent invasive health testing. Systemic sexual health education encourages the individual to undertake testing of their own volition, in the interest of their own sexual health, not simply for the sake of meeting regulatory requirements. In addition, this information will stay with a sex worker throughout their sexually active life, rather than being a perfunctory action that is abandoned entirely once leaving the sex industry.

The following state and territory sex industry regulation reviews create an opportunity to provide national leadership:

- Queensland regulations are currently being reviewed in regard to the testing regimes outlined in the Prostitution Licensing Authority regulations.
- Victorian regulations and OH&S requirements were reviewed last year, with outcomes yet to be released. Victorian regulations and legislation will be reviewed in more detail later this year.
- Western Australia is about to table and vote on new legislation and a new draft OH&S policy will be released at the same time.
- Tasmanian laws will be reviewed in 2008.

Summary

1. Mandatory testing fails to acknowledge that Australian sex workers already practice safe sex as a fundamental occupational health and safety practice.
2. There is no evidence that mandatory testing produces better results than well resourced, targeted public health strategies including involving sex worker communities in a comprehensive response, including provision of peer education and prophylactics.
3. Testing is invasive for many sex workers. This is exaggerated when the frequency of testing is both unnecessary and without any benefit to the individual.
4. Mandatory testing of sex workers is perhaps most surprising when compared to the absence of mandatory testing of all general health care workers and all patients, given there have been cases of HIV transmission from patient to health care worker in an Australian occupational setting. Health care workers undertaking exposure-prone procedures are required to test for HIV every 12 months if they have experienced a significant occupational exposure, or a non-occupational exposure has been identified.
5. Mandatory testing is expensive, especially when medical, pathology, infrastructure and administration costs are considered. Furthermore, frequent testing places a burden on existing, already stretched, health resources.
6. Mandatory testing programs exacerbate existing social injustices by labelling sex workers as 'diseased' and unable, or unwilling, to take responsibility for their own and their clients' sexual health.
7. Mandatory testing places an undue burden on sex workers; a burden which is not based on a high risk of transmission. It is also worth noting that sex workers clients are not subject to mandatory testing regimes, although HIV is at least three times as efficient in male to female transmission, as it is in female to male transmission.^{xix}
8. Mandatory testing creates a false sense of security for clients (that all sex workers are free of infection) thereby undermining the fundamental message of safe sex and decreasing the ability of individual sex workers to implement protected sex.
9. Mandatory testing programs undermine individual sex workers' autonomy and empowerment.
10. Mandatory testing programs are contrary to Australia's commitments under international human rights law.
11. Mandatory testing fails to acknowledge that Australian sex workers are far better informed on safe sex practices than the broader Australian community.

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- ⁱ Scarlet Alliance acknowledges S. Cameron, AFAO, draft discussion paper on this topic
- ⁱⁱ Australian Government, *National HIV/AIDS Strategy – Revitalising Australia’s response 2005-2008*, Australian Government, Canberra, 2005, p.19.
- ⁱⁱⁱ Ibid, and Australian Government, *National Sexually Transmissible Infections Strategy 2005–2008*, Australian Government, Canberra, 2005
- ^{iv} Ibid
- ^v Roberta Perkins and Francis Lovejoy, “Call Girls”, UWA Press, 2007
- ^{vi} Queensland Prostitution Licensing Authority Regulations, www.pla.qld.gov.au
- ^{vii} Section 19, *Prostitution Control Act*, Victoria
- ^{viii} Australian Government, *National HIV/AIDS Strategy – Revitalising Australia’s response 2005-2008*, Australian Government, Canberra, 2005.
- ^{ix} NCHECR, HIV/AIDS, viral hepatitis and sexually transmissible infections in Australia, Annual Surveillance Report, 2006
- ^x Brisbane Sexual Health Clinic (BIALA) staff and individual sex workers raised access problems as a result of mandatory testing, Scarlet Alliance Community Forum, Brisbane, March 2005
- ^{xi} Basil Donovan and Christine Harcourt, ‘Sex Workers’, *Sexual Health Medicine*, (Fairley, Russell, Bradford ed), IP Communications, Melbourne, 2005.
- ^{xii} Australian Government, *National HIV/AIDS Strategy – Revitalising Australia’s response 2005-2008*, Australian Government, Canberra, 2005.
- ^{xiii} Basil Donovan and Christine Harcourt, ‘Sex Workers’, *Sexual Health Medicine*, (Fairley, Russell, Bradford ed), IP Communications, Melbourne, 2005.
- ^{xiv} Metzenrath and Banach, “Public Health and Mandatory Testing ‘Model Principles for Sex Industry Law Reform”, Scarlet Alliance and AFAO, 2000
- ^{xv} Basil Donovan and Christine Harcourt, ‘Sex Workers’, *Sexual Health Medicine*, (Fairley, Russell, Bradford ed), IP Communications, Melbourne, 2005
- ^{xvi} Ibid, Basil Donovan and Christine Harcourt, 2005.
- ^{xvii} Ibid, Basil Donovan and Christine Harcourt, 2005.
- ^{xviii} Commonwealth Government Department of Health and Aged Care, *National Sexually Transmissible Infections Strategy 2005–2008*, 2005, Pg 28
- ^{xix} Jonathan Mann, Daniel JM Tarantola and Thomas W Netter eds, *AIDS in the World*, Cambridge, MA, Harvard University Press, 1992, Appendix 6.1A quoted in ‘Forced Prostitution and HIV/AIDS’, Human Rights Watch at <http://www.hrw.org/about/projects/womrep/General-137.htm>