



**Australian
Sex Workers
Association**

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Dear Margot,

I am writing to you on behalf of Scarlet Alliance, the Australian Sex Workers Association. Our organisation formed in 1989 and is the national peak body representing the interests of sex workers and sex worker organisations, projects, groups and networks in Australia.

Scarlet Alliance offers the following comments in relation to the December 2005 Crime and Misconduct Commissions '*Should legal outcall prostitution services in Queensland be extended to licensed brothels and/or escort agencies?*' Interim Position Paper. Scarlet Alliance would like to formally acknowledge and endorse the SSPAN (Sexual Service Providers Advocacy Network) submission and offer these following comments in addition. This document follows our meeting with the CMC providing information as part of an inquiry into Queensland Sex Industry Legislation in November 2003. In 2004, Scarlet Alliance provided an extensive submission on the *2004 CMC Report 'Regulating Prostitution, An evaluation of the Prostitution Act 1999'* and the subsequent inquiry into the possibility of legalising Escort Services in Queensland. Scarlet Alliance attended and provided a submission to the public hearings on legalising Escort Services in Brisbane in 2005.

Outlined below are factors related specifically to Escort Services, however we also address others that are of a more systemic nature but will impact on the effectiveness and outcome of the proposed model, particularly in relation to individual sex workers.

Scarlet Alliance is concerned that the interim report fails to acknowledge support for a change to laws that would permit two private sex workers to work together. This option was strongly supported by the majority of stakeholders attending the CMCs public hearings in Brisbane in 2005. We are extremely concerned that the Interim report overlooks the changes necessary to provide safe working environments for individual sex workers (of whom there are thousands,

with the majority being women) and instead places a disproportionate interest in safeguarding the financial reward of legal brothel owners (less than 50, mainly men).

The only opposition to changes to law to enable two sex workers working together were brothel owners who perceive private workers to be potential competition. The interim report seems to show an unnecessary favoring toward removing competition from legal brothels rather than a focus on the occupational health and safety of sex workers.

It is imperative that an inquiry of this kind does not favour brothels over private sex workers. If the CMC is to show favour toward legal brothel owners over private sex workers it may be seen to be acting in an irresponsible manner towards

- private sex workers right to self-determine in regard to their safety,
- how much they work (having to do more clients in a brothel to make the same money),
- what services they provide (brothels expect workers to provide oral and penetrative sex for every booking),
- and how much they charge for their services.

Finally, Scarlet Alliance would like to impress upon the Commission that we do not accept the potential to 'erode the concept of the sole trader'¹ as a reason not to enact necessary changes to legislation which would protect the safety of individual sex workers. We would like to remind that the term 'sole trader' is a legal term and was introduced by Queensland legislation. The term does not provide a helpful description of the activities conducted by private workers. Maintaining the 'concept' of a legal term must not stand in the way of improving safety for sex workers.

Yours faithfully,

Janelle Fawkes,
Manager.

¹ *Should legal out call prostitution services in Queensland be extended to licensed brothels and/or escort agencies?*
CMC, December 2005, Pg 18

Executive Summary

Scarlet Alliance

- supports the decriminalisation of Escort Services in Queensland. However, we do not support discriminatory laws for example those which permit escort services by legal brothels but not escort agencies.
- does not support the registration of Private sex workers wishing to place advertisements of a substantial size.
- does not support Police regulation of sex workers and warns against the current practice of providing protection against corruption only to those sex workers employed in legal brothels.
- does not support the CMCs approach of not acknowledging necessary changes to legislation which will clearly improve the safety of individual sex workers because of the presumption that the practices will allow illegal escort operators to mimic a private sex worker service. Scarlet Alliance believes that many of the concerns raised about the illegal sector are put forward by brothel owners attempting to protect their earnings from perceived competition.
- does not support elements of the report which advantage the brothel sector over private workers. Additionally any new measures that make it more difficult for private workers to advertise, or work are, by nature acting to 'push' sex workers into the brothels.
- does not support the proposed restrictions placed on a private sex workers ability to discuss with another sex worker 'when they are going to a job and when they will be back'
- does not support the interim reports proposed discrimination against current and former sex workers by preventing them from working as a driver or receptionist. This is obviously discriminatory but also prevents a sex worker from employing a person likely to be the most skilled in a position that is critical to their safety. This proposal also reduces possible occupation options for sex workers who stop providing services and seek alternative work options in the Sex Industry.
- does not support the criminalisation of 'doubles'. This is a sex work service currently provided throughout Australia and legally 'inhouse' in legal brothels in Queensland but which will not be possible for private sex workers. 'Doubles' services are considered a safety mechanism for some sex workers.
- supports legislation which promotes private sex workers to retain control over their work practices for reasons including:
 - increased ability to control how much/when/if they work
 - greater control over what services they provide, with which health outcomes.
 - increased control over how they implement OH&S eg: who they employ as a driver or receptionist etc.

- supports two private workers working together. We raise a serious concern that the CMC interim policy has not supported this extremely necessary change in the face of safety concerns raised by sex workers and sex workers representatives and the support for this change by representatives of the Queensland Police Service and the Prostitution Licensing Authority.²

Comments on the INTRODUCTION

Unintended negative consequences for private sex workers – an outcome of the proposed changes to the laws.

*"It appears that illegal outcall prostitution agencies, masquerading as either social escort agencies or sole operators in the print media, Yellow Pages and on the Internet, are largely responsible for illegal outcall services in Queensland. Accordingly, we have developed a model to reduce the capacity of these operators to function, and to increase the capacity of the legal industry to continue."*³ CMC

While the CMC investigations since the release of "Regulating Prostitution" (CMC Dec 2004) are superficially concerned with the provision of Escort services by the legal brothel sector, the recommendations will have a disproportionate effect on legal private workers in Queensland in the attempt to increase regulation and criminalisation to reduce 'illegal' operators.

The support for increased policing and surveillance is in opposition to the Governments own Prostitution Licensing Authority Annual report⁴ which suggests that increased surveillance may not be an effective method to reduce the illegal sector of the Queensland Sex Industry.

Scarlet Alliance advocates that the Prostitution Act 1999 and the Criminal Code, which criminalise many sex work practices that in other States are legal and had historically been a feature of the services provided by sex workers in Queensland. (Including two girl or double services, private sex workers working together, Escort services provided by two sex workers etc.) Many of the problems which increased surveillance and increased regulation will supposedly address are in fact the result of the current Queensland legislation.

² Transcript of Proceedings, Crime and Misconduct Public Hearings, Brisbane, Sept 2005, (<http://www.cmc.qld.gov.au/library/CMCWEBSITE/day2transcript.pdf>)

³ *Should legal out call prostitution services in Queensland be extended to licensed brothels and/or escort agencies?* CMC, December 2005, Pg 3

⁴ Prostitution Licensing Authority (PLA), Annual Report 2001-2002, (www.pla.qld.gov.au)

Comments in relation to - Section 1 Regulate Social Escort Providers

Increased regulation (including registration of private workers) will lead to increased police harassment and police corruption.

“The aim is to create a more equitable situation for legal operators, who are currently impeded by the Prostitution Act and illegal competitors, and not to damage an industry that is clearly trying to do the right thing.”⁵ CMC

The proposal for increased regulation (including registration of private sex workers) in order to combat an ‘illegal’ escort sector will potentially damage the business and legality of private sex workers. By comparison to the threat of concerns either legally or not

Scarlet Alliance believes evidence of illegal workplaces in Queensland is not strong, however we do hear regular reports of police harassment of individual private workers who had believed they were working within the law. Scarlet Alliance is concerned that, as with current police practice, any future focus on so-called ‘illegal’ operators will only result in an increase in police involvement with private sex workers, thus increasing harassment, lack of access to protection and justice for sex workers, and increase the potential for police corruption.

Comments in relation to Section 2 Tightening existing PLA prostitution advertising policies

Individual registration numbers linked to private sex workers through their advertising will force more sex workers to work *outside* the law, not within it.

“In relation to advertising by sole operators....Consider requiring sole operators to have a registration number based on photo identification and pseudonym (provided to the PLA) for display advertisements, but not for shorter ones (e.g. two lines).”⁶ CMC

Increased regulations (including the registration of private sex workers) proposed in the interim report (CMC Dec 2005) will have the opposite effect. The CMC proposals will result in private sex workers (who are working within the law) being over-regulated to such an extent that they will choose to work outside the law in order to be able to operate without police and CMC interference. Thus increased regulation will result in a higher number of illegal sex workers, who choose to maintain control over disclosure of their work status by avoiding registration with the PLA and thus potentially working illegally.

Scarlet Alliance vehemently opposes proposals by the CMC to introduce private sex worker registration.

In the experience of Scarlet Alliance members, individual sex worker registration has been a failure:

- In Victoria registration of private sex workers has resulted in a boom of illegal private workers.
- In the ACT many sex workers choose to remain unregistered, or do not pay their registration fees after the initial fee due to the lack of benefits from registering
- In the Northern Territory registration has resulted in police all over the Territory knowing a persons sex work status, announcing it to entire car loads of people when a person is pulled over for a routine license check, disclosing a persons work status in social situations, and recently, releasing entire lists of individuals names without their consent.

⁵ *Should legal out call prostitution services in Queensland be extended to licensed brothels and/or escort agencies? CMC, December 2005, Pg 4*

⁶ *Ibid, Pg 12*

- In Western Australia individual registration was dropped from the Prostitution Control Act 2002/3 due to strong public pressure and in the wake of a widely publicised submission period.

The PLA should not have control of the wording of sex worker advertising.

“Importantly, the Commission does not consider that the words used in a print media advertisement need to be included in the PLA ‘approved form’. The PLA currently has a list of ‘approved words’ which can be used in licensed brothel and sole operator advertisements. This requires a great deal of PLA time in maintaining and applying the list of words to advertisements submitted for approval.

Our consultations with newspapers have revealed that the editorial guidelines voluntarily imposed by the newspapers are stricter than the PLA list of approved words. This is because readers demand a certain standard, and when the adult services column appears in close proximity to other columns such as ‘births’ or ‘pets’ – which may be read by children, or by adults not interested in adult services – complaints from the readership are not uncommon.

Given this, the CMC believes that the PLA approved form for print media should not regulate the words used in the advertisements. The approved form should regulate the form of the advertisement (i.e. the size, the images used, no reference to race or ethnic origin, and the like). The words used, however, can be left to the newspapers and other publishers themselves to regulate, according to the demands of their readership. This would also remove the current necessity to develop different ‘approved words’ lists in line with the nature of the publication (e.g. allowing more explicit words in ‘R’ classified magazines). It is the Commission’s view that the work of the PLA to date has set appropriate standards and from now on, in the print media, publishers can be relied on to permit wording that is acceptable to their particular readership.”⁷ CMC

Scarlet Alliance notes that the PLA tried to introduce registration of private sex workers by stealth in mid 2005 when they changed their advertising policies, leading to broad scale police harassment and criminal prosecutions of private sex workers on the basis of having an ‘unapproved’ word in their advertisement. The unapproved word in question was (at that time) ‘service.’ The disapproval was on the basis that sex workers may describe themselves, however they cannot describe what they do. For all intents and purposes, the moral overtones of this argument may have sounded convincing on the surface. However when such a policy is used to criminally prosecute law-abiding sex workers for the use of a word as innocuous as ‘service,’ it indicates that there is a more politically motivated reason than the protection of public morality and decency. Sex work advertising by private sex workers is not anti-social or offensive. It is the right of individuals operating private sex work businesses in Queensland to be able to advertise without fear of criminal prosecution, however when the PLA began their campaign for registration in earnest last year, it became clear that advertising was about to become particularly contentious. Private sex workers were the subject to police harassment, dragged to the police station in their sex work lingerie and charged with a criminal offence, all for using the word ‘service’ in their advertising. In response, other private sex workers called the PLA for advice and guidelines about advertising. It was reported in writing to SSPAN (Queensland member of Scarlet Alliance) and verbally to Scarlet Alliance, that the PLA responded by saying “Well if you want to be kept up to date about PLA advertising regulations, you will have to register with us in order for us to release that information.”

Given the situations that have arisen due to the PLA, Queensland Police and Queensland Judiciary regulation of individual words in advertisements, Scarlet Alliance support the withdrawal of such a practice. However, we are very concerned about the proposal to enforce individual registration of private workers in order for them to be able to advertise beyond a two-line restriction.

⁷ *Should legal out call prostitution services in Queensland be extended to licensed brothels and/or escort agencies?* CMC, December 2005, Pg 13

The CMC should not be endorsing deceptive practices as a form of sex industry regulation.

“A person who advertises as a sole operator and then makes more than one worker available at the end of the telephone would necessarily commit the offence of knowingly participating in the provision of prostitution by another person. That is, if police made three separate calls to a telephone number which had advertised a sole worker, each time requesting a worker to be available at the same time in three different places, and the person answering the phone agreed to provide these services, the person placing the advertisement would commit the offence of knowingly participating in the provision of prostitution by another person. If the words ‘non-sexual’ do not appear in the advertisement, they are advertising prostitution; and if they make more than one worker available, they are necessarily participating in the provision of prostitution by another person. The fact that they have advertised prostitution services means that they have no defence to the participation offence. They cannot argue, as they do now, that they were providing only social escort services. This provision would make police enforcement much easier than it currently is. The QPS would only need to monitor the advertisements. If an advertisement for prostitution leads to a worker being made available at different places at the same time, the offence of knowingly participating in the provision of prostitution by another person has been committed.”⁸

Scarlet Alliance notes that the above example proposed by the CMC of police ‘enforcement’ is actually deceptive practice and a form of police harassment. It is unacceptable to expect the regulation of a sex industry to rely upon police officers calling every private sex worker in the newspaper, pretending to be a client, and then harassing the sex worker to consent to an illegal act.

This is not a sensible or rational process by which to regulate legally operating private sex workers, and will potentially lead to an increased level of police harassment for private sex workers, resulting in stress, corruption, discrimination, and an overall outcome of increased mistrust between private sex workers and police.

Furthermore, the CMC will be aware of the fine line between entrapment (currently legal in Queensland) and undue inducement whereby a person agrees to commit a crime or agree to commit a crime under pressure, which they would not have normally considered committing.

This practice would simply not be effective as the current high number of ‘no show’ clients who book services with private sex workers results in a number of private sex workers double booking to ensure increased likelihood that they will not have a wasted booking time by a booked client not showing up. So a sex worker agreeing that they will do two bookings at the same time will not be particularly unusual and should not be considered evidence that more than one sex worker is available at the same time.

⁸ “Should legal out call prostitution services in Queensland be extended to licensed brothels and/or escort agencies?” CMC, December 2005, Pg 14/15

A current inequity exists in Queensland whereby the current legislation, (and parliamentary speeches) recognise the Queensland State's history of police corruption in regard to the sex industry and as such introduce measures to ensure there is minimal opportunity for police corruption to occur in legal brothels. However, the legislation does not afford the same protection to sex workers (mainly women) in other sectors of the industry.

Scarlet Alliance suggests the implication that increased regulation will 'make police enforcement much easier than it currently is' without seeking to protect individual sex workers from police corruption is an oversight.

Comments in relation to Section 4 Improve safety for sole operators

Safety of private sex workers will not be achieved while private sex workers are criminally liable for networking, working together, sharing support, information and resources

*"The Commission believes that sole operators should not be permitted to refer clients to other sex workers, or attend calls with other sex workers."*⁹CMC

"The 'safety contact' for a sole operator could not be another sole operator."¹⁰

The CMC proposal will effectively disallow communication, sharing of clients, networking, doubles, and industry best practice of working together to avoid potential danger. This proposal, and the current law, places private sex workers in the vulnerable situation operating illegally when putting in place the best safety mechanism, that being, to work together with another private sex worker.

Many sex workers lead incredibly private lives and do not disclose to non-sex workers about their sex working status. If a sex worker will ONLY tell other sex workers, and the law makes it criminal to share information (such as booking times, client details for safety etc), then these provisions would criminalise the practices of most, if not all, private sex workers in Queensland. The proposal will not make sex workers safer, it will criminalise them.

Discrimination against current and former sex workers by barring them from working as a receptionist is against Equal Opportunity law in Queensland and cannot be implemented without amending and ignoring the rights of sex workers in Queensland.

"(c) the participant has not provided prostitution either at the time of the participation or any other time" (in reference to participating in being a receptionist or driver for a private sex worker)¹¹

Scarlet Alliance asserts that the Queensland Equal Opportunity Commission would be concerned about the proposal to enforce such clearly discriminatory and unenforceable laws. A person's sex work identity, now or in the past, is not grounds upon which to discriminate, as cases in both the Queensland Equal Opportunity Commission and the Queensland Court have already proven. It is incredible that this proposal has come from the CMC, who should be aware of such cases and rights.

⁹ "Should legal out call prostitution services in Queensland be extended to licensed brothels and/or escort agencies?" CMC, December 2005., Pg 18

¹⁰ Ibid, Pg 19

¹¹ Ibid, Pg 19