
Scarlet Alliance Submission to the PLA Regulatory Impact Statement (RIS)

Scarlet Alliance, Australian Sex Workers Association, through our objectives, policies and programs, aims to achieve equality, social, legal, political, cultural and economic justice for past and present workers in the sex industry, in order for sex workers to be self-determining agents, building their own alliances and choosing where and how they work. Scarlet Alliance formed in 1989 and has represented both sex worker organisations and the interests of sex workers in Australia since that time.

Our membership comprises sex worker organisations, projects, networks and groups, and we hold an annual national forum to determine policies, workplans and discuss issues relevant to sex workers in Australia. Representation at the national meeting is influenced by the Scarlet Alliance affirmative action policy for sex workers; the voices of sex workers are a priority for our organization. As such we draw upon a vast store of knowledge – almost 2 decades of intrinsic involvement in the sex worker rights movement in Australia, and a leadership role in the response to HIV/AIDS, STI's, OH&S, human rights, advocacy, civil liberties and many more issues that require ongoing attention for sex workers in Australia.

SSPAN (Sexual Service Providers Advocacy Network), is a member of Scarlet Alliance, and we are proud to be releasing to you our joint submission in response to the PLA RIS in relation to licensed brothels in Queensland. Scarlet Alliance and our member organisations have been consistently involved in the debates around law reform in Queensland since the Fitzgerald Inquiry uncovered wide-scale police corruption in the Queensland sex industry. Our concerns with the licensing system reflect much of the concerns at that time – the sex industry responds to criminalising regimes not by closing shop but by altering practices to avoid prosecution. No alteration of the licensed system will eradicate the ongoing criminalisation of private sex workers and sex workers working in groups or co-op arrangements. Only decriminalisation, the removal of all criminal penalties relating to sex work, will see sex workers able to be fully compliant and operate without fear of police harassment.

We urge you to consider the systemic problems associated with licensing. Increasing or decreasing fees or the resources of the PLA will do little to address the situation for sex workers in Queensland

Elena Jeffreys
Acting President, Scarlet Alliance, Australian Sex Workers Association

SSPAN (Sexual Service Providers Advocacy Network) Queensland

Attention: Ms Ros Baxter
c/- Prostitution Licensing Authority
GPO Box 3196
Brisbane Qld 4001

Re: Prostitution Licensing Authority – Regulatory Impact Statement.

Dear Madam

SSPAN is an unfunded network of Queensland sex workers from all sectors of the sex industry. Since forming in June 2004 we have consulted with a range of government and non-government organisations including the CMC, PLA, Police Minister's office, SQWISI, Queensland Health and the LHMU (Liquor Hospitality and Miscellaneous workers' Union) on issues relevant to sex workers.

SSPAN is a member of the Scarlet Alliance and we share similar views regarding the need for a decriminalised framework for the operation of sex industry businesses in Queensland (and elsewhere). Please find attached our submission, produced jointly with Scarlet Alliance, in response to the PLA Regulatory Impact Statement.

We believe that a decriminalised system would prove to be the most beneficial for sex workers' health, safety, privacy and social well-being. We do not believe that brothel owners or managers should be subject to heavy licensing fees and we have serious concerns about the way in which the original fee schedule was determined.

That being said, we are aware of the current political situation and that it is unlikely to change much before the next CMC review in 2006-7. We realise that the primary purpose of this RIS is to determine whether or not to increase the licensing and managers' approval fees for legal brothels.

The RIS has brought up pertinent issues regarding the viability of some Queensland brothels and we realise that some of these brothels may be danger of closing down altogether. Our concern is always for the sex workers themselves, not brothel owners or managers. We do not want sex workers pressured by brothel owners who are going out of business and we do not want sex workers who may rely on these brothels out of work altogether. We also do not wish to see the capacity for sex workers to open their own brothels undermined any further.

With those interests in mind, we ask why, if licensing fees are going to be set, they couldn't be determined according to the profitability of the brothel? We understand that this is how liquor license fees are determined. A nominal amount could be set for the initial license approval and, at the end of the first year of operation the true fee could be calculated and charged as the ATO does with provisional tax for contractors.

Yours faithfully

Ms Candi Forrest
Spokesperson, SSPAN Queensland



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& SSPAN (Sexual Service Providers Advocacy Network)
Submission to the Queensland RIS July 2006

SSPAN (Sexual Service Providers Advocacy Network) Queensland

**Joint Submission
to the**

**Prostitution Licensing Authority
*Regulatory Impact Statement: Changes to the fee structure for the Prostitution
Regulation 2000.***

(May 2006).

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1. Executive Summary

Decriminalisation provides the best framework for sex workers to operate without the harmful effects of criminalisation (police harassment, criminal charges, vulnerability to violence and barriers to access to justice) or licensing/registration (discriminatory surveillance systems, mandatory testing, permanent records of sex worker status).

Queensland sex workers need government authorities to take an open, honest and serious approach to reform of the sex industry. It is disturbing to see the PLA gloss over important issues brought up by the CMC.

The expansion of PLA functions in relation to private workers is out of step with the original legislation, will be costly and ineffective, and is a serious breach of privacy, justice and health concerns for sex workers, resulting in sex workers avoiding interaction with health and law enforcement institutions in order to avoid being discovered as unregistered.

The Queensland sex industry licensing strategy was flawed at its inception, and is still being administered in a haphazard manner. The potential size of a compliant Queensland sex industry appears to have been seriously over-estimated and the PLA budget rationale seems naïve.

Contrary to the assertion by the PLA that regulation is a success we claim that the PLA is not fulfilling its role in sanctioning brothel owners who breach licensing conditions.

Scaling back of the PLA's administration practices in relation to advertising would effectively ameliorate some of the financial issues faced by the PLA.

No informed comment can be made about the impact of fee increases on the economic viability of brothels (and the industry generally) using the information provided by the PLA in this RIS. What is the point of having a regulatory body auditing the brothels if relevant up-to-date figures cannot be produced for analysis?

Any fee increases will push the possibility of groups of sex workers coming together to operate their own brothel further out of their reach. Fee increases on already tenuous brothels will cause problems for the most vulnerable sex workers - those who rely on these brothels for work.

Rhetoric which posits an unsafe illegal industry against a safe legal industry maintains the illusion that the licensing system is working successfully. As long as private workers are forced into a 'sole operator' situation in order to be legal, the notion of a "safe and clean" industry maintained by the PLA is a farce.

2. Sex industry laws around Australia

We present below our overview of the different legal frameworks – criminalisation, licensing, registration and decriminalisation - in which the sex industry operates throughout Australia. We briefly relate how we perceive that each impacts on the working lives of sex workers.

One dangerous phenomenon which occurs in all states where decriminalisation is not practiced is the vilification, harassment and persecution of private sex workers by established brothel owners. Thus, despite continuing 'teething' problems with entrenched discriminatory attitudes at a local government (council) level in NSW, we believe that a decriminalised model best serves the interests of sex workers.¹

2.1. Criminalisation:

There is no doubt that criminalising prostitution is counterproductive to sex workers' occupational health and safety², and it exposes them to police corruption and violence.³

South Australia and Western Australia have systems of criminalisation. The sex industry operates both clandestinely and with informal police sanction.

The informal 'containment' policies of last century in Western Australia resulted in certain areas (Roe Street Perth, Kalgoorlie) of police sanctioned brothels.

Since 2003 in South Australia the police stopped enforcing the laws against brothels, resulting in a new era of informal police sanction.

In both states street based sex work is illegal and street-base workers are frequently prosecuted, with the use of 'Move On Notices,' 'Exclusion Zones,' 'Restraining Orders' and more.

Private workers operate discretely in both states, however recently in Western Australia brothel owners publicly vilify private workers and call for their prosecution. One prominent brothel owner admits to spending thousands of dollars on private investigators to identify, harass and encourage police prosecution of local private workers.⁴

¹ Banach, L. (AFAO) and Metzenrath, S. (Scarlet Alliance), *Principles for model sex industry legislation*, 2000, Sydney: Scarlet Alliance and the Australian Federation of AIDS Organisations.

² Banach, L., 1992 *Sex workers experiences on the impact of the law on their daily lives: A qualitative survey*, 1992, Unpublished Masters Thesis, University of Queensland, Department of Social Work and Social Policy; Hatty, S., 'Violence against prostitute women: social and legal dilemmas', *Australian Journal of Social Issues*, 1989, vol. 24, no. 4, pp. 235-48; Host, L.. 'Assaults against Queensland sex workers: a situational prevention analysis', 1999, unpublished thesis, Griffith University, Brisbane.

³ Banach, *op.cit*, page 154-155.

⁴ Gartell, Adam "Madam furious over cut-price sex workers," *News.com.au*, 14th July 2006

[<http://www.news.com.au/story/0,10117,19785658-421,00.html?from=rss> viewed July 2006] and Riley, Sam "Council hires private eyes to spy on brothels," *The West Australian Newspaper*, 14 July 2006

Following heavy anti-sex work lobbying from Project Respect and the Catholic Women's League, Tasmania recently criminalised the entire sex industry except for private sex workers in groups of two. This latter point is the only commendable aspect of an otherwise irrational and anachronistic approach to the sex industry.

In practice the Tasmanian brothel industry has been clandestine and operating outside industrial law and occupational health and safety standards for many years, and the changes to legislation have had little practical effect.

Private workers in Tasmania still experience harassment and threats from brothel owners, including at the Scarlet Alliance National Forum in 2000, witnessed by Peg Putt, Tasmanian MLA.⁵

2.2. Licensing:

Victoria, Northern Territory and Queensland have licensing regimes and in each state systemic problems have arisen which seriously undermine its effectiveness as a model.

In the NT sex workers must register with the police in order to work at a licensed escort agency. This has resulted in sex workers experiencing discrimination, disclosure without consent and harassment by the police.⁶

The Northern Territory licensing laws only permit outcalls, however setting up 'brothel' in short stay motels is an anomaly that is tolerated.

In Victoria private sex workers may apply for 'exemption' from the licensing regime, however this is actually a form of registration itself. Due to privacy concerns, sex workers prefer to share 'exemption' numbers rather than have their details on a register so compliance is low.

The Victorian licensing system has proven to be costly for the industry there. Prices are among the lowest in Australia as large expensive purpose-built licensed brothels compete with smaller cottage-industry collectives of private workers who have lower overheads.

Brothel owners in Victoria are known to 'dob in' private workers to the police in an effort to curb competition.

⁵ Putt, Peg, Tasmanian Greens MLA, Legislative Assembly In *Hansard*, 27th October 2005, 12.37pm
[<http://www.hansard.parliament.tas.gov.au/isysquery/ir1128c/1/doc> viewed July 2006]

⁶ Australian Federation of Aids Organisations, "Sex worker registration – privacy and ethical concerns" *HIV Australia*, 2006, Vol. 5, No. 2; Scarlet Alliance "Submission to Racing, Gaming and Licensing, Darwin, Northern Territory," March 2005
[http://www.scarletalliance.org.au/library/nt0305/file_view viewed July 2006]

2.3. Registration

As noted above, private workers in Victoria are subject to registration within the broader licensing system.

In the A.C.T. registration is conducted in a similar manner to that in other states' licensing regimes. Brothel owners must undergo a criminal history check and have their details on a public register.

Private workers pay \$220 to register and \$110 every following year. However many choose not to divulge their details via registration.

The Sex Workers Outreach Project of A.C.T. recently discovered that the details of private sex workers are shared by the Office of Fair Trading with the police.⁷ Given the high rate of police harassment of sex workers, this recent revelation confirms sex workers concerns that their registration information is not safe.

2.4. Decriminalisation:

New South Wales has had varying levels of decriminalisation since the 1970's. Brothels are treated the same as other similar businesses, and private workers are not against the law.

Unfortunately in the last decade the process of decriminalisation has been stalled by local government and a lack of political leadership by Government means this has not been corrected. Thus, discrimination still occurs on a local council level against both brothels and private workers.

Upon explicit and/or tacit refusal by council, many brothel owners take their Development Applications to the Land and Environment Court and win. However private sex workers, who are without resources to fight, are still campaigning for their right to operate as other like businesses - without a Council Development Application.

Recent changes to the Local Environment Plan by the state Government has further entrenched discrimination against private workers, in contravention to the recently released *Sex Services Premises Planning Guidelines*.⁸

⁷ ACT SWOP, personal communication.

⁸ Sex Services Premises Planning Advisory Panel, *Sex Services Premises Planning Guidelines*, 2004, Local Government Association of NSW on behalf of the Department of Infrastructure Planning and Natural Resources.

2.5. Conclusion to overview – our position on decriminalisation

Despite this backlash in New South Wales, decriminalisation provides the best framework for sex workers to operate without the harmful effects of criminalisation (police harassment, criminal charges, vulnerability to violence and barriers to access to justice) or licensing/registration (discriminatory surveillance systems, mandatory testing, permanent records of sex worker status).

We believe that a decriminalised model is the only just framework and that, in time and with strong political leadership, acceptance of sex work as a legitimate occupational choice will prevail.

3. Response to the PLA Regulatory Impact Statement.

We outline in this section a response to what we see as the problematic points of the RIS.

3.1. The PLA Regulatory Impact Statement ignores or glosses over important issues brought up by the CMC review (2004)

(RIS p.8) On 21 December 2004 the Chair of the Criminal and Misconduct Commission (CMC) handed the CMC report *Regulating Prostitution: An Evaluation of the Prostitution Act 1999 (Qld)* to the Speaker of the Legislative Assembly of Queensland.... Twenty-nine recommendations were contained in the report, and most have been dealt with by way of administrative and legislative change.

This statement is extremely misleading given that the Prostitution Amendment Bill 2006 which was tabled in March 2006 (and is yet to be passed through parliament) deals with only 17 of the 29 recommendations. The Minister said that for other adopted recommendations "a regulation will be developed for cabinet approval within the next six months"⁹

Recommendations which impact on the financing and activities of the PLA include 4, 14, 15, 17, 18, 19, 20, 21, 22, 24, 26, 27, 28. If implemented, most of these recommendations will increase the workload of the PLA. Some may lighten the workload (eg. 17, 21), but only slightly.¹⁰

⁹ Queensland Parliament Legislative Assembly, *Hansard*, 28th March 2006, page 844, Available at: [http://parlinfo.parliament.qld.gov.au/isysnative/XFxXRUIJTRVJWRVJcSEFOX0ITWVM2REJcMjAwNi5wZGZcMjAwNi8wM18yOF9XRUVLTFkucGRm/2006_03_28_WEEKLY.pdf#xml=http://parlinfo.parliament.qld.gov.au:80/isysquery/irl823c/1/hilite viewed 20th July 2006].

¹⁰ Crime and Misconduct Commission, *Regulating Prostitution: An evaluation of the Prostitution Act 1999 (QLD)*, December 2004, pg xviii-xxi.

Yet to be mentioned or dealt with are Recommendations 4 and 28 ¹¹.
If this is meant to be a Regulatory Impact Statement why aren't these extremely relevant CMC recommendations mentioned?

We assert that Queensland sex workers need government authorities to take an open, honest and serious approach to reform of the sex industry. It is disturbing to see the PLA gloss over important issues brought up by the CMC.

3.2. Private sex workers and individual registration

(RIS p.11) The fees collected by the PLA are used in compliance and monitoring activities, as well as information and advice provision...

We note with concern that the tabled legislation Prostitution Amendment Bill 2006 (sections 93, 139A, 140) will allow for the extension of PLA functions in relation to private sex workers.

The pending CMC report (due out in April but yet to be released) advises against the regulation and registration of private sex workers by the PLA.¹² This concurs with the majority of submissions to the CMC, as well as the verbal evidence presented at the CMC inquiry in September 2005, as the following quotes indicate:

THE HON M BOYCE: Well, a fundamental problem is that sex workers want to remain anonymous and the PLA view is that registration of sex workers is undesirable.¹³

CHERYL MATTHEWS, SQWISI: We're adamant that registration of sex workers should not be put on the table.¹⁴

JANELLE FAWKES, SCARLET ALLIANCE: The 2002 annual general meeting of Scarlet Alliance attended by all its State member organisations and projects considered the issue of registration of individual sex workers.... The meeting unanimously concurred with existing Scarlet policy that the licensing registration of sex workers is contrary to

¹¹ Recommendation 4 That the policy and research functions of the PLA be adequately resourced to enhance its capacity to review and collate information about a range of issues relevant to prostitution (such as sexual health, workplace health and safety, and workplace relations), and to the social factors that contribute to involvement in the sex industry; Recommendation 28 That the government undertake a review of the resources and administrative location of the PLA to ensure that it has the capacity to meet its legislative requirements.

¹² Alison Ryding, CMC Lawyer, Personal communication with Scarlet Alliance, 18th May 2006

¹³ Crime and Misconduct Commission, "Public Hearings into whether escort services in Queensland should be legalised." Transcript Day 1, pg 35, line 40, Available at: [<http://www.cmc.qld.gov.au/data/portal/00000005/content/03894001143008779320.pdf> viewed July 2006]

¹⁴ Ibid, pg 44, line 5

the best interests of sex workers, it is unworkable and has failed in every jurisdiction it has been enacted in.¹⁵

DR MARGOT LEGOTZ, CMC: It's also important to note that Germany required or did require the registration of sex workers but that initiative failed with many underground and consequently suffering more abuse.¹⁶

MS ISAACS, REGISTRAR, PLA: While I can see some merits in the case of registration, I don't think that it's going to achieve the outcome that everyone desires... So, while I can see that a system of registration may relieve some of the issues in respect of advertising, I think that the risks in respect of all of that, apart from the administrative costs and serving all of that and the fact that it's been testified that a lot of the workers would choose not to come to us for registration, that it isn't going to entirely relieve the issues in respect of advertising.¹⁷

The only group that supported registration of private sex workers is QABA (Queensland Adult Business Association), for they stand to gain a considerably larger slice of the 'legalised' market if private workers are driven underground due to low compliance with registration.

If passed, the Prostitution Amendment Bill 2006 will empower the PLA to register private workers. This is opposed by Scarlet Alliance, SSPAN and Queensland Association for Health Communities (formerly Queensland AIDS Council),¹⁸ on the basis that it is a discriminatory practice which is not demanded from other workers, has been a failure in other states and countries, and is in opposition to all but one sector of the testimonial voices heard at the CMC inquiry in September 2006.

We assert that the expansion of PLA functions in relation to private workers is out of step with the original legislation, will be costly and ineffective, and is a serious breach of privacy, justice and health concerns for sex workers, resulting in sex workers avoiding interaction with health and law enforcement institutions in order to avoid being discovered as unregistered.

3.3. An increase in the number of licensed brothels would result in an increased workload for the PLA

(RIS p.10) When the PLA commenced operation on 1 July 2000 there was an expectation that it would become self-funding through revenue derived from brothel licence and manager certificate fees based on an assumption of up to eighty licensed brothels operating in Queensland.

¹⁵ Ibid, pg 60, lines 4-22

¹⁶ Ibid, pg 8, lines 12 - 16

¹⁷ "CMC Public Hearings into whether escort services in Queensland should be legalised." Day 2,

[<http://www.cmc.qld.gov.au/data/portal/00000005/content/90309001143008779320.pdf> viewed July 2006] pg 55, lines 8, 9 and 40 - 46

¹⁸ "Pre-emptive strike against sex workers: Spence avoids CMC report and pushes ahead with registration of private sex workers." Scarlet Alliance website, [http://www.scarletalliance.org.au/media/News_Item.2006-05-12.3555] viewed July 2006

We believe that the assumptions expressed in the above quote reveal that the initial licensing strategy was based on unsound budgeting and a gross overestimation of the market that Queensland could support.

It is apparent that the fees from 80 brothels and manager's certificates would provide upward of \$1.5 million dollars – enough to support the PLA at its current cost with \$300,000+ to spare. However, we are not told how this increased income would have allowed the PLA to be self-sustaining, given that more brothels necessitate more work for the PLA. More brothels will translate to more licensee and managers' applications to investigate and issue each year, plus additional compliance inspections and complaints to be processed. As noted below, we are under the impression that the PLA is unable to deal with the number of complaints already received by sex workers.

The fact that with only 21 brothels state-wide, some of these businesses are failing and many are 'slow' reveals that the initial assumption that the Queensland market could support 80 brothels might have been over-enthusiastic. We ask, on what basis was this prediction made?

There is no detailed debate about the PLA budget in the Parliamentary transcripts. The figure of 80 brothels seems to have been derived from a comparison with Victoria¹⁹, which currently has 91 brothels²⁰ and has always had a much larger sex industry than Queensland. In fact, the only Parliamentary mention of the 80 brothel figure comes via a quote from a newspaper article:

Australia's biggest brothel owner is quoted in the Courier-Mail in June this year as saying—"Mr Trimbole estimates the number of illegal brothels operating in Victoria outnumbers the registered businesses by as much as three to one. The Prostitution Control Board has 80 registered brothels..."²¹

Furthermore, given that small towns (less than 25,000 residents) can obtain an 'exemption status', we do not believe that there was ever a possibility that there would be 80 brothels licensed in Queensland. Hypothetically assuming that there were 80 brothels as suggested, it would cost significantly more than \$1.2 million to micro-manage them in the manner that is dictated by the legislation.

We assert that the Queensland sex industry licensing strategy was flawed at its inception, and is still being administered in a haphazard manner. The potential size of a compliant Queensland sex industry appears to have been seriously over-estimated and the PLA budget rationale seems naïve.

¹⁹ Queensland Parliament Legislative Assembly, *Hansard*, 2nd December 1999, page 5818, Available at: [http://parlinfo.parliament.qld.gov.au/isysnative/XFxXRUIJTRVJWRVJcSEFOX0ITWVM2REJcMjAwNi5wZGZcMjAwNi8wM18yOF9XRUVLTFkucGRm/2006_03_28_WEEKLY.pdf#xml=http://parlinfo.parliament.qld.gov.au:80/isysquery/irl823c/1/hilite viewed 20th July 2006]

²⁰ Business Licensing Authority, personal communication with SSPAN, February 2006.

²¹ Cunningham, Liz, *op.cit.*

3.4. Complaints from sex workers about licensed brothels are not dealt with adequately

[RIS p.10] Given this success within the relatively new legal industry, this RIS does not propose regulatory change to alter the current regulatory framework in any substantial way. Overall, the recipe seems to have been successful at this early stage, recognising that there is still considerable work to be undertaken in facilitating movement from the illegal to the legal industry. The focus of this change is on ensuring the future financial viability of the regime. The key policy objective of the proposed regulatory change is to provide for a financially sustainable regulatory regime for the prostitution industry in Queensland.

We argue that the regulatory framework has not been successful.

The huge number of complaints from sex workers about licensed brothels is one indication of this systemic failure, not that of individual brothels or individual licensed brothel owners.

SSPAN members are under the impression that, already, PLA compliance officers are unable to deal with all of the complaints made to the PLA by sex workers in licensed brothels because of a lack of funds. Sex workers who deal with the PLA compliance staff have been told that if the PLA could acquire more funding they would be able to deal with these complaints.

Sex workers in Queensland report discrimination and mistreatment in the workplace:

- The debate about sex workers as employees vs contractors has seen a stalemate in the development of good workplace policy.
- Sex workers have been sacked or told not to come back on the basis of rumor, innuendo and unsubstantiated workplace gossip.
- Brothel owners who take a particular dislike to individual sex workers will tell other brothels not to employ them – without an opportunity for the sex worker in question to be able to defend herself.
- In regional and country areas where there are few legal brothels, ageing sex workers experience being told they are 'too old' and refused work in legal brothels. For older sex workers who worked alongside aging sex workers all through the pre-Fitzgerald inquiry days, to be told by brothel owners that they are too old to work in the legal industry is an indication that the system has irrevocably failed them. Their only legal alternative is to work unsupported and alone, as a 'sole operator'

Due to the small number of legal premises sex workers have little choice when it comes to place of work, and find they must put up with bad workplace conditions because there is no

other option. Many sex workers have made approaches to the PLA about improving workplace conditions, only to be told that the PLA doesn't have enough staff to assist them.

When approaching the PLA with issues, sex workers are told verbally that they must give their real name in order for it to be treated as a 'formal complaint'. When approaching the PLA in writing, sex workers are told they must attend in person for the same reason. However both of these assertions by PLA staff seem to contradict their own guidelines which state that complaints can be made anonymously or by using a pseudonym.²²

The range of complaint issues which breach the PLA *Brothel Licence Conditions*²³ but have not been enforced by the PLA include:

1. *Free provision of prophylactics* Instead of providing prophylactics for free – as per licensing conditions – almost all licensed brothels sell prophylactics to sex workers with a mark up. Complaints have been made to the PLA about brothels that sell condoms, but there has been no change to brothel practices.

2. *Independent status of contractors*: The licensing conditions specify that sex workers can work at as many premises as they choose, privately or at the brothel. If understood as sub-contractors, this also asserts that right. However sex workers in licensed brothels are threatened with immediate dismissal if they are found to be working at other premises. In contravention of the conditions, sex workers are also charged 'shift fees' by brothel owners. Shift fee receipts have been presented to the PLA as proof of the contravention, along with formal complaints from sex workers. The complaints have had no effect on the practice.

3. *Checks for STI's*: The conditions state that sex workers have the right to a second opinion from a co-worker in the instance of suspected client STI. However many brothels instead have their receptionist or manager do the second check. If that receptionist or manager refutes the sex workers' concerns, the power of decision is taken away from the sex worker. This removes sex worker autonomy in regards to STI checks and to refuse suspected infectious clients and is a contravention of the regulations.

4. Cleanliness Case study: Contaminated Waste Removal

SSPAN is aware that a sex worker recently made a formal complaint to the PLA in regards to the emptying of the contaminated waste bins at a brothel. Upon inspection the PLA found that the brothel was indeed contravening the licensing condition that deems bins must be emptied every week. After talking to the owner (who complained about business being slow and the cost of having the bin emptied), the PLA compliance officer informally determined that the owner could empty it once a fortnight instead. When three weeks passed without the bin being emptied, a second complaint was made to the PLA. The PLA then informed the sex worker that the conditions will be changing soon to make disposal of contaminated waste a monthly, not weekly, event.

²² Prostitution Licensing Authority, *Guidelines for the operation of licensed brothels in Queensland*, sections 13.6, 13.7.

²³ Prostitution Licensing Authority, *Brothel Licence Conditions*, Available at [<http://www.pla.qld.gov.au/conditions.shtml>] viewed 20th July 2006.

These, and many other examples of conditions that are ignored, blatantly overlooked and flagrantly broken, regularly and systemically since licensing began, illustrates the failure of the PLA as a regulatory body. PLA staff are working under the most extreme conditions – unable to implement basic regulatory requirements and consistently ignoring serious and health threatening complaints from sex workers in licensed brothels.

Contrary to the assertion by the PLA that regulation is a success we claim that the PLA is not fulfilling it's role in sanctioning brothel owners who breach licensing conditions.

3.5. Scaling back of PLA role could ameliorate their financial instability

(RIS p.12) It should be noted at the outset that the options solely concentrate on fee structure - the amount that the industry is required to pay for the various certificates and licenses issued. Scaling back or altering compliance and monitoring activities is not explored under any of the options as the legislative framework tightly prescribes activities which must be undertaken.

We assume that this fee review is in response to the CMC Recommendation 14 which called for such a review.²⁴

However, given the other CMC recommendations, and in particular Recommendation 28²⁵, which suggested that the whole of the PLA resourcing and administrative location be reviewed, we don't understand why "scaling back or altering compliance and monitoring activities" is not explored. After all, at least 6 of the CMC recommendations (4, 15, 22, 24, 26, 28) in *Regulating Prostitution* were related to changes in PLA activities.

It would have been logical for the PLA to wait until the CMC issued its final report on escorts before undertaking this regulatory impact assessment since recommendations made by the CMC might well affect the PLA's administration practices. For example, one recommendation made by the CMC in its Interim Report on escorts was that the PLA scale back advertising monitoring activities.²⁶

We assert that scaling back of the PLA's administration practices in relation to advertising would effectively ameliorate some of the financial issues faced by the PLA.

²⁴ Crime and Misconduct Commission, *Regulating Prostitution: An evaluation of the Prostitution Act 1999 (QLD)*, December 2004, pg xix; Recommendation 14 That the Queensland Government undertake a review of the fee structure for legal brothels, with a view to assessing its relativity with adult entertainment licence fees and assessing the impact of license fees on the development of legal brothels in Queensland

²⁵ Recommendation 28 That the government undertake a review of the resources and administrative location of the PLA to ensure that it has the capacity to meet its legislative requirements.

²⁶ Crime and Misconduct Commission, Should legal outcall prostitution services in Queensland be extended to licensed brothels and/or escort agencies: Interim position paper, December 2005, page 9.

3.6. Economic status and viability of brothels

[RIS p.11] A more realistic and sustainable fee increase is now being sought which takes into account the current business circumstances of licensed brothels in Queensland.

[RIS p.17] Although some of Queensland's legal brothels are doing very well, many have had financial difficulties. One brothel has closed and some licensees have advised that their capacity to remain financially viable is already tenuous at the current fee structure.... In 2004 the licensed industry reported an overall net profit of \$2,042,000.

It is impossible to determine from these figures whether Queensland brothels are experiencing economic difficulties or how fee increases might affect them. We need to see the range of profitability of the brothels. That is, what was the highest level of profit and what was the lowest? What is meant by "doing very well" and "already tenuous"? How many brothels fell within each profit category?

We are given old figures (2004) and not told at what point in the year they refer. In any case, from the figures given it seems that in 2004 the 13-15 brothels which were open and operating were averaging \$157,000 - \$136,000 per year profit. If the profits were indeed being shared at this rate, an additional \$10,000 per year in fees would not seem onerous. However there is no way to make any sort of informed comment about whether fee increases will penalise the industry generally without knowing exactly how many brothels are "doing very well" and what that means in dollars and, alternatively, how many are "already tenuous" and what that means.

In an already profitable brothel, a \$10,000 increase in fees might not be difficult for the business to bear and therefore not problematic at all to the sex workers who work there. However, for sex workers in licensed brothels any increase in fees in an "already tenuous" brothel operation will create increased pressure to perform services. Brothels which experience slow business tend to lose workers to busier brothels. The sex workers who are left behind are pressured to do more shifts and double shifts. There will also be more pressure from the owners and managers to service clients that the sex worker might otherwise not wish to see.

We assert that no informed comment can be made about the impact of fee increases on the economic viability of brothels (and the industry generally) using the information provided by the PLA in this RIS. What is the point of having a regulatory body auditing the brothels if relevant up-to-date figures cannot be produced for analysis?

3.7. Fee increases will impact negatively on sex workers

[RIS p.17] Another key consideration in balancing the costs/benefits of the increase represented by option 3 is its potential impact on sex workers operating from legal brothels.

The Queensland licensing system has already failed sex workers who wish to be empowered to work independently. One intent of the law reform in 1999 was to provide a means by which (a) independent sex workers could come together to work for themselves, or (b) sex workers who chose to work for someone else would have their independence, health and safety ensured.

The way in which the existing system is regulated makes it practically impossible for groups of sex workers to start a brothel together. Increasing the fees will push this possibility even further out of the hands of sex workers.

In the case of sex workers who choose the convenience of working shifts in already operating brothels, fee increases will impact most on those who are already most vulnerable. Sex workers who are older and/or less attractive face disadvantages in the competition for shifts at the busier brothels and are sometimes forced to work in brothels which are slow. Operators of brothels which are already struggling financially will be less inclined to comply with PLA conditions and therefore sex workers in these brothels will be under more pressure to engage in activities which are unsafe and breach the licence conditions. Sex workers, even in busy brothels, are pressured to (a) see clients they do not wish to service, (b) pay for condoms, (c) not work independently, (d) work double shifts etc. In slow brothels these pressures are increased.

We assert that any fee increases will push the possibility of groups of sex workers coming together to operate their own brothel further out of their reach. Fee increases on already tenuous brothels will cause problems for the most vulnerable sex workers - those who rely on these brothels for work.

3.8. Mythologisation of the 'illegal' industry only serves to demonise private workers

[RIS p.17] Operating within an illegal environment where organised crime is rife and workers experience ill-health carries with it flow-on financial costs which are difficult to quantify. For example, staff turnover may be high and this involves recruitment costs. Extra funds may need to be expended in protection. Fines and other sanctions if prosecuted add further to costs. In essence, the legal industry reaps the financial benefits of not being subject to these other financial costs because of regulation of the industry.

The illegal sex industry in Queensland is a creation of the unworkable licensing structure and cannot be stemmed by police activity.

Evidence from all over Australia, over the last 100 years, illustrates that police activity does not stop the sex industry.

The definitions of 'legal' and 'illegal' are inconclusive due to the grey areas within which private workers operate. In their 2004 meeting with the Queensland Police Minister Judy Spence, SSPAN learnt that 100 sex workers a year are charged under the Prostitution Control Bill laws, and SSPAN estimate that at least half of those charged are private workers.

Case study: Police Harassment of Private Sex Workers – 'legal' sex workers as 'illegals' when the police decide to make a 'bust'

In mid-2004 the Prostitution Enforcement Taskforce of QPS made regular calls to private sex workers, posing as clients and requesting unsafe services over the phone. The practice of police posing as clients is a common and regular occurrence in Queensland. The police pose as a client, making bookings with private sex workers and attending in person to the workplace of the sex worker. After checking out the worker and the premises the police make the excuse 'I left my wallet in the car' and leave. SSPAN has been informed of many of these stories since formation in 2003.

In 2004, a police officer, posing as a client, attended at a private sex workers' workplace in person, and pressed repeatedly for unsafe oral sex.²⁷ The discussion was explicit and eventually the worker found the officer's behavior unacceptable and asked him to leave her premises. The police officer said "Oh well, we are going to charge you for your advertising anyway" and pulled out his badge and charged her.

She was charged for having the word 'service' in a nationally advertised magazine. Technically, this is a criminal offence because the PLA regulations only allow you to describe yourself, not what services you provide. The worker in question was charged and found guilty of a criminal offence, for having a single and inoffensive incorrect word in her advertisement.

What this case study illustrates is that if a police officer decides to target and harass a specific private worker, the laws are so stringent that tiny and inconsequential mistakes (such as having one word incorrect in your advertisement) results in that worker being "illegal."

We assert that there is no realistic way of operating "legally" outside the licensed structure.

²⁷ The sex worker approached SSPAN with her story and gave permission for SSPAN to use this as an example of police harassment of private sex workers, and the grey areas of the law pertaining to private sex workers.

Activities that deem a private sex worker "illegal:"

- Two workers sharing a premises, even if they are not working on the same day.
- Two workers sharing an advertisement, even if they don't work together.
- Workers offering doubles.
- Seeking the support of an accountant, cleaner, lawyer or real estate agent.
- Recruitment of a non-licensed security officer.
- Recruitment of a receptionist.
- Phoning, texting, or checking in with another person to let them know about your bookings and safety.
- Having any other second party (who is not a client) aware of your business.
- Having a single word or image that is not strictly within the guidelines of the PLA.

It is nonsensical to talk about illegal operations as a normative concept. Organised crime is not 'rife' in the Queensland illegal environment. Any sex worker trying to run business privately will at one time or another fall into the category of "illegal."

Groups of sex workers who choose to work at the same premises for safety, cost sharing, company and camaraderie are also by definition "illegal." The current practice of criminalising workers from creating small cottage style work environment prevents best practice, which is to work in pairs or small groups for all the reasons already listed. As previously stated, no amount of police activity will prevent the sex industry from manifesting in this way. It is the laws that construct these workers as "illegal," not the actions of the workers themselves, who are simply doing what is safest and best for them at the time.

There is no evidence whatsoever that suggests that sex workers in illegal situations suffer from 'ill-health.' Sex workers in Western Australia, South Australia and Tasmania are all "illegal" yet enjoy the same low rates of STI's and BBV's as the licensed (NT, VIC and QLD) and decriminalised. (NSW) sex industry. This is asserted by Scarlet Alliance in the 2006 Victorian Submission,²⁸ and more conclusive research currently being conducted by the "Laws and Sexual Health" project (LASH) will shed further light on this topic.

Rhetoric which posits an unsafe illegal industry against a safe legal industry maintains the illusion that the licensing system is working successfully. As long as private workers are forced into a 'sole operator' situation in order to be legal, the notion of a "safe and clean" industry maintained by the PLA is a farce.

3.9. Sex worker health and brothel induction

[RIS p.18] The current legislation has been effective in improving the health and safety of the sex workers within it.

²⁸ Scarlet Alliance *Submission to the Victorian Government, RIS, 2006* [http://www.scarletalliance.org.au/library/vic_sub06/file_view viewed July 2006]

It is the understanding of Scarlet Alliance and our Queensland based member organisation and has been reported to the CMC on several occasions that the current legislation has NOT improved the health and safety of Queensland sex workers.

Peer education and provision of targeted prevention services has declined significantly in Queensland since the introduction of licensing.

SQWISI, a Department of Health funded service, formerly provided peer education to sex workers in their place of work or central locations. However funding for these services were de-prioritised.

Outreach to sex workers by trained peer educators (current or former sex workers) providing information, education and referral services targeted to the work practices of sex workers is a key strategy in the successful Australian response to HIV/AIDS.

SQWISI now provides a limited outreach service and an on-line sexual health induction service in place of direct peer education and are no longer funded to do brothel outreach,²⁹

Recommendation 3 of the December 2004 CMC report suggests that sex worker support, including support to leave the industry, be taken over by Queensland Health.³⁰ This is in opposition to the Australian Governments National HIV/AIDS Strategy that reiterates the success of including affected communities (in this case sex workers) in the development of that communities response to HIV/AIDS and that peer education (where services are provided to sex workers by trained peer educators – other sex workers) has continued to be a successful strategy underpinning the Australian response.

Who is going to resource the need for peer education of licensed brothel workers? We have heard nothing about Queensland Health's program for undertaking the induction of brothel workers, now that they no longer feel that SQWISI should do it. Will sex workers be reliant on *unfunded* peer education within the brothels themselves?

²⁹ SQWISI, Personal Communication with Scarlet Alliance, July 2006

³⁰ Crime and Misconduct Commission, *Regulating Prostitution: An evaluation of the Prostitution Act 1999 (QLD)*, December 2004, pg xviii, Available at: [<http://www.cmc.qld.gov.au/data/portal/00000005/content/39465001129618636127.pdf> viewed July 2006]

4. Conclusion:

4.1 Changes to the fee structure cannot compensate for an unworkable system

No amendments to the PLA fee structure can alter the fact that the industry is operating in a grey zone – state sanctioned discrimination against the industry as a whole is a characteristic of the licensed system, and lack of decriminalisation means that there is no grounds upon which to challenge it.

Through the PLA regulations Queensland licensed brothels are treated as an industry that needs to be controlled and micro-managed. Herein is the problem of the costs of running the PLA. Worksafe, industrial, occupational health and safety, planning and standards related regulations should be a priority for the licensed brothel sector of the Queensland sex industry, however these important issues are overlooked while the PLA endeavors to meet the paper-work licensing related tasks that the regulations require it to fulfill.

That the PLA exists at all is illustrative of the discriminatory and regulation heavy Queensland approach to the sex industry.

4.2 The needs of Queensland sex workers are being sidelined continuously, and are not seriously or critically considered in the RIS

In the experience of SSPAN and Scarlet Alliance, sex workers interests are of low importance to the PLA, and are in fact totally overlooked, even when substantial and evidentiary based complaints are made in relation to specific PLA regulations. Peer education has been totally whittled away via funding cuts and self-censorship of SQWISI, sex workers are not of interest or too low on the list for the PLA, and their concerns are falling on deaf ears.

As in other states and territories around Australia (WA, Victoria, Tasmania, Northern Territory), private workers are the vulnerable subject of harassment and public vilification by brothel owners. Examples of this in Queensland include the unqualified yet persistent statements by brothel owners to the CMC inquiry in September 2005,³¹ and the ongoing threat of sacking if found working privately that brothel workers face.³² This area of discrimination will be reinforced if the PLA takes on registration of private sex workers for the purposes of advertising, or for any other purpose.

³¹ See transcripts of CMC Public Hearings into whether escort services in Queensland should be legalised,” Available at [<http://www.cmc.qld.gov.au/asp/index.asp?pgid=10837&cid=5378&id=595>] viewed July 2006

³² Personal Communication to both Scarlet Alliance and SSPAN from a variety of brothel worker sources, many of whom have made their complaints verbally and in writing to the PLA and CMC.

4.3 Hysteria about the mythological “illegal” system only fuels police harassment of private sex workers, and does nothing to ensure that necessary legislative change will occur

The ongoing discussion of “illegals” as the source of the financial and regulatory problems of licensed brothels and the PLA requires serious re-evaluation. The failing of laws to encompass the good working practices of the sex industry results in all private sex workers finding themselves “illegal” at some time during their working life. The licensing system is unworkable not only for those who are within it – but also for those who are outside it. Non-complying businesses are criminalised therefore there is no dialogue to discover what it is about the regulations that render them unworkable.

The maintenance of a discourse about “illegals,” without the inclusion of the points of view of “illegals,” is untenable. Continued claims of problematic “illegals” without critical engagement in the issues by licensed brothel owners, the PLA and the Government, will only serve to confirm fears of most, that is, that “illegals” are the scapegoats for a licensing system that is not working for licensed brothels.