



**SEX WORKER OUTREACH PROGRAM
SEX WORKER REFERENCE GROUP**

Legislative Scrutiny Committee for the NT Planning Act Amendments inquiry
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Scarlet Alliance, Australian Sex Workers Association, Sex Workers Outreach Program (SWOP NT) and Sex Workers Reference Group (SWRG) joint submission on the Planning Amendment Bill 2020

Scarlet Alliance, the Australian Sex Workers Association, is the peak national sex worker organisation in Australia. Formed in 1989, the organisation represents a membership of individual sex workers and sex worker organisations, projects, networks and collectives throughout Australia. Through our work and that of our membership, we have very high access to sex workers and sex industry workplaces in the major cities and many regional areas of Australia.

Scarlet Alliance has played a critical role in informing policy through work with governments and the health sector, both in Australia and internationally, on issues affecting sex workers in the Australian sex industry.

SWOP NT is a member of the Scarlet Alliance Australian Sex Workers Association; their peer based and led program is located within the Northern Territory AIDS & Hepatitis Council (NTAHC). SWOP NT's health promotion service engages sex workers and other sex work industry stakeholders to gain knowledge about the Northern Territory's laws and policies including sex work laws, and work, health and safety requirements.

SWOP NT's advocacy, health promotion, training/workshops, outreach and broader programming aims to improve sex workers lives by holistically addressing issues including our human rights. SWOP NT advocates to reduce stigma and discrimination against us as workers via advocacy, information resources and education sessions to health and legal sectors to facilitate equitable access to services and to inform policy development for a safer framework with an aim to fully decriminalise sex work.

The Sex Worker Reference Group (SWRG) is comprised of past and current sex workers who work in NT. The SWRG co-represents alongside SWOP NT at roundtable and departmental and political meetings, in the delivery of training to stakeholders and at conferences and forums. The SWRG documents best practice and case studies to support our submissions recommendations and evidence for reforms based on the lived experience of workers.

www.scarletalliance.org.au

www.ntahc.org.au/programs/sex-worker-outreach-program-swopnt

Thank you for the opportunity to submit to the proposed amendments to the Planning Act 1999 and related legislation as detailed in the Planning Amendment Bill 2020 (“the Bill”).

We welcome the intent of the Bill to increase transparency and accountability within the planning system and to deliver better development outcomes. While we are predominantly supportive of the amendments proposed in the Bill, there are some amendments that raise potential areas of concern.

With the welcome passing of the Sex Industry Bill 2019 and the imminent application of the recognised best practice model of the full decriminalisation of sex work to the NT, we want to ensure the implementation of a fair and transparent Planning Act that does not undo the intended benefits of decriminalisation on sex industry businesses and the broader community. Experience from other states demonstrates the negative impact that can result from an unfair and inconsistent planning system.

The new purpose and objectives on the function of the Act expand upon the old objects in Section 2a in positive ways. It rightfully focuses on the important role of strategic plans and policy, sustainability, cultural and historical conservation, responsible use of resources and community benefit and engagement throughout the planning processes. What is notably absent is an assurance that the wishes and needs of the *whole* community is considered, including the most marginalised. Further the Planning Act objects and purpose must be driven by evidence informed, equitable decision making processes based on planning considerations and not public misconceptions and misguided fears. The planning system must be transparent and accountable, with mechanisms to ensure the fair and equitable treatment of all, including sex workers and sex services premises.

In the Bill, changes have been made throughout the Act to the way the local authority or councils can respond to proposals, concurrent applications, applications for permits and development proposals. Previously the local authority could make a submission to those processes. The amendments allow the local authority to provide advice or a comment rather than a submission in each of those cases. The explanatory statement to the Bill notes that the advice and comment can be made by the local authority “in the event matters are of a technical nature only” and that “this amendment allows the local authority to differentiate between comments in relation to its role and a provider of infrastructure and services and submissions in relation to planning issues.” This is not clear in the Bill and the Bill does not specify nor restrict the type of comment or advice the local authority or council may provide to the Consent Authority (CA) or the Development Consent Authority (DCA).

Experience from NSW, where sex work was decriminalised in 1995, has demonstrated that councils involvement in planning processes has often been fraught, inconsistent and inequitable. In NSW, councils play a significant role in regulating planning components in relation to sex industry businesses. When local councils do regulate sex industry businesses in accordance with decriminalisation, it has proven to be overall a successful model: a high rate of voluntary compliance, low cost to Government, low levels of complaints, reduced appeals to the Land and Environment Court, and minimal opportunities for corruption. Where implementation, and therefore the potential of decriminalisation has been hindered by council’s overly restrictive and discriminatory approaches to the sex industry in their area, problems have resulted. Over the years Scarlet Alliance have received numerous reports of unfair treatment and discrimination by councils in development applications, zoning and planning processes and in monitoring and enforcement practices. Each council makes their own decisions about planning responses in regard to sex services

businesses in their area. This has resulted in inconsistency of responses, inequitable treatment of sex industry businesses from other land uses and an extreme lack of clarity for sex workers, businesses and the broader community.

The planning system should be designed so that compliance is consistent, reasonable and feasible for all businesses, rather than allowing individual councils to create onerous planning and zoning obstacles, which often act as a de facto ban on what is now a decriminalised industry in NT. The NT Planning Act currently allows for a consistent planning system to be appropriately applied to the diversity of scale and impact of sex industry businesses, just as it is to other businesses. We have concerns that allowing councils to provide “comments and advice” into various processes may impact negatively on sex industry businesses. We would recommend the Bill remove this inclusion and the sections allowing councils to make a submission about a proposal remain as they are in the existing Act. At a minimum, the “comments and advice” must clearly be stated to relate only to councils role in providing infrastructure and services and must be documented and accessible for public view to ensure transparency and accountability. If councils “comments and advice” oppose an application, evidence must be provided to support their opposition and the applicant must be provided an opportunity to respond.

Although councils can nominate 2 community members to the DCA when the Division is within a council area, we welcome the clarification in 89(3) that these community members cannot be employees of the council. While we welcome the inclusion of 98A to provide clarity around the independence of community members in the DCA, we question the inclusion of 98A(2) that allows the community member nominated by the local authority to take into account the opinion of a local authority in relation to a development application. Although it states in 98A(1) that the community member’s decision must be independent, it does not state how the opinion of the local authority can be received, on what grounds and in relation to what matters and if anyone else is aware of the opinion of the local authority. It again allows for a level of undue influence and a lack of transparency into the decision making process. The local authority is able to make a submission in relation to a development application and the community member can consider the submission in line with all other submissions and with the same information for consideration as the other members of the DCA, without the need for other “opinions” to influence their decision making.

We further welcome the inclusion of section 89A requiring training for members of the DCA. We would recommend that guidance is provided to the DCA on the best practice approach to the DCA’s role in implementing decriminalisation and training on the intent and evidence for the laws as they have been passed in the NT. Successful examples of sex industry planning in New South Wales demonstrate that sex industry businesses can be regulated like other businesses, an underpinning aspect of the decriminalisation model of sex industry regulation, in a way that protects the rights, health and safety of sex workers. Critical to the success has been in the consultation and training by sex worker organisations. Scarlet Alliance, SWOP NT and SWRG remain committed to working together with the Minister, Planning Commission, DCA and government to ensure the intended outcomes of decriminalisation of improved compliance, transparency and workplace health and safety for sex workers in the NT.

Scarlet Alliance, SWOP NT and SWRG would welcome the opportunity to provide further details at the upcoming hearing into these amendments. We are also available to answer any questions and provide further information through contact to CEO of Scarlet Alliance, Jules Kim and SWOP NT

Coordinator Leanne Melling via [REDACTED]
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Regards,

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