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The Australian response to ‘10 Reasons for Not Legalizing Prostitution’¹ by Scarlet Alliance, Australian Sex Workers Association

This Scarlet Alliance paper, on behalf of our membership and with input canvassed generally from sex workers in Australia, addresses the Janice Raymond paper ‘10 Reasons for Not Legalizing Prostitution’.

As the sex industry in Australia is regulated by State and Territory law, and each state has a different model of regulation, Australia can be considered a case study of the impact of various models of sex industry law. Scarlet Alliance, as the national peak sex worker organisation in Australia, with a membership of individual sex workers and sex worker organisations, networks, projects and groups is well placed to speak to the impact of such models on the personal and work life of our membership: sex workers in Australia.

Legalisation and decriminalisation are two separate regulatory frameworks with different outcomes and impacts on sex workers.

In the Australian States that Raymond refers to as legalised, the industry is in fact regulated by a licensing framework. The licensing model includes the development of a Government body² to regulate the licensing of sex industry businesses, operators, managers, and in some cases sex workers. This is a complex model which results in a small percentage of the industry operating legally with, in some cases, extreme and illogical conditions regulating day to day operation. In both States it is the regulations determined by the Government body regulating the licensing system which introduced the most problematic conditions.

Any negative impact of this model of regulation **does not signify proof that legalisation is not effective** as there have been positive outcomes for sex workers operating in the legal sectors. The negative outcomes of licensing frameworks relate to regulations and conditions that are illogical and not evidence based. Many individuals have little choice but to operate outside of the licensed and therefore legal industry when the regulations over-regulate the industry. It must be noted that anti-sex work feminists have

¹ Raymond, J., *10 Reasons for Not Legalizing Prostitution*, 1993, viewed 10th May, 2007
<http://www.rapereliefshelter.bc.ca/issues/prostitution_legalizing.html.

² In Queensland the Government body is the Prostitution Licensing Authority, www.pla.qld.gov.au.

lobbied for heavy regulation of the sex industry and have played a role in creating the existing unworkable legal frameworks.

1. **Legalization/decriminalization of prostitution is a gift to pimps, traffickers and the sex industry (Raymond, 2003).**

Australian response: Notably Australia does not have a culture of 'pimps' involved in the sex industry (AFAO, 2000)³.

Sex Industries when regulated by police are susceptible to police corruption. Police demanding pay-offs and/or sex in exchange for not closing businesses/arresting sex workers is well documented when the sex industry is criminalised.⁴

One of the main reasons New South Wales decriminalised the sex industry was to remove police as the regulators of the industry to diminish police corruption. Many sex workers from the time before decriminalisation saw police as the Australian equivalent of pimps.

Decriminalisation has been effective in reducing police corruption in NSW.

Australia's experience - Decriminalisation of the sex industry reduces police corruption. Within a decriminalised sex industry, sex industry businesses are regulated like other businesses eg. inspections by the local government and workplace health and safety authorities. Businesses are authorised and zoning is regulated by councils. Sex workers are not criminals and their work places are not illegal. As such, sex workers advocate for, and expect to have, the same rights as other workers. The likelihood of crime being reported to police has increased.

A strong and vocal sex worker rights movement has given a voice to the sex worker community in Australia for over twenty years, informing Government policy, addressing myths and stereotyping in the media and informing other sex workers of their human and civil rights. The formation of collectives and lobby groups and the 'unionisation' of sex workers has seen a once isolated and segregated group of individuals become a community, coming together in local, national and international networks and advocating for rights as workers and as citizens, irrespective of the legal environments they work in.

Other factors which have contributed to the empowerment of Australian sex workers include:

Supportive legal frameworks that remove criminal sanctions against sex workers and our clients. This has enabled sex workers to openly discuss and negotiate sex with other

³ AFAO and Scarlet Alliance, *Model Principles for Sex Industry Regulation*, 2000, viewed 10th May, 2007 <http://www.afao.org.au/library_docs/policy/sex_law.pdf>

⁴ Fitzgerald (Qld) & Woods (NSW) Inquiries into Police Corruption and charges laid in Western Australia against Police.

consenting adults (our clients) which in turn reduces the possibility of conflict and has increased our ability to effectively introduce safer sex practices into our sexual encounters with clients, thereby reducing our risk of HIV and STI transmission. Funded sex worker community organisations that enable us to come together to have a voice on policy, inform Government, be represented on Government bodies, participate freely, and determine the key issues affecting sex workers with a high level involvement of sex workers, including consultation with sex workers who are unable to participate directly. It should be noted that the issues affecting sex workers in Australia as defined by sex workers are not reflected in the Raymond document. In fact, sex workers in Australia have openly questioned the agenda behind Raymond et al. and the perpetuation of a false and misleading understanding of the outcomes of sex industry regulation in Australia.

Anti-discrimination legislation in three States of Australia has created a legal framework that supports sex workers to address discrimination under the Anti-Discrimination Act. Inclusion in anti-discrimination legislation has begun to address systemic discrimination sending a clear message to Government agencies, service providers, police and the general community.

Whilst CATW members have suggested that they support decriminalisation of sex workers, the group has NOT taken any public action in Australia to support the calls by sex workers in Australia for decriminalisation of sex work. This has included a request by sex workers for a member⁵ of the CATW to sign a petition supporting decriminalisation of sex workers in Western Australia, reversing laws which heavily criminalise women. The request was refused.

Scarlet Alliance believes that the 'support for decriminalisation of women in prostitution' is a public line by CATW to gain support from women generally. However, there has been no active action or support from CATW to progress decriminalisation, even though CATW has lobbied strongly for other sex industry law changes in Australia.

The stereotypes relating to underage sex workers, pimps and drug use have been used to justify further criminalisation or regulation of the industry. Often these issues are focused upon at the expense of occupational health and safety. (AFAO, 2000)

2. Legalization/decriminalization of prostitution and the sex industry promotes sex trafficking (Raymond, 2003).

Australian Response: There is no evidence that sex trafficking is increased in jurisdictions with either a legalised or decriminalised sex industry. In fact, New Zealand and Australia have a low incidence of sex trafficking.

As Australia has several different sex industry regulatory frameworks, including the criminalisation of sex industry businesses in three large States, any sex trafficking that does occur can not be attributed to legalisation or decriminalisation.

⁵ Sheila Jeffreys was approached by a SWAG (Sex Worker Action Group) member following the UWA Institute of Advanced Studies *Future of Gender* Research Workshop in 2001.

In fact, the Australian report for Beijing +10 and CEDAW acknowledge that inappropriate anti-trafficking responses have increased sex workers vulnerability.⁶

3. Legalization/decriminalization of prostitution does not control the sex industry. It expands it (Raymond, 2003).

Australian Response: The size of the Australian Sex Industry has not expanded in the States and Territories that have a decriminalised or legalised sex industry.

A clarification needs to be made that decriminalisation and legalisation as sex industry regulatory models do not seek to control the industry but rather to regulate the sex industry. Like other businesses and workplaces, sex industry businesses need to be regulated. The sex industry does not need or require extra regulation. When the sex industry is singled out as needing extra regulation over other businesses, it is usually because regulators are attempting to affect prohibition rather than legalisation. Indeed, extra regulation often simply enacts systemic discrimination against sex workers, and their workplaces.

Sex workers benefit from a diverse choice of workplaces. Sex workers are not a homogenous group and like all other workforces, individual sex workers have varied requirements for suitable workplace arrangements.

Australia has a culture of small home based businesses that operate with little to no impact on the rest of the community and provide smaller, sex worker controlled, workplaces. Larger sex industry businesses often have a higher turnover of clients (are busier) and suit sex workers who may prefer not to be responsible for managing a business (advertising, phone enquiries, overheads, etc).

4. Legalization/decriminalization of prostitution increases clandestine, hidden, illegal and street prostitution (Raymond, 2003).

Australian Response: New Zealand decriminalised the sex industry in 2003. As New Zealand is the only country to decriminalise the entire industry, it creates a good example for a case study of the outcomes of decriminalisation. A New Zealand study has in its first stages found 'that there has been no increase in the number of street based sex workers' since decriminalisation of the sex industry.'⁷

It is also incorrect to say the legalisation increases clandestine, illegal and street prostitution in the Australian context. The legalisation framework Raymond refers to is a licensing framework. A licensing framework, by its intention, divides the industry into

⁶ Carole Shaw, 2004 Centre for Refugee Research ***Women Taking Action Locally and Globally Outcomes Document, 2004***

⁷ "The Christchurch School of Medicine is also undertaking two estimates of the number of sex workers in New Zealand. Findings from the first estimate, when compared with a similar survey done in 2003, indicate that there has been no increase in the number of street based sex workers since prostitution was decriminalised." <http://www.justice.govt.nz/prostitution-law-review-committee/index.html>

illegal and legal operations. In this way it is the licensing framework itself which makes sex industry operations (including many individual sex workers working privately) illegal.

This is not an outcome of legalisation but is the outcome of an over-restrictive licensing model.

Raymond states *"In New South Wales, brothels were decriminalized in 1995. In 1999, the numbers of brothels in Sydney had increased exponentially to 400-500. The vast majority have no license to operate. To end endemic police corruption, control of illegal prostitution was taken out of the hands of the police and placed in the hands of local councils and planning regulators. The council has neither the money nor the personnel to put investigators into brothels to flush out and prosecute illegal operators"*.

NSW does not have a system of licensing brothels or individuals. It took a pragmatic approach that sought to minimize future potential for further corruption by government officers and unworkable over regulation. In 1995 significant law reforms were introduced through the Disorderly Houses Amendment Act. These reforms were a direct result of the Wood Royal Commission into the NSW Police Service that identified pervasive police corruption in respect to among other areas, the sex industry.

The amendment to the Disorderly Houses Act abolished the common law offence of keeping a brothel. Councils were given powers to take action in the Land & Environment Court to close a brothel in response to amenity complaints from nearby residents or other land occupiers. Later, regulatory responsibility was given to local government pursuant to the Environment Planning & Assessment Act 1979,

The definition of a brothel includes one person premises which has led to unsubstantiated claims that the number of "brothels" in NSW has increased.

Councils have sufficient powers to regulate sex industry businesses - they have the same powers as they have to regulate all industries land usage.

5. Legalization of prostitution and decriminalization of the sex industry increases child prostitution (Raymond, 2003).

Raymond has misrepresented the findings of the ECPAT 1998 national inquiry 'Youth for Sale'.

Raymond states: *"Child prostitution has dramatically risen in Victoria compared to other Australian states where prostitution has not been legalized. Of all the states and territories in Australia, the highest number of reported incidences of child prostitution came from Victoria. In a 1998 study undertaken by ECPAT (End Child Prostitution and Trafficking) who conducted research for the Australian National Inquiry on Child Prostitution, there was increased evidence of organized commercial exploitation of children"*.

ECPAT reported that for their 'national inquiry' they 'surveyed 451 agencies, and of those 258 were aware of incidences of young people engaging in csa (commercial sexual activity).' Of the 258 agencies, they reported 3100 young people confirmed or believed to be participating in 'commercial sexual activity'. This inquiry did not, for ethical and resource reasons, speak to or interview any young people directly.

Clearly this methodology can not be relied on to provide reliable numbers. Nor does this report make any link between numbers of youth providing sexual services and the legalisation of the sex industry. In opposition to Raymond's claims, the report lists a range of factors including homelessness, no access to income etc as the reasons, the service providers interviewed believed, for participation by youth in 'commercial sexual activity'.

The report identifies limitations of the inquiry as lack of contact with any young people, reliance on service providers that did not keep statistics, inconsistencies with the questionnaire and that the data has "an unsteady statistical foundation".⁸

7. Legalization/decriminalization of prostitution increases the demand for prostitution. It boosts the motivation of men to buy women for sex in a much wider and more permissible range of socially acceptable settings (Raymond, 2003).

Australian response: Results of a large representative study of Australian adults, published in 2003⁹ found that 15.6% of Australian men had ever paid for sex, and 1.9% had done so in the previous year. An earlier 1986 study, at which time the sex industry was illegal in every state, found that 19.2% had ever paid for sex, with 2.5% having done so in the previous year. This compares to studies in populations of European men, where from 6.6% to 39% of men had ever paid for sex, with the European average being around 15%. These same studies found that from 1% to 11% of European men had paid for sex in the previous year, with an average of 2-3%. Clearly, the legalisation or decriminalisation of sex work in Australia has not created increased demand.

Legalisation does not result in uncontrolled advertising as may be understood from Raymond's claim that 'Advertisements line the highways of Victoria'. In fact, advertising is heavily regulated under the licensing framework in Victoria and would still be regulated under decriminalisation. Advertisements for sex industry businesses in Victoria are few and their depiction of women is far more discreet than advertisements for cars, chocolates, ice-creams, hair products etc.

In our networks and communications with sex workers from Sweden, we have built an increasing awareness of the negative impact that the criminalisation of clients has had on sex workers. Most notably, the model has resulted in clients' fear of visiting sex workers having negative repercussions for sex workers. As clients will not attend an indoor establishment or visit a home which might easily be under surveillance, sex

⁸ ECPAT, *Youth for Sale*, 1998, viewed 10th May, 2007, <<http://www.childwise.net/young-people-and-prostitution.php>>

⁹ Australian and New Zealand Journal of Public Health, 2003 vol 27 No. 2

workers must now organise to meet clients in a public place or a hidden or quiet street or place determined by the clients. To sex workers in Australia, this means the usual control that sex workers have in determining where and when the interaction takes place would be removed and the clients demanding control of the service location in order to protect themselves from prosecution. Clearly this outcome is not a positive outcome for sex workers. So rather than proving that by 'prohibiting the purchase of sexual services, prostitution and its damaging effects can be counteracted' as Raymond argued, the Swedish model has resulted in a cultural shift in how and where sex work takes place in Sweden and these changes include new and dangerous outcomes for sex workers.

Sex workers have spoken out strongly against the Swedish model of sex industry legislation for a number of years now. The fact that Janice Raymond is advocating for the same is in direct opposition to what sex workers in Sweden say they need to protect their safety.

Petra Ostregren in her paper 'Sex Workers Critique of Swedish Prostitution Policy'¹⁰ states that sex workers in Sweden 'strongly discourage other countries from adopting similar legislation'.

Rather than Sweden's Violence Against Women, Government Bill 1997/98:55 improving conditions for sex workers as described by Raymond, a local sex worker explains the laws 'against purchasing sexual services have increased the risks and the violence against sexworkers and the law against procurement make it impossible for us to work safely'.

8. Legalization/decriminalization of prostitution does not promote women's health (Raymond, 2003).

Many studies show that Australian sex workers enjoy better sexual health than the general community and low rates of HIV/AIDS.¹¹ Whilst this alone does not prove that legalisation or decriminalisation of the sex industry promotes women's health, or even sexual health, it does refute any claim that sex workers are not proficient and 'in control' enough to negotiate condom use. Sex workers in Australia report very high rates of condom use.¹²

Nothing promotes women's health more than having access to social justice and equity. How can women feel they have equal rights to anything when they and their workplaces are criminalised with no recourse to the legal justice?

9. Legalization/decriminalization of prostitution does not enhance women's choice (Raymond, 2003).

¹⁰ Ostregren, P n.d., *Sexworkers Critique of Swedish Prostitution Policy*, viewed 1 June 2007, <<http://www.petraostergren.com/content/view/44/67/>>.

¹¹ Harcourt. C.,

¹² *National HIV/AIDS Strategy 2005-2009* Commonwealth of Australia, 2005

Many sex workers in Australia have described their decision to work as a sex worker as a decision made after considering a range of options. To many, sex work offers greater flexibility of hours and the ability to earn larger amounts of money in a shorter amount of time – allowing single parents and students, for example, to devote extra time to their children or studies without sacrificing their income. However, as sex workers are not an homogenous group, our motivations for entering the industry are diverse and uniquely individual.

Raymond misrepresents the interaction between sex workers and their clients by her statement 'Her compliance is required by the very fact of having to adapt to conditions of inequality that are set by the customer who pays her to do what he wants her to do.'

In an interaction between an individual sex worker and a client the content of the service is, in most cases, negotiated before the service begins and on other occasions as the service is happening. In a national talkfest of sex workers in Australia, sex workers described the initial negotiation as a time to set boundaries with a client, determine the price, introduce safer sex discussions and make the choice to agree to a booking or not.

Raymond's assertion that sex workers will provide unprotected sexual services, or other services they do not want to provide, simply because they are offered an extra payment, is a perpetuation of the myth that sex workers are greedy or 'money hungry' women without professional standards.

Sex workers regularly determine not to do certain activities or to refuse unsafe services because, like most people, their incentive to stay healthy is strong. This is evidenced by high rates of condom use amongst sex workers and low rates of STIs.

A characteristic of contemporary anti-sex work writings is the use of terminology that is both repugnant and derogatory toward sex workers. Raymond and other CATW members, including Sheila Jeffreys, use the term 'prostituted women' even though sex workers have pointed out the disempowering impact of the term and state that they feel its use is highly stigmatising.

10. Women in systems of prostitution do not want the sex industry legalized or decriminalized. (Raymond, 2003)

Scarlet Alliance and our membership strongly refute Raymond's claim that sex workers 'do not want the sex industry legalised or decriminalised'. In Australia, sex workers have publicly called for the sex industry to be decriminalised and have done so consistently since the mid 1980s.

Sex workers and our organisations and regional and international networks are advocating for the decriminalisation of the sex industry.

Scarlet Alliance, the Australian Sex Workers Association, holds a three day national forum each year. Sex worker delegates from each State and Territory attend as do local

and individual sex workers. The executive committee of the organisation is nominated and elected at the Annual General Meeting attached to the meeting. Scarlet Alliance is informed and directed by its membership of sex workers and sex worker organisations/projects/networks and groups. The decision to advocate for the decriminalisation of the sex industry in Australia has developed from strong representation by sex workers demanding decriminalisation to be introduced into all Australian States and Territories in Australia.

Clearly Raymond has decided to not represent the views of the publicly expressed call for the decriminalisation of the sex industry by sex workers in Australia and many other countries, in an attempt to misinform readers.

The Australian experience is that anti-sex work feminists have on many occasions misrepresented the views of sex workers in order to progress their own agenda.

Conclusion:

Scarlet Alliance and our membership strongly recommend the voices of sex workers should be at the forefront of any debate regarding sex industry law. It is often the laws made with our 'protection' in mind, that have the most devastating impacts on our work, safety and personal lives. An example of one such model is the Swedish Model of sex industry regulation which is promoted by anti-sex work feminists globally, yet which Swedish sex workers themselves experience as contributing to unsafe workplaces and work practices, and diminished empowerment.