



Phone – +61 2 9326 9455
Fax – +61 2 9326 9870
Post – P.O. Box 261,
DARLINGHURST NSW 1300
AUSTRALIA

Street - Level 3,
154 Albion Street, Surry Hills

Email – info@scarletalliance.org.au
Web – www.scarletalliance.org.au

Kristina Keneally, NSW Minister for Planning -
office@keneally.minister.nsw.gov.au , and
John Hatzistergos, NSW Attorney General –
office@hatzistergos.minister.nsw.gov.au

Dear Ministers,

Scarlet Alliance have recently become aware that a NSW Taskforce has been formed to respond to ICAC recommendations regarding the sex industry, including representatives from the NSW Department of Planning and the NSW Attorney Generals Office.

Scarlet Alliance endorses and supports the NSW Government's current response to ICAC recommendation (2); in that the Government is not currently considering introducing a licensing regime as part of the regulation of brothels.

Scarlet Alliance also endorses the attached Briefing Paper regarding recommendation (3), titled: ***"ICAC recommendation to restrict advertising for the NSW sex industry will only exacerbate the current problems with sex industry regulation."***

We note that in the past there has often been a failure to consult with sex worker organisations during legislative reviews. This has led to legislative changes put forward to decision makers that would lead to unidentified and unintended negative outcomes for sex workers. In NSW this has resulted in hasty last-minute consultations with sex worker representatives and subsequent revisions of the drafted legislation. To enable the consultation process, Scarlet Alliance is willing to meet with members of the Taskforce to discuss ICAC recommendation (1), reviewing the corruption risks attached to the regulation of brothels by local councils, and developing an appropriate strategy to deal with those risks. We welcome an opportunity to do so before the Government's response to the ICAC recommendations has been finalised, and look forward to hearing back from you soon.

We also seek a meeting with the Minister for Planning and the Attorney General as a matter of urgency, to clarify existing links between occupational health and safety and the regulatory approaches that are being consulted upon. We will be in touch with your offices to arrange such a meeting.

Yours sincerely,

Elena Jeffreys
President of Scarlet Alliance, Australian Sex Worker Association

ICAC recommendation to restrict advertising for the NSW sex industry will exacerbate the current problems with sex industry regulation.

Briefing paper for NSW Minister of Planning and NSW Attorney General

Recent media instigated by the Adult Business Association (ABA) highlighted the 2007 ICAC recommendation to restrict advertising of 'illegal' brothels in NSW. This puts pressure on the NSW Government to act on this issue. This paper proposes that recommendation be rejected.

Background

- The ICAC recommendation to restrict advertising by 'illegal' sex industry operators arose from an investigation into corrupt conduct of a Parramatta Council enforcement officer.
- The ICAC recommendation to adopt a system of restricting advertising to 'permit holders', such as operates in Victoria, was poorly researched. The ICAC failed to recognise essential differences between the Victoria regime of sex industry '**legalisation and licensing**', and the NSW approach of '**decriminalisation**'.
- Soon after the ICAC released its report, the Minister for Planning (at that time The Hon. Frank Sartor), publicly dismissed the advertising recommendation as unworkable in NSW.
- Prohibitions on advertising sex services without development consent would not eradicate the primary cause of 'illegal' or 'unauthorised' premises; namely, overly-restrictive council regulations.

The real problem

- As the Ministerial Taskforce on Brothels noted, "*The [1995] reforms to the prostitution laws made brothels a legitimate land use. However, if planning regulation is too restrictive, it can be difficult for brothel operators to operate legally.*" (Taskforce Final Report: 2001: p. 9). Yet since that time most local councils have continued to create overly-restrictive and prohibitive zoning controls and/or regularly refuse Development Applications from sex services premises - even if they have met the principle objectives of the planning controls. Such decisions are often overturned in the Land and Environment Court, at significant cost to operators and ratepayers.
- The Sex Services Premises Planning Guidelines (SSPPG) state that: "*The most effective way for councils to reduce the number of illegal operators ... within local council areas is to draft planning provisions that enable operators to conduct well-run premises within a reasonable choice of localities.*" (SSPPG: p.76). A notable example of a LEP supporting this principle was made by Armidale/Dumaresq Council in 2007.
- "*The continuation of illegal brothels and the inability of legal brothels to be established is undesirable because: it may encourage street sex work; the amenity impacts are not controlled through development consent provisions; illegal operators are vulnerable to corrupt conduct by council officers (as they were vulnerable to corrupt conduct by police before the DHA Act), and illegal operators are less likely to access occupational health and safety programs.*" (Taskforce Final Report: 2001: p. 11).

Issues – Discussion

- **Until a level playing field exists for all sectors of the sex industry, equal to other legitimate land uses, a significant percentage of operators will remain unauthorised or 'illegal'**. Attempts to restrict advertising under the current circumstances will likely lead to an increasing number of 'illegal' premises, rather than the reduction desired by ICAC and the NSW Government; inflating corruption potential. It will also add newspapers to councils as potential sources of sex industry corruption.
- **Any proposal to restrict advertising would require some form of 'registration' of independent sex workers**. However, the identification of individual sex workers was firmly rejected by the NSW Ministerial Taskforce on Brothels because it is incompatible with the principles of decriminalisation, and contrary to

various agreements, recommendations and policies arising, respectively, from the international, national, and NSW Public Health sectors (p.14).

- **Currently a large number of independent sex workers operate quite lawfully, discreetly and anonymously, as exempt and complying developments in various local government areas**, eg: Sydney City, Canada Bay and Armidale/Dumaresq. Also, in all local government areas of NSW independent sex workers who only offer escort services are currently operating quite lawfully. Independent Escorts do not require consent from local council to do outcalls (SSPPG: 2004: p. 11). Yet both these lawful groups would be captured by advertising restrictions and are more likely to move underground rather than sacrifice their current anonymity.
- **Trying to force sex workers to register in order to advertise would meet considerable resistance from sex workers.** This would lead to sex workers seeking clients in public places (greatly increased numbers of street sex workers is a feature of Victoria's *legalised/licensed* regime) and drive other segments of the industry further underground. The organisation and marketing of services would simply move from the print media to other options that are virtually impossible, or highly costly, for authorities to track; such as chat rooms on the internet.
- **Most importantly, the local sex worker organisation (SWOP) relies upon classified advertisements to identify targets for their outreach services.** This process is cost effective, and enables them to provide relevant Occupational Health and Safety information and safer sex supplies to sex workers and managers of premises, regardless of whether they have consent from council or not. Restrictions on advertising will drive a significant proportion of the sex industry further underground, greatly impeding SWOP's ability to effectively provide such services.

Recommendations to the NSW Minister of Planning and Attorney General:

- **Repeal the *Summary Offences Act (1988): Section 18.*** Deleting this un-used law, thus removing unnecessary discrimination, is consistent with the intentions of decriminalisation. Advertising publishers would still be able to exercise editorial control to ensure sex industry advertisements meet the publication's standards for content.
- **Add new category to the *Anti-Discrimination Act (NSW)* to include protection on the basis of 'lawful sexual activity', or 'occupation, vocation, calling or trade'.**
- **Remove discriminatory provisions against sex workers within the standard LEP.** Amend the Dictionary definitions of 'home occupation' and 'home business' by deleting their reference to 'home occupation (sex services)' and then delete the definition of 'home occupation (sex services)'.
- **Appoint a sex industry liaison officer within the Department of Planning.** This position would require a demonstrable understanding of the NSW sex industry and the intent and justification of decriminalisation. Their role would be to assist Councils to abide by the guiding principles for sex industry planning identified in the SSPPG (p.3); which would be very timely during the current round of LEP reviews.
- **Revise and update the existing SSPPG** as an ongoing resource for councils.
- **Promote the development and use of 'Factsheets' to address and appropriately respond to community concerns and public perceptions of safety issues.** Sample Factsheets are available in the SSPPG (Appendix E).
- **Support and fund the development of a half day education program at the next NSW Local Government Conference,** to: inform councillors of the rationale behind decriminalisation; explain the legislative framework and Standard LEP; explore the impact of planning on the public health prevention strategies, the Occupational Health and Safety of workers and their clients, competition and economic outcomes within the sex industry; discover the reality of amenity issues; and case law.

Scarlet Alliance acknowledges the work of Saul Isbister (ISIS CATS), Julie Bates (Urban Realists) and the Scarlet Alliance Executive in informing this briefing paper.