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Project Manager
Department of Justice
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21 March 2012

Dear Project Manager

Regulation of the Sex Industry in Tasmania

Thank you for the opportunity to comment on the Department of Justice's Discussion Paper on the Regulation of the Sex Industry in Tasmania.

Scarlet Alliance is the Australian Sex Workers Association. Through our objectives, policies and programs, Scarlet Alliance aims to achieve equality, social, legal, political, cultural and economic justice for past and present workers in the sex industry.

Formed in 1989, Scarlet Alliance is Australia's national peak body representing a membership of individual sex workers, and sex worker networks, groups and community-based projects and organisations from around Australia. Scarlet Alliance is a leader when it comes to advocating for the health, safety and welfare of workers in Australia's sex industry. Our member organisations and projects have the highest level of contact with sex workers in Australia of any agency, government or non-government. Through our projects and the work of our membership we have a high level of access to sex industry workplaces in the major cities. Scarlet Alliance represents sex workers on a number of Commonwealth committees and ministerial advisory mechanisms.

The Tasmanian Scarlet Alliance Project is based in Hobart, and provides: health promotion to sex workers in Tasmania; evidence based policy advice to government; addresses stigma and

discrimination through community education and has established strong networks within the Tasmanian Community Sector, State Government and sex workers.

The Tasmanian Scarlet Alliance project, in conjunction with our national office, commends the Attorney General for placing primary importance on promoting the welfare and occupational health and safety of sex workers.

Please find attached our submission supporting decriminalisation as the sex industry regulatory model for Tasmania. This submission outlines how decriminalisation: supports best practice occupational health and safety and human rights for sex workers; results in strong public health outcomes; and ensures that people are able to make a choice to enter sex work as a legitimate employment option and to leave the industry should they chose.

Our submission is based on evidence obtained from Tasmanian sex workers, including a survey conducted with sex workers in urban and regional areas in Tasmania, a long history of engagement by Tasmanian sex workers with sex industry regulation in Tasmania and through analysis of impacts and outcomes of different models of regulation in other parts of Australia. Our support for decriminalisation also considers available evidence and that it is internationally-recognised as the best-practice model for protecting the health, safety and human rights of sex workers.

As sex workers are the primary stakeholders in this law reform process, we look forward to meeting with the Attorney General to discuss this submission further.

Regards,



Kane Matthews
President



Jade Barker
Tasmanian Project Coordinator

Submission to the
**Regulation of the Sex Industry
in Tasmania Discussion Paper**

23rd March, 2012



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Executive Summary

"I am a sex worker. I want to be a sex worker. The money I make pays my bills. I don't want for the laws around what I choose to do for a job to mirror social assumptions of who I am. Having sex for money is not what I do. I provide company. I provide solace. I am kind and I am genuine. The people who pay to spend time with me don't buy my body they pay for my time. It is up to both of us how we spend it. I just wish people would stop telling me how I should behave".

"Sure I don't like my job some days, that's why it's called a job. I choose to work for money, just like everybody else. Only difference is I am not protected by the same industrial laws as everyone else".

Scarlet Alliance supports decriminalisation as the sex industry regulatory model for Tasmania. Our organisation is committed to evidence based policy development and evidence supports our claim that decriminalisation will be the most effective sex industry regulatory model for Tasmania. Decriminalisation will: support best practice occupational health and safety and human rights for sex workers; strong public health outcomes; ensure people are able to make a choice to enter sex work as a legitimate employment option and to leave the industry; be sustainable in the Tasmanian context while providing high levels of compliance at low cost to the community and Government.

This submission is based on a survey conducted by Scarlet Alliance with view to canvassing the needs and concerns of Tasmanian sex workers, the key stakeholders in the current law reform process. Scarlet Alliance has conducted surveys with sex workers from each of the main Tasmanian population centres in order to inform this submission. Additionally, regional sex workers have been contacted either by telephone or electronically. Sixty-two local sex workers were surveyed, in addition to fourteen interstate sex workers who travel to Tasmania for work. The results of this consultation process are the foundation of the Scarlet Alliance submission and boxed quotations from Tasmanian sex workers are used throughout this submission.

When reviewing the current attitudes of Tasmanian sex workers the sentiment most abundantly clear is that of fear. Fear the Tasmanian government will create laws without listening to sex workers. Fear that laws will be created in response to unrelated criminal activity. Fear that if the government chooses laws promoted by moral opponents to the sex industry they will be forced to work in unsafe environments and above all, a fear, that rather than eliminating systemic discrimination the new laws will endorse it.

In their comparative law and health study, Harcourt et al. found that legal climates continue to affect the delivery of health promotion and the occupational health and safety of workers.¹ While a range of structural, social and cultural barriers impact on our health, safety and rights, Ally Daniel notes, ‘the overarching factor affecting the sexual health of sex workers can be found in the legal context in which they work.’²

Evidence-based research demonstrates that harsh legislation and law enforcement acts to ‘breed corruption and seriously damaged public health’.³ In their report, Harcourt et al. note that ‘most prohibitionist regimes only achieve their aim through the suppression of democratic and human rights.’⁴

Decriminalisation is clearly demonstrated to be the best practice model for sex industry regulation. It is recommended by United Nations bodies and Australia’s National HIV Strategy. The recommendations and submissions below detail how criminalisation (the Swedish Model), licensing, police registration and mandatory testing endanger sex workers, and why decriminalisation is the only viable and sustainable approach for the Tasmanian Government.

“Through this legal reformative process I keep being asked about why I want to be a sex worker? Why is that any ones business? The government aren’t career advisors. Aren’t they simply supposed to protect the choices I make?”

¹ Christine Harcourt, Jody O’Connor, Sandra Egger, Christopher K Fairly, Handan Wand, Marcus Y Chen, Lewis Marshall, John M Kaldor and Basil Donovan, ‘The Decriminalisation of Prostitution is Associated with Better Coverage of Health Promotion Programs for Sex Workers’, *Australian and New Zealand Journal of Public Health*, 34:5, 2010, at 482.

² Ally Daniel, ‘The Sexual Health of Sex Workers: No Bad Whores, Just Bad Laws’, *Social Research Briefs*, NSW Health, 2010.

³ Christine Harcourt, Sandra Egger, Basil Donovan, ‘Sex Work and the Law’, *Sexual Health* 2(3), 2005, 121–128 at 126.

⁴ Ibid.

Recommendations

- 1) The Tasmanian Government should adopt decriminalisation as the states' model of sex industry regulation. Decriminalisation in Tasmania will result in: strong occupational health and safety outcomes for sex workers; continued public health outcomes for the general community; high compliance at low cost for government and support improved social inclusion of sex workers into the Tasmanian community. Decriminalisation is recognised as a best practice approach by United Nations Bodies, health professionals, sex workers and sex worker organisations and is identified in Australia's National HIV Strategy supported by comparative research. This model includes decriminalisation of sex work and the regulation of sex industry businesses in the same manner as general businesses are regulated in Tasmania. Decriminalisation in New South Wales and New Zealand have been demonstrated to increase sex worker health and safety and have not lead to a rise in the size of the sex industry;
- 2) Decriminalisation must be coupled with comprehensive Tasmanian anti-discrimination protections for sex workers to be fully effective. The Tasmanian Government should actively seek to end the social exclusion and discrimination experienced by all Tasmanian sex workers;
- 3) The Tasmanian Government should recognise that sex workers are the key stakeholders in this law reform process. Not all interested groups are impacted equally by legislation and input from those who will be most impacted, sex workers, is of the highest importance. A Partnership approach between sex workers and Government has been central to Australia's response to HIV;
- 4) The Tasmanian Government should formally recognise that legal climates without decriminalisation – such as criminal and licensing regimes - pose barriers to effective outreach, encumber rights of sex workers, force sex workers to work invisibly or 'underground', perpetuate discrimination and stigma, and impinge health promotion;
- 5) The Tasmanian Government should formally recognise that the Swedish Model has detrimental effects on the health, safety and rights of sex workers, by driving the industry underground; reducing sex workers' autonomy over our workplaces; inaccurately assuming that clients are perpetrators and sex workers are victims of violence; marginalising male and sex and/or gender diverse sex workers; failing to recognise the fact that clients see sex workers for many different and legitimate reasons; criminalising everyone *around* the sex worker so that it becomes illegal to rent a room, house, hotel room or apartment for sex work; forbidding sex workers from working together; and dramatically decreasing our opportunity to look out for each other's safety;

- 6) The Tasmanian Government should recognise that Police are inappropriate regulators for the sex industry due to demonstrated high levels of corruption, entrapment practices and other policing practices contrary to health promotion. Having Police as regulators means sex workers are unlikely to turn to police in event of a crime;
- 7) The Tasmanian Government should formally acknowledge that licensing models are inappropriate because they do not protect sex workers human rights, health and safety; impose excessive requirements on both businesses and individuals that result in low compliance; create a two-tiered sex industry; require a high level of police involvement to address non-compliance; are very expensive; and detract funding from important sex worker programs;
- 8) The Tasmanian Government should formally recognise that individual registration requirements for Tasmanian sex workers breach the confidentiality and privacy of sex workers; affect our opportunities for employment, further education and access to justice; act as a barrier to sex workers working legally; and limit sex workers' access to health services for fear of being 'outed';
- 9) The Tasmanian Government should acknowledge that mandatory screening requirements for sex workers contradict strong evidence developed and endorsed by the World Health Organisation; are not evidenced by current epidemiology in Australia; create unnecessary, expensive burden on public health funds; lead to sex workers hiding our profession from medical experts; jeopardise sex worker privacy; consumes resources that could be better spent on peer education; perpetuate unfounded stereotypes of sex workers as diseased; and can lead to increased requests for unsafe practices. Voluntary testing remains the optimal and best-practice approach to STI and HIV testing in Australia, as recommended by the National HIV and STI Strategies; The Tasmanian Government should acknowledge that sex workers are entitled to equal access to justice and protection of the law;
- 10) The Tasmanian Government should ensure that sex industry businesses to operate openly and transparently, increasing professionalism and improving workplace standards;
- 11) The Tasmanian Government should recognise sex workers as leaders in safer sex practices. Australian sex workers have demonstrated lower rates of STIs and HIV than the general population and are recognised as safe sex educators of clients and the Australian public;
- 12) Law reform should be based on the health and safety of sex workers, not on religious or moral objections;

- 13) The Tasmanian Government should adequately fund Scarlet Alliance subsequent to any legislative change to design, manage and implement a peer-based sex work project targeting sex workers in Tasmania; and

- 14) The Tasmanian Government should improve awareness amongst Tasmania's service providers (including Sexual Health Services, Police, Family Planning and Legal services) of the self-identified health and welfare needs of sex workers.

Decriminalisation is the Best Practice Model for Sex Industry Legislation

"I don't want to be business woman of the year, in fact, I do not want any notoriety. I just want to do my job safe in the knowledge that I have support."

"I want to be a sex worker. It's what I do for a job. It's not who I am as person. Why can't my work conditions be like everybody else's?"

*'Decriminalisation involves the removal of criminal laws relating to sex work. Sex work is subject to general laws and sex worker businesses are regulated in the same way as other businesses in respect of occupational health and safety, industrial laws, taxation, immigration, planning laws and criminal laws.'*⁵

Decriminalisation recognises sex work as work, increases transparency, creates social inclusion, and fosters health promotion

The basic principle of sex industry law reform should be to legitimise sex work as an occupation. Law reform must address the marginalisation of sex workers, both in a workplace setting and in their everyday lives. Legislation should seek to recognise and uphold the human and civil rights of people working in the sex industry – including industrial rights, anti-discrimination protection and equal access to justice.

If the sex industry in Tasmania was fully decriminalised, it would be more open to scrutiny, as it would be more accessible to service providers and regulatory bodies. It would also provide more choices for sex workers and be more accountable to sex workers. Decriminalisation also has a direct impact on marginalisation, social exclusion and discrimination by sending a clear, direct message to the community that sex workers are not separate from the community, but part of the community, and are not a special case needing to be protected from society, nor have society protected from them. This helps to breakdown untrue stereotypes and myths that burden sex workers in Tasmania and have been the basis for problematic policy in the past.

A decriminalised system amplifies opportunities for outreach, magnifies capacities for peer education, supports sex worker self-determination, maximises compliance, increases transparency and minimises discrimination. A decriminalised environment gives businesses further opportunities to develop important OHS policies, including providing lubricants and massage oils that are non-

⁵ Regulation of the Sex Industry in Tasmania Discussion Paper, Hon. Brian Wightman MP Attorney General Minister for Justice, accessed on 22nd March, 2012 at http://www.justice.tas.gov.au/_data/assets/pdf_file/0008/188738/Regulation_of_the_Sex_Industry_Discussion_Paper.pdf

allergenic, maintaining beds in good repair, ensuring workers have adequate breaks between clients, developing policies to prevent/deal with any condom breakage, providing training and education on disinfecting and safe use of equipment and recommending culturally sensitive medical health clinics.⁶

Public health is best protected under a decriminalised model.

Decriminalisation actively supports health promotion. The World Health Organisation's Commission on Social Determinants of Health (CSDH) in 2005 found that social policies were a key component in avoidable inequalities in public health. A decriminalised model would prevent avoidable inequalities in access to public health services.

"I miss working in a brothel, I like talking to other girls, about how to respond to a client who doesn't want to use a condom. Or how to put on condom on a guy who is overweight or has a weird shaped penis. I can't ask the sexual health. I need to talk to another worker."

The *Ottawa Charter*⁷ defines health promotion action as 'building healthy public policy, creating supportive environments, strengthening community action, developing personal skills, reorienting health services':

Health promotion goes beyond health care. It puts health on the agenda of policy makers in all sectors and at all levels, directing them to be aware of the health consequences of their decisions and to accept their responsibilities for health. Health promotion policy combines diverse but complementary approaches including legislation, fiscal measures, taxation and organizational change. It is coordinated action that leads to health, income and social policies that foster greater equity.

Sex workers share low rates of STIs largely as a result of community based organisation outreach, peer education and health promotion. Both the Sixth National HIV Strategy 2010-2013 and the Second National STI Strategy 2010-2013 note that 'the incidence of HIV/STIs in sex workers in Australia is among the lowest in the world. This is largely because of the establishment of safe-sex as a norm, the availability of safe-sex equipment, and community-driven health promotion and peer-based interventions.'⁸

Sex workers and sex worker organisations have been at the forefront of the response to HIV and STIs

⁶ Scarlet Alliance Occupational Health and Safety Working Group, *A Guide to Best Practice: Occupational Health and Safety in the Australian Sex Industry*, Scarlet Alliance, accessed at <http://www.scarletalliance.org.au/library/bestpractise> on 11 May 2011.

⁷ World Health Organisation, *Ottawa Charter for Health Promotion*, 21 November 1986, accessed at <http://www.who.int/healthpromotion/conferences/previous/ottawa/en/> on 7 September 2011.

⁸ Australian Government Department of Health and Ageing, *Sixth National HIV Strategy 2010-2013*, Commonwealth of Australia, Canberra, 2010, 16; Australian Government Department of Health and Ageing, *Second National STI Strategy 2010-2013*, Commonwealth of Australia, Canberra, 2010, 16. Comparatively low rates of STIs among Australian Sex Workers are also cited in NSW Health, *STI Strategy Environmental Scan*, 2006.

in Australia and are recognised in the National HIV and STI Strategies as playing an important role in HIV and STI prevention. Sex Workers are active participants in reducing rates of HIV and STI.

“The best way to protect sex workers is to decriminalise the sex industry and end the stigma and discrimination against sex work and sex workers. It’s a job. Just like yours. We go to work for the same reasons. Because we live in a society where we need money. Until you’ve been a sex worker I don’t think you have any scope to talk with any authority about it.”

The Tasmanian Director of Public Health, Dr Roscoe Taylor, has publicly stated, “It would be wrong for readers to construe that the sex work industry has contributed to an increase in sexually transmissible infections in our community. In fact, the evidence indicates this to be a rare occurrence.”⁹

The simple reality is that informed and supported sex workers are able to maintain greater occupational health and safety standards where safe sex and general health knowledge can be converted to safe work practices. This can only be fully achieved under a decriminalised framework.

Safe sex practices and access by health services and peer educators is greatly enhanced by decriminalisation. All other models of sex industry regulation will be counterproductive for public health outcomes.

“If the laws change badly I won’t stop working. The government will make me a criminal because I do something pleasurable with another adult. One-day law abiding. Next day prostituted woman or victim. They will decide that I will get no say. Nor will they tell me what I am. I mustn’t understand my own choices. Tell that to my mortgage broker. Tell that to my credit card company. Obviously there is no value in the money I make.”

Decriminalisation is supported by United Nations Bodies and Australia’s HIV and STI Strategies

Increasingly, international policy supports the decriminalisation of sex work. United Nations Secretary General Ban Ki-Moon, quoted in the UNAIDS Guidance Note on HIV and Sex Work, states:

In most countries, discrimination remains legal against women, men who have sex with men, sex workers, drug users, and ethnic minorities. This must change... Not only is it unethical not to protect

⁹ Tasmanian Director of Public Health, cited in the *Sunday Tasmanian*, December 11, 2011.

these groups: it makes no sense from a public health perspective. It hurts us all.¹⁰

The UNAIDS report on the Global AIDS Epidemic 2010 states that ‘countries should now take action to decriminalize sex workers.’¹¹ The Australian Government Sixth National HIV Strategy 2010-2013 states that ‘Australia’s approach to HIV/AIDS has demonstrated the protection of human rights to be compatible with and *essential* to the effective protection of public health.’¹² The Commonwealth HIV/AIDS Action Group and the International HIV/AIDS Alliance write:

Rather than arresting sex workers and closing down brothels, the most effective approach to preventing HIV is to view sex workers as partners in prevention, and encourage them to engage in sexual health promotion as peer educators and advocates.¹³

In their paper on Building Partnerships on HIV and Sex Work (report from the Asia Pacific Regional Consultation), UNAIDS and UNFPA ‘insist on universal rights for sex workers’ whilst ‘removing criminal laws against sex workers’ to promote access to justice and create an ‘enabling legal and policy environment’.¹⁴ The paper states that ‘[v]iolence against sex workers, including by state actors, are human rights violations that should be taken up by human rights institutions’.¹⁵ The Hon. Michael Kirby AC CMG states, ‘We will insist on human rights for all, including for sex workers. Nothing else is acceptable as a matter of true public morality.’¹⁶ Australia’s *Sixth National HIV/AIDS Strategy* states ‘In relation to sex workers, there are data suggesting that sex workers in a decriminalised and deregulated legislative framework have increased control over their work’.¹⁷

A report released in December 2011 by the UNAIDS Advisory Group on HIV and Sex Work¹⁸ asserts – that ‘States should take all necessary measures to enable sex workers to enjoy work-related protections like other workers, including workplace safety and protection from violence, exploitation and discrimination’.¹⁹ This expressly includes removing criminal penalties for purchase and sale of sex, management of sex workers and brothels, and other activities related to sex work.²⁰

The Tasmanian Government should follow the recommendations of the United Nations bodies and

¹⁰ UNAIDS, Joint United Nations Program on HIV/AIDS, *UNAIDS Guidance Note on HIV and Sex Work*, Geneva, 2009, 2.

¹¹ UNAIDS, *Report on the Global AIDS Epidemic*, 2010, 137.

¹² Australian Government Department of Health and Ageing, *Sixth National HIV Strategy 2010-2013*, Commonwealth of Australia, Canberra, 2010 at 6.4, emphasis added.

¹³ Commonwealth HIV/AIDS Action Group and the International HIV/AIDS Alliance, *Enabling Legal Environments for Effective HIV Responses: A Leadership Challenge for the Commonwealth*, 2010, 23.

¹⁴ UNAIDS and UNFPA, *Building Partnerships on HIV and Sex Work: Report and Recommendations from the first Asia and the Pacific Regional Consultation on HIV and Sex Work*, 2011, 13-15.

¹⁵ UNAIDS and UNFPA, *Building Partnerships*, above at 29.

¹⁶ UNAIDS and UNFPA, *Building Partnerships*, above at 14.

¹⁷ Australian Government Department of Health and Ageing, *Sixth National HIV Strategy 2010-2013*, Commonwealth of Australia, Canberra, 2010 at page 20.

¹⁸The report of the UNAIDS Advisory Group on HIV and Sex Work, December 2011, accessed at http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2011/20111215_Report-UNAIDS-Advisory-group-HIV-Sex-Work_en.pdf.

¹⁹ Ibid.

²⁰ Ibid.

National HIV Strategy and decriminalise sex work for the health and safety of Tasmanian sex workers.

"I want to work in a brothel. Sometimes I want to work privately. I just want to work. I want to go to work and come home and be left to do as I choose."

Positive Experiences of Decriminalisation in NSW and New Zealand

In New South Wales where sex work is partially decriminalised, there are very low rates of HIV and STIs. The annual national surveillance report between 2001-2009 demonstrates prevalence of HIV among sex workers has remained consistently low – less than 1%.²¹ The 2011 Law and Sexual Health (LASH) report illustrates that condom use approaches 100% in Sydney brothels.²² In their 2005 comparative study of brothels in Perth, Melbourne and Sydney, Harcourt et al. found that of three Australian approaches to sex work legislation (criminalisation, licensing and decriminalisation), decriminalisation led to the best health outcomes.²³ The authors found that in Sydney, where sex work was decriminalised, the outreach organisation had the 'greatest financial support' and the 'best access to brothels for its outreach workers'.²⁴ Of all three states, the Sex Workers Outreach Project (SWOP) NSW was the only organisation to promote peer education and provide staff with Asian language skills and conduct outreach during the evenings. In comparison Perth, where brothels were operating illegally, had the lowest health and safety levels.²⁵

Similarly, in New Zealand, the introduction of the *Prostitution Reform Act 2003*²⁶ in 2005 decriminalised sex work to safeguard the human rights and Occupational Health and Safety of sex workers.

The Report of the Prostitution Law Review Committee²⁷, as discussed in the Tasmanian Discussion Paper, clearly articulates the success of the laws. The findings indicate increased control and autonomy over the services provided and more than 90% of sex workers feel they have legal rights under the Act. Five years after the enactment of the Prostitution Reform Act 2003, the numbers of sex workers in Christchurch had stayed approximately the same between 1999 and 2006 despite the

²¹ National Centre in HIV Epidemiology and Clinical Research, *HIV/AIDS, Viral Hepatitis and Sexually Transmissible Infections in Australia, Annual Surveillance Report 2010*. National Centre in HIV Epidemiology and Clinical Research, The University of New South Wales, Sydney, NSW; Australian Institute of Health and Welfare, Canberra, ACT, 2007 at 26 and Figure 36.

²² Basil Donovan, C Harcourt, S Egger, L Watchirs Smith, K Schneider, JM Kaldor, MY Chen, CK Fairley, S Tabrizi, *The Sex Industry in New South Wales: A Report to the NSW Government*, Kirby Institute, University of New South Wales, Sydney, 2011, vii.

²³ Christine Harcourt, S Egger, B Donovan (2005), 'Sex Work and the Law', *Sexual Health* 2(3) 121–8 at 121.

²⁴ Ibid.

²⁵ Christine Harcourt et al., 'The Decriminalisation of Prostitution is Associated with Better Coverage of Health Promotion Programs' at 485.

²⁶ New Zealand's Prostitution Reform Act 2003 available at www.legislation.govt.nz/act/public/2003/0028/latest/DLM197815.html.

²⁷ Report available at <http://justice.org.nz/prostitution-law-review-committee/index.html>.

decriminalisation of sex work.²⁸ In NSW, the Law and Sexual Health (LASH) report shows that the number of sex workers in Sydney brothels in 2011 was similar to estimates from 20 years ago.²⁹ This supports the assertion that decriminalisation does not increase the incidence of sex work.

“People who want to criminalise the sex industry need to stop saying they are protecting me. If they want to protect me, give me equal rights. Making me a criminal is not protecting me. Making my clients criminals isn’t protecting me. Don’t criminalise me, just decriminalise the industry and then you will protect me.”

Swedish Model

The Swedish Model is based on a misreading of sex work

In some jurisdictions around the world, governments have called for the criminalisation of the purchase of sexual services but not the selling of sexual services (the ‘Swedish Model’). This model reflects the inaccurate assumption that clients are perpetrators and sex workers are victims of violence. By categorising sex work as ‘violence against women’ this model also denies the existence of sex workers who are not female. Swedish sex worker Pye Jacobsson notes that in Sweden this has marginalised male and sex and gender diverse sex workers.³⁰

This model is popular within schools of thought that conceptualise sex workers as victims and clients as exploiters. This perspective is naïve as it is based on an untrue assumption and oversimplifies the sex industry as a whole. It should be noted that this is not how sex workers describe or represent the consensual contractual agreement between themselves and their clients. It is an uninformed over-generalisation to view all sex workers as poor helpless victims and all clients as perpetrators of crime.

Not all clients are men and not all sex workers are women. People from all classes and backgrounds, as well as couples, people with disability and the elderly, use the services of sex workers of many genders, and many straight-identifying men use the services of male sex workers. Conversely, people from all classes and backgrounds as well as couples, people with disability and older people, also work in the sex industry.

²⁸ New Zealand Government, *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003*, Ministry of Justice, Wellington, 2008, 13.

²⁹ Basil Donovan, C Harcourt, S Egger, L Watchirs Smith, K Schneider, JM Kaldor, MY Chen, CK Fairley, S Tabrizi, *The Sex Industry in New South Wales: A Report to the NSW Government*, Kirby Institute, University of New South Wales, Sydney, 2011, vi, preliminary findings presented at the Sex Workers Outreach Project Policy Meeting, Australasian Society of HIV Medicine, 9 September 2011.

³⁰ Interview with Pye Jacobsson, ‘A Swedish Sex Worker on the Criminalisation of Clients’, accessed at <http://www.youtube.com/watch?v=7D7nOh57-l8> on 30 August 2011.

Banning the buying of sex demonises clients and denies the fact that clients see sex workers for many different and legitimate reasons. Company, therapy and to explore their sexuality in a safe environment are some of the reasons clients give for visiting sex workers. There is no specific demographic of those who purchase sexual services; in fact, the idea that clients of sex workers are somehow 'fringe' citizens is proven false by the amount of money needed to visit a sex worker.

Scarlet Alliance met with the Tasmanian Director of the *Australian Christian Lobby*³¹ to clearly understand the ideology of those who support the 'Swedish Model'. We were able to determine that it comes back to an anti-sex position. It is a very "rescuing prostituted woman" oriented approach. Individual sex workers are capable of deciding for themselves what the risks and benefits of becoming involved in sex work are, and whether becoming involved in sex work is the right choice for them. It isn't the role of the government, feminists, churches, or the law to make that decision for sex workers. To imply that most sex workers are being coerced into doing sex work is simply false and not reflected in the experience of sex workers in Tasmania.

"I see disabled clients, their mum, dad or carer may contact me. I go to their home or hospice. If we get the Swedish model they will be criminals. I get that I won't be, but how do I say to a mother who has been brave enough to call me, "you do know you are breaking the law?"

The 'Swedish Model' does not protect public health or sex worker health and safety

The public health rationale for HIV interventions in sex work settings³² as determined by the World Health Organisation has reviewed current best practice in sex work interventions. The following key principles have been concluded as key aspects of effectiveness and sustainability:

- adopting a non-judgemental attitude;
- ensuring that interventions do no harm;
- ensuring that sex workers' rights to privacy, confidentiality and anonymity are respected;
- respecting sex workers' human rights and according them basic dignity;
- respecting sex workers' views, knowledge and life experiences;
- involving sex workers, and, where appropriate, other community members in all stages of the development and implementation of interventions;
- recognizing that sex workers are usually highly motivated to improve their health and well-being, and that sex workers are part of the solution;

³¹ Meeting with Mr. Mark Brown.

³² World Health Organisation, *The Public Health Rationale for HIV Interventions in Sex Work Settings*, accessed at http://www.who.int/hiv/topics/vct/sw_toolkit/context/en/index.html.

- building capacities and leadership among sex workers in order to facilitate effective participation and community ownership;
- recognizing the role played in HIV transmission by clients and third parties, i.e. targeting the whole sex work setting, including clients and third parties, rather than only sex workers;
- recognizing and adapting to the diversity of sex work settings and of the people involved.

The Swedish model contradicts all of the suggested best practice interventions made by the world health organisation. The ‘Swedish model’ of sex industry legislation does not stop or reduce the industry³³; rather it has the impact of changing the culture of where and how sex work occurs.

The impact in Sweden is that clients, in order to avoid detection, will not agree to visit sex workers at their workplace indoors. Instead they make bookings with sex workers who agree to meet them in a public location (e.g. a bar or park) so that the client feels detection by police is less likely. This has changed the indoor private setting culture of sex work that existed where sex workers would negotiate a service and payment in a location they had purposefully set up to maximise their safety and protect their anonymity. The Swedish model results in clients determining locations suited to protecting themselves rather than sex workers determining work locations based on their needs. The Prostitution Licensing Authority (PLA) Queensland reports that the prohibition on the purchase of sexual services in Sweden has ‘driven the sex industry underground’.³⁴ The PLA reports, ‘sex workers feel less secure and consider themselves at greater risk of violence.’³⁵ With predominantly clients of street-based workers being targeted, sex workers are then denied the choice and autonomy that comes with selecting one’s own work and clients.³⁶ Fearful of losing their client base, street-based sex workers have been spatially displaced, forced into more isolated, poorly-lit industrial and outdoor areas where they are more vulnerable.³⁷

Models that criminalise the clients of sex workers clearly act as a barrier to sex worker health and safety. Petra Östergren and Susanne Dodillet report that in Sweden they have found ‘serious adverse effects of the Sex Purchase Act – especially concerning the health and well-being of sex workers – in

³³ Susanne Dodillet and Petra Östergren, ‘The Swedish Sex Purchase Act: Claimed Success and Documented Effects’, Conference paper presented at the International Workshop: *Decriminalizing Prostitution and Beyond: Practical Experiences and Challenges*. The Hague, March 3 and 4, 2011, accessed at <http://xa.yimg.com/kq/groups/2834953/1982978694/name/Claimed%20Success%20and%20Documented%20Effects%2E%20Dodillet%20%26amp%3B%2> on 13 August 2011.

³⁴ Bob Wallace (Principal Policy Officer), *The Ban on Purchasing Sex in Sweden*, Office of the Prostitution Licensing Authority Queensland, 19 accessed at <http://www.pla.qld.gov.au/Resources/PLA/reportsPublications/documents/THE%20BAN%20ON%20PURCHASING%20SEX%20IN%20SWEDEN%20-%20THE%20SWEDISH%20MODEL.pdf> on 11 May 2011.

³⁵ Bob Wallace, *The Ban on Purchasing Sex in Sweden*, above at 19.

³⁶ Christine Harcourt et al., ‘Sex Work and the Law’, above at 123.

³⁷ ‘Michelle’ cited in ‘Sex Ban Puts Us at Greater Risk’, *The Guardian*, 27 May 2009, cited in B Wallace, *The Ban on Purchasing Sex in Sweden*, above at 15.

spite of the fact that the lawmakers stressed that the ban was not to have a detrimental effect on people in prostitution.’³⁸

In Sweden, laws that criminalise everyone around sex workers act to isolate us and force sex workers into unsafe working conditions. Sex worker blogger Hexy writes:

[W]hile the legislation does not specifically criminalise the sex worker, it criminalises everyone *around* the sex worker. It becomes illegal to rent a room, house, hotel room or apartment for anyone to do sex work out of, or the land lord risks being charged with pimping... ‘Pimping’ is also a charge applied to anyone who assists in finding clients, provides security services, or allows advertising for sex workers. Sex workers cannot work together or they risk being charged with pimping each other, which dramatically decreases our opportunity to look out for each other’s safety, reduce overhead costs, and establish peer support networks, which are known to be our most effective method of reducing the STI rate.³⁹

In Sweden the Penal Code prevents the use of private apartments for sex work, requiring a landlord or tenant to terminate the tenancy or move out if premises are being used for sex work.⁴⁰ The overall effect of these laws has been to reduce sex workers’ control over their workplace. As Susanne Dodillet and Petra Ostergren reflect:

The overall implications of these laws is that no one can operate a brothel, rent an apartment, room or hotel room, assist with finding clients, act as a security guard or allow advertising for sex workers. This in turn implies that sex workers cannot work together, recommend customers to each other, advertise, work from property they rent or own or even cohabit with a partner (since that partner is likely to share part of any income derived from sex work).⁴¹

Hexy notes that laws which prohibit anyone ‘living off the earnings of prostitution’ have been used to charge sex workers’ children with pimping, where they have been living with their parents and not paying rent.⁴² The Swedish Government has also denied access to the methadone treatment program to sex workers unless they leave sex work.⁴³ Elena Jeffreys writes that the Swedish model has proven to be ‘a decade-long failure’ and that the Swedish model ‘ultimately hurts sex workers; decreasing sex workers’ human rights, income, health, dignity, increasing corruption and creating barriers for sex workers to access justice if crimes occur.’⁴⁴

³⁸ Susanne Dodillet and Petra Ostergren, ‘The Swedish Sex Purchase Act: Claimed Success and Documented Effects’ Conference paper presented at the International Workshop *Decriminalizing Prostitution and Beyond: Practical Experiences and Challenges* The Hague, March 3 and 4, 2011, page 3, accessed at <http://www.petraostergren.com/upl/files/54259.pdf> on 17 May 2011.

³⁹ Hexy, ‘On the Swedish Model’, *Feministe*, 23 July 2011, accessed at <http://www.feministe.us/blog/archives/2011/07/23/on-the-swedish-model/> on 13 August 2011.

⁴⁰ Susanne Dodillet and Petra Ostergren, ‘The Swedish Sex Purchase Act’ above at 4.

⁴¹ Susanne Dodillet and Petra Ostergren, ‘The Swedish Sex Purchase Act’ above at 4.

⁴² Hexy, ‘On the Swedish Model’, above.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

Licensing

Licensing results in low compliance, high cost, and creates a two-tiered sex industry

Licensing is sometimes misleadingly referred to as 'legalisation', however it is more accurately described as over-regulation. Licensing imposes stringent requirements on both sex industry businesses and individual sex workers, providing only a narrow range of ways in which we can operate legally. These requirements are so strict that many businesses and individuals are forced to operate outside the licensing system to protect their own safety. This effectively creates a two-tiered sex industry - the legal sector or those that can comply, and the illegal sector made up of the majority, who are unable to meet the excessive conditions of compliance. Licensing rules put sex worker's health, privacy, rights and safety in danger.

For sex industry businesses, licensing may include: being forced to operate in isolated, industrial areas; facing restrictions on the number of rooms allowed; being charged exorbitant licensing fees; unusually long processing times; inconsistent and unfair decisions regarding development applications by local councils; requirements to operate above level in inaccessible locations; anti-clustering laws that prevent sex industry businesses from working close together; and being subject to black bans by councils.

For individual sex workers, licensing may include: registering our legal name and address on a permanent police or government record; being required to undergo forced medical testing; being prevented from working with other sex workers; being banned from working from home; being forced to work in brothels or through escort agencies; being forbidden to work on the street; not being able to access anti-discrimination protections if we operate outside this system; and being prosecuted for acts which would be lawful for non-sex workers (such as consensual sex between adults without a condom).

The *Prostitution Act 1999*⁴⁵ passed by the Queensland Government has given other jurisdictions an opportunity to analyze the success or failure of a licensing model. The twelve years since the enactment of the laws have exposed the deep flaws in the licensing model of legislation. For sex industry businesses, annual Reports from the Queensland Prostitution Licensing Authority show that in 2001-2 the average time to process a brothel licence application was 231 days. A study of why potential applicants did not apply for a license showed *the information required, privacy invasion and fees too expensive* as the top three reasons not to apply. In addition, the Queensland model allows some councils to ban brothels completely. Within two years of implementation, 201 towns or areas were granted permission to refuse brothel development applications. These kinds of regulations

⁴⁵ Accessed at <http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/P/ProstitutA99.pdf>.

remain a barrier – and provide no incentive – for sex industry businesses to operate within legal, licensing systems. In Queensland, by 2005, only 15 brothels had been approved. After ten years of licensing, in 2010 there were still only 24 legal brothels in the whole of Queensland. Majority continue to operate outside the system.⁴⁶

For individual sex workers, there are no incentives to cooperate with a licensing system that puts our health, safety, confidentiality at risk. Sex workers may avoid working in brothels where we are required to disclose our legal name to clients, because it can lead to harassment, discrimination, and improper use of our personal information. Where licensing laws force private sex workers to work alone, many sex workers still work together because it increases our safety, support, and access to safer sex education. Where licensing prohibits sex workers in residential areas, many sex workers still operate from home because it is safer than working in industrial, isolated locations.

Those business owners without the necessary ‘connections’ or with limited finances, as well as sex workers wanting to protect their safety and support, are forced to operate illegally. This creates a two-tiered sex industry, which is disadvantageous to both the legal and illegal sectors. Licensing models have similarly detrimental effects on sex worker health because their focus on licensed brothels creates a group of ‘*clandestinas*’, members of whom fall outside health interventions and miss targeted health programs⁴⁷ – ‘usually they “capture” only a minority of sex industry workers.’⁴⁸ In comparison to NSW where ‘decriminalisation has helped to ensure that the benefits gained in one sector are not denied to people working in less well-tolerated sectors,’⁴⁹ Harcourt et al. argue that the ‘one-size-fits-all’ approach is ‘inappropriate’.⁵⁰

The Department of Health of the Government of Western Australia contracted The Law and Sexual Health (LASH) team at National Centre in HIV Epidemiology and Clinical Research to investigate if the various legislative approaches across Australian jurisdictions were associated with different health and welfare outcomes for the sex workers. The resulting report⁵¹ includes two important points for consideration for the Tasmanian Government:

- Licensing of sex work (‘legalisation’) should not be regarded as a viable legislative response. For over a century systems that require licensing of sex workers or brothels have consistently failed. Most sex workers remain unlicensed, so criminal codes remain in force, leaving the

⁴⁶ Prostitution Licensing Authority Queensland, *Licensed Brothels*, <http://www.pla.qld.gov.au/brothels/licensedBrothels.htm> accessed on 8 September 2011.

⁴⁷ Christine Harcourt et al., ‘Sex Work and the Law’, above at 125.

⁴⁸ *Ibid* at 126.

⁴⁹ *Ibid* at 126.

⁵⁰ *Ibid* at 125.

⁵¹ Donovan, Harcourt, Egger, Schneider, O’Connor, Marshall, Chen, and Fairley, *The Sex Industry in Western Australia: A Report to the Western Australian Government*, National Centre in HIV Epidemiology and Clinical Research, University of New South Wales. Sydney, 2010, accessed at <http://nothing-about-us-without-us.com/wp-content/uploads/2011/05/WA-Sex-Report-2010.pdf>.

potential for police corruption. Licensing systems are expensive and difficult to administer. Thus licensing represents a potential threat to public health – most jurisdictions that once had licensing systems abandoned them long ago.

- At a political level, licensing systems have other costs. Licensed brothel owners have a vested interest in publically exaggerating the scale of their “illegal” competition, goading politicians and police to prosecute.

Licensing is extremely expensive and detracts funding from important sex worker programs

In addition to the obvious human and industrial rights infringements resulting from a licensing model, it is simply not financially viable for Tasmanian Government. A Licensing model is inherently expensive and requires a long-term commitment by the state government to resource the Licensing Authority. In 2002 approximately 80% of the Prostitution Licensing Authority (PLA) income was provided by Government grants. In 2006 approximately 45% of the Prostitution Licensing Authority was still carried by Government grants. The system has cost over \$6 million to operate and is still does not self-sustain through licensing fees. Analysis of the Prostitution Licensing Authority Statement of Financial Performance⁵² reveals annual government grants in excess of \$500,000.⁵³

This money could be better spent by resourcing state sex worker organisations, supporting health promotion, peer education, and maximising sex workers’ human rights, industrial rights and occupational health and safety. The work of sex workers and sex worker organisations is recognised by Australia’s National HIV and STI Strategies as pivotal in the maintenance of low rates of HIV and STIs.

Misunderstandings about organised crime and the role of Police

The licensing of sex industry businesses is often a misguided attempt to discourage organised crime involvement. This is an unjustified stereotype with no basis in evidence. In fact, licensing processes that are unnecessarily harsh or discriminatory actually encourage organised crime involvement and often exclude more appropriate business operators, particularly in cases where a license is denied on the basis of unrelated criminal convictions. Basing licensing on an operator’s criminal history, rather than their ability to run a professional sex industry business, encourages potential operators to employ ‘fronts’, as it has in other states, providing opportunities for corruption and organised crime

⁵²Prostitution Licensing Authority, Annual Report, 2010-2011, accessed at <http://www.pla.qld.gov.au/Resources/PLA/reportsPublications/annualReport/2011/documents/Annual%20Report%202010-2011.pdf>.

⁵³ Ibid page 46.

involvement. Charging exorbitant fees for licenses has a similar effect. There is a lack of demonstrable evidence of any negative amenity impacts of sex industry businesses. Stereotypes associating the presence of sex industry businesses with increased criminality are clearly illogical. Sex workers and businesses are *rendered* illegal by licensing frameworks. Licensing practices do not protect communities from criminality or violence, but instead put sex workers greater danger. Evidence clearly illustrates that it is sex workers who are in need of protection (from harsh licensing frameworks), not communities in need of protection (from sex work).

Moreover, a licensing approach requires a high-level police involvement in regulation of the industry maximising corruption risk. One of the major drivers for decriminalisation in NSW was the findings of the Wood Royal Commission into corruption within the NSW Police Force. The Commission cited evidence showing 'a clear nexus between police corruption and the operation of brothels.'⁵⁴ Licensing affects sex workers' ability to call upon the police for assistance.

"What are the newspapers and church people talking about when they say there is organised crime in Tasmania? I have been a sex worker here for twelve years and the only 'organised crime' levelled at me has been by consistent and organised harassment via text message from people telling me I will 'burn in hell' and that what I am doing 'is against god'. As far as bikies running brothels and taking advantage of me, I see bikers as clients and they are great. I also see truck drivers and taxi drivers. Men who drive busses. I think this organised crime thing is created by journalists who watch too much television."

Individual Registration of Sex Workers

The registration of individual sex workers is an unnecessary and discriminatory practice. Unlike, for example, registered nurses, sex workers are not registered to recognise professional qualifications, specialist training or skills. Registers of sex workers are in fact criminal databases, created as a means to monitor sex workers' activities in much the same way as the Sex Offender Register.

Registered sex workers in other states have suffered great injustices and violations of their civil rights due to their registration, including rejections of visa applications for countries where sex work is illegal, inability to secure rental properties, discrimination in custody disputes and dismissals from non-sex industry employment.

"I will not register as an individual sex worker. Never. Won't happen ever! I am studying in the medical field and I know that if I registered as a sex worker it will impinge on my future work prospects".

⁵⁴ New South Wales Government (1997), *Royal Commission into the NSW Police Service: Final Report – Corruption*, 13.

Placing one's involvement in the sex industry on the public record is one of the primary causes of sex workers avoiding licensing frameworks and choosing to 'go underground'. This is not due to an unwillingness to comply, but is the result of an informed process of risk assessment where sex workers must choose between their legal status and their personal safety.

"No way will I register. And sex work is what I do. It's my job. So I will be forced to break the law. I have had some driving offences but other than that haven't been in trouble. But I will be a criminal if asked to register".

Financial institutions often deny loans or credit to sex workers, even where a pattern of income and savings has been established. Police and the judicial system are reluctant to prosecute crimes committed against sex workers - in cases where crimes are investigated sex workers are often regarded as party to the crime, rather than the victim. Sex workers are routinely discredited as witnesses in criminal proceedings.

As Harcourt et al. write, 'Registered sex workers are socially labelled, acquiring an official history that is not readily buried if their circumstances change. Depending on the severity of the regime, licensed sex workers may have their movements restricted, their travel documents identified and their choice of medical care limited to approved clinics.'⁵⁵ Registration erects a barrier to people working legally (there is often low compliance) and affects the quality of health advice received because workers may not be candid with our health professional for fear of 'outing' ourselves, or may actively avoid health services for fear of prosecution.⁵⁶ As Ally Daniel writes,

The police register acts similarly to a criminal database and once a person's name is listed it can never be removed, even after they have left the sex industry. The stigmatisation of this lasts a lifetime and sex workers, past and present, may avoid health professionals for fear of being discriminated against or of having to disclose their name.⁵⁷

Sex workers often choose to opt out of this process to protect their privacy, leaving them working outside of the law and more vulnerable to further discrimination or abuse. When an 'unregistered' sex worker is assaulted or harassed, rather than going through the usual channels (police complaint, Human Rights Commission, Industrial Relations Tribunal, etc.) the sex worker fears attention from a regulatory body and may choose simply to move house, put up with the harassment or be more covert in the future.

⁵⁵ Christine Harcourt et al., 'Sex Work and the Law', above at 124.

⁵⁶ Jan Jordan, *The Sex Industry in New Zealand: A Literature Review*, Ministry of Justice, 2005.

⁵⁷ Ally Daniel (2010) 'The Sexual Health of Sex Workers: No Bad Whores, Just Bad Laws', *Social Research Briefs*, NSW Health, 19, 1.

In February 2012 a Standing Committee On Justice And Community Safety Inquiry into the Prostitution Act 1992 in the Australian Capital Territory reports, 'A majority of the Committee recommends that sole operators no longer be required to register with the Office of Regulatory Services'.⁵⁸The Standing Committee has arrived at this conclusion after seeing the failure of this discriminatory approach. Tasmania has a chance to learn from the mistakes made in the Australian Capital Territory and at no point should consider individual registration as an option.

Mandatory Testing

The occupational health and safety of sex workers is not improved by mandatory testing

Under some licensing systems, sex workers are required to undergo compulsory STI and HIV testing.

Mandatory testing fails to acknowledge that Australian sex workers already practice safe sex as a fundamental occupational health and safety practice. A review of international programs for controlling HIV infection in sex workers' communities showed that regulatory efforts such as mandatory HIV testing are ineffective.⁵⁹

Mandatory STI and HIV testing for sex workers in licensing regimes is contrary to best-practice models of voluntary testing outlined in the National Strategies and is not evidenced by current epidemiology in Australia.⁶⁰ Although sex workers are often seen in policy initiatives to be a high-risk group for HIV, research shows that sex workers have successfully implemented and consistently maintained safe sex practices. Sex workers have consistently low rates of sexually transmissible infections and HIV,⁶¹ with very high rates of prophylactic use.⁶² STI/HIV prevalence remains low among sex workers in jurisdictions with voluntary testing.⁶³ Evidence indicates that current testing rates in jurisdictions with mandatory testing are 'excessive',⁶⁴ and in their study, Samaranayake et al. found that the use of resources in screening sex workers could be better spent.⁶⁵ Peer education initiatives remain highly effective with a proven track record in health promotion and prevention of STI and HIV transmission. In comparison, Harcourt et al. note, 'Pressure on resources can lead to poor medical standards;

⁵⁸ Standing Committee on Justice and Community Safety Inquiry into the Prostitution Act 1992, 2012, report accessed at <http://www.legassembly.act.gov.au/downloads/reports/JACS09%20Prostitution%20Act.pdf>.

⁵⁹ Day S, Ward H, 'Sex workers and the control of sexually transmitted disease,' *Genitourin Med* 1997; 73: 161–68.

⁶⁰ Australian Government Department of Health and Ageing, *Second National Strategy on Sexually Transmissible Infections 2010-2013*, Commonwealth Australia, Canberra, 2010, 6.2.

⁶¹ Australian Government, *National HIV/AIDS Strategy: Revitalising Australia's response 2005-2008*, Australian Government, Canberra, 2005, 19.

⁶² Roberta Perkins and Francis Lovejoy, *Call Girls*, University of Western Australia Press, 2007.

⁶³ D Wilson, K Heymer, J Anderson, J O'Connor, C Harcourt and D Donovan (2009), 'Sex Workers can be Screened too Often: A Cost-Effective Analysis in Victoria, Australia', *Sexually Transmitted Infections*, October 2009.

⁶⁴ *Ibid*, at 2.

⁶⁵ A Samaranayake, M Chen, J Hocking, C Bradshaw, R Cumming and C Fairley (2009) 'Legislation Requiring Monthly Testing of Sex Workers with Low Rates of Sexually Transmitted Infections Restricts Access to Services for Higher Risk Individuals' *Sexually Transmitted Infections*, 85:7, 540 - 542.

including insensitive or inhumane treatment of sex workers, poor-quality examinations, and breaches of confidentiality.⁶⁶

It would be remiss of the Tasmanian Government to not acknowledge its' status as a signatory to the *National Health Strategy*, which recognises voluntary testing as the most successful approach to detecting STIs.⁶⁷ Perception, rather than evidence, or the best interests of sex worker health and safety motivate the implementation of mandatory testing.

Laws and policies that promote or enforce mandatory or compulsory testing:

- Are in opposition to best practice models of voluntary testing and self regulation of sexual health amongst sex workers;⁶⁸
- Are not supported by current epidemiological evidence in Australia;⁶⁹
- Endorse a false sense of security in the form of a 'certificate,' which confirms only that a person has attended for a sexual health check;
- Create an expensive, unnecessary cost burden on public health funds;
- Overload sexual health services, denying access to sex workers with symptoms, or who have experienced a condom breakage and need to access sexual health services quickly;⁷⁰
- Result in reduced quality of sexual health services to sex workers;⁷¹
- Leads to sex workers hiding their profession from medical experts or avoiding the health system altogether;
- Have the unintentional consequence of endorsing existing social injustices by labelling sex workers as 'diseased' and unable, or unwilling, to take responsibility for their own and their clients' sexual health.

In April 2010, a *National Centre in HIV Epidemiology and Clinical Research* (renamed The Kirby institute) conducted a cost-effectiveness analysis of the financial cost of the testing policy versus the health benefits of averting the transmission of HIV, syphilis, chlamydia and gonorrhoea to clients. The study was conducted in Victoria, Australia and focused on female sex workers. The resulting journal

⁶⁶ Christine Harcourt et al., 'Sex Work and the Law', above at 124.

⁶⁷ Australian Government Department of Health and Ageing, *Second National STI Strategy 2010-2013*, Commonwealth of Australia, Canberra, 2010, accessed at [http://www.health.gov.au/internet/main/publishing.nsf/Content/ohp-national-strategies-2010-sti/\\$File/sti.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/ohp-national-strategies-2010-sti/$File/sti.pdf).

⁶⁸ Australian Government Department of Health and Ageing, *Sixth National HIV Strategy 2010-2013*, Commonwealth of Australia, Canberra, 2010.

⁶⁹ National Centre in HIV Epidemiology and Clinical Research (NCHECR), HIV/AIDS, viral hepatitis and sexually transmissible infections in Australia, *Annual Surveillance Report*, 2006.

⁷⁰ Brisbane Sexual Health Clinic (BIALA) staff and individual sex workers raised access problems as a result of mandatory testing, Scarlet Alliance Community Forum, Brisbane, March 2005.

⁷¹ Basil Donovan and Christine Harcourt, 'Sex Workers', *Sexual Health Medicine*, (Fairley, Russell, Bradford ed), IP Communications, Melbourne, 2005.

article, 'Sex workers can be screened too often: a cost-effectiveness analysis in Victoria, Australia'⁷²; concluded the following;

Mandatory screening of female sex workers at current testing frequencies is not cost-effective for the prevention of disease in their male clients. The current testing rate required of sex workers in Victoria is excessive. Screening intervals for sex workers should be based on local STI epidemiology and not locked by legislation.

The Tasmanian Director of Public Health, Dr Roscoe Taylor, has publicly stated; "Mandatory testing of sex workers is not the preferred approach, as it does not provide a guarantee of safety at any one point in time and risks de-emphasising the key point that sex, when it occurs, needs to be safe – and this is a responsibility of both client and worker".⁷³ Epidemiology shows the high level of personal responsibility sex workers take with regard to their sexual health. Clients of sex workers share equal responsibility. Mandatory testing contradicts the rationale that safer sex is a mutual responsibility.

The Tasmanian Government should conclude that the obvious human rights' implications, coupled with the prohibitive cost of implementation, make mandatory testing of sex workers an imprudent decision for Tasmania.

The protection of people from being forced to work in the sex industry

Scarlet Alliance aims to achieve equality and social, legal, political, cultural and economic justice for sex workers. Securing sex workers' industrial rights, occupational health and safety, anti-discrimination protection are important steps in ensuring that sex workers have choice and autonomy over their work.

Fears about people being forced into the sex industry are often based upon myths and assumptions about sex workers ourselves and what sex work entails. Sex work is a skilled occupation. Sex work is a profession that involves professionalism and dignity. Sex workers do not sell our bodies – we sell a skilled, professional service which involves both the body and mind. Sex workers have skills in negotiation, asserting boundaries and safer sex educating. Sex work is not inherently violent, degrading, objectifying or exploitative. Many sex workers experience objectification and exploitation from public misinformed stigmas about sex work, rather than sex work itself. The Anti-Discrimination Commission in Tasmania has ruled that attitudes that sex work is damaging to families and women is discriminatory.

⁷² Wilson, D, Heymer, K, Anderson, J, O'Connor, J, Harcourt, C and Donovan, B, 'Sex Workers can be Screened too Often: A Cost-Effective Analysis in Victoria, Australia', *Sexually Transmitted Infections*, October 2009, 117–125.

⁷³ *The Sunday Tasmanian*, December 11, 2011.

Anti-sex work agendas have had catastrophic effects on the lives of sex workers. They have resulted in the criminalisation of our workplaces, imprisonment of sex workers, forced health testing, compulsory police registration, restraining orders, cavity searches and a lack of access to justice due to police corruption, stigma, isolation and discrimination. The best way to empower sex workers is through improving working conditions, human rights, industrial rights, job satisfaction, occupational health and safety and access to services.

Scarlet Alliance staff and executive have been active participants in movements to end trafficking and labour exploitation through a prevention approach that improves the rights of sex workers, including migrant sex workers. Our organisation is represented on the Commonwealth Attorney General's Ministerial Round Table on People Trafficking. In 2011 Scarlet Alliance won the Anti-Slavery Association Freedom Award for our Migration Project.

Research by migrant sex workers has generated valuable demographic data on the lives, backgrounds, experiences and needs of migrant sex workers in Australia.⁷⁴ Studies detailing the age, life experience, language skill, and education level of migrant sex workers in Australia show that we are diverse, well educated and have an international outlook. Many have previously travelled and worked throughout the region. Some anticipate returning to Australia, and are experienced, with the majority of those researched showing a high level of knowledge of industrial rights. Evidence-based research by migrant sex workers demonstrates that their rights and wellbeing are best protected by policies focusing on prevention of exploitative conditions rather than increased surveillance.

Trafficking debates in Australia often conflate important terminology and fail to distinguish between trafficking and sex work. The Attorney General must avoid confusion of this issue and that of consensual sex work so as to promote more enlightened policy for the future. Moral hysteria about the sex industry, panic over the sanctity of the body, xenophobic views on migration and racial stereotypes have led to inflated figures of trafficking victims. International research demonstrates that anti-trafficking policies continue to have adverse impacts on migrant sex workers' human rights worldwide. Raid and 'rescue' operations, harassment, and detention of Asian sex workers in visible brothels and massage parlours have forced sex workers to adapt and change the way we work and have acted to force the industry 'underground'. Research shows that criminalisation approaches to trafficking are often culturally insensitive, create barriers to migrant sex workers accessing essential

⁷⁴ Di Surgey, *SIREN's Story*, The Sexual health, Information, Resources and Education for Non-English speaking sex workers (SIREN) Project, Prostitutes Collective of Victoria and Department of Human Services and Health, 1994; Global Alliance Against Traffic in Women, Empower Foundation and Sex Workers Outreach Project, *Research Report: Thai Background Sex Workers in Sydney*, Bangkok, 2000; Pell et al., 'Demographic, Migration Status, and Work-Related Changes in Asian Female Sex Workers Surveyed in Sydney, 1993 and 2003' (2006) in *Australian and New Zealand Journal of Public Health*, 30:2 157-162; Roberta Perkins and Elena Jeffreys, 'Trafficking: Chinese and Other Migrant Sex Workers in Australia', *The Asia Pacific Journal of Anthropology* 2011, publication pending, also accessible at <http://www.scarletalliance.org.au/library/chinesesexworkerposter0607>; Elena Jeffreys (Scarlet Alliance), 'Migrant Sex Workers Research in Australia' Presentation to the 4th Australian National Symposium on Sex Work: Nothing About Us Without Us, 2008.

services, hinder migrant sex workers' opportunities to negotiate suitable workplace conditions and instill distrust in outreach workers and other community service providers.

Trafficking is exacerbated by Australia's hostile immigration policies, including the favouring of specific 'skilled' migration from industrialised countries. Information on visas, forms and the actual visas themselves are not available in languages other than English. Australia's stringent and discriminatory migration policies disadvantage workers from lower-income countries and ensure a lack of opportunities for sex workers to migrate to Australia legally. These policies and lack of appropriate language resources have led to a greater likelihood of dependence on third-party agents in order to travel, ultimately forming an opportunity whereby people may be more susceptible to deception and trafficking.

To decrease reliance on debt contracts and support the human rights of migrant sex workers, the Australian Government should negotiate fair visa systems for those seeking visas to travel to Australia for work, provide accessible information on visa access and conditions in multiple languages, and provide funding and support for peer education and community outreach to strengthen the human, civil and political rights of migrant sex workers and increase their autonomy, agency and self-determination.

Australia looks to sex worker organisations in developing countries as role models in advocating on sex worker rights. International examples of best practice and autonomous sex worker organisations include the Can Do Bar in Thailand, owned and operated by sex workers with just, safe and fair conditions, the Durbar collective in India representing 65 000 sex-workers fighting for sex worker rights, and Friends Frangipani in Papua New Guinea representing sex workers in eight provinces.

Child exploitation is an area of concern for the Tasmanian Government, particularly in light of recent broadly publicised events. Scarlet Alliance acknowledges the pressure placed upon the current government by opposition politicians, the media and broader community as a whole. Protections for children currently exist in the Tasmanian criminal code and it is our understanding that these laws are also under review. Scarlet Alliance submits that sex industry legislative reform focus on the health and wellbeing of all those who choose to work within the industry. Individuals choice and autonomy over our kind of work and workplace conditions and are best protected by industrial rights, occupational health and safety and the decriminalisation of sex work in Tasmania.