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27th January 2011

To the Honorable Charles Christian Porter,
Attorney General of the Western Australian State Government

Submission in Response to Proposed Sex Industry Law Reform in Western Australia 2011

RE: *Proposals to ban sex work in residential areas, license and register sex workers and auxiliary staff, increase criminal penalties for non-compliance and expand related police powers.*

I am writing on behalf of Scarlet Alliance, Australian Sex Workers Association. Our organisation was formed in 1989 and is the national peak body representing the interests of sex workers and sex worker organisations, projects, groups and networks in Australia. Our objectives, policies and programs aim to achieve social, legal, political, cultural, health and economic justice and equality for past and present sex workers. It is within this context that we would like to offer input into the proposed sex industry law reform expected to be debated during 2011.

The attached Submission is

In Opposition to Attorney General Christian Porter's Proposal To:

- Ban sex work in residential areas
- License and register sex workers and auxiliary staff
- Impose restrictions on sex industry advertising
- Increase criminal penalties for non-compliance
- And expand related police powers

While we would much prefer to have engaged in formal consultation during the drafting of the legislation, we hope you will accept our response to your media release on the 25th of November 2010,¹ which was expanded upon during your Parliamentary Address of the same day.²

¹ Christian Porter, Treasurer; Attorney General "Community safety first under proposed prostitution reforms" Portfolio: Attorney General, *Thu 25 November, 2010*

<http://www.mediastatements.wa.gov.au/Pages/default.aspx?ItemId=134502&>

² Christian Porter, "Prostitution Legislation Reforms" Statement by the Attorney General, Legislative Assembly, P9670b-9678a, Thursday 25 November 2010, 11.31am

Scarlet Alliance has participated in every step of sex work law reform in Western Australia since our inception in 1989. In recent years we have consulted, comment and campaigned in relation to:

- the introduction of the Prostitution Act 2000 criminalising street based sex workers and expanding police powers;
- the failed licensing and registration model introduced by Labor's Police Minister Michelle Roberts in 2003;
- the almost successful attempt by the Carpenter Government to decriminalise brothel ownership in 2007/2008;
- the current Liberal Government's attempt to introduce another licensing and registration model.

During this process Scarlet Alliance has contributed numerous submissions and given advice through face to face meetings and briefings, including:

- 2003 Submission to the Prostitution Control Bill
<http://www.scarletalliance.org.au/library/wa-pcbsub03/>
- 2006 Submission to the Prostitution Law Reform Working Group
http://www.scarletalliance.org.au/library/wa_sub_06/
- Briefings to Police and Police Ministers staff
- Briefings to the Department of Planning and Planning Ministers staff
- Briefings to the Health Department and the Health Ministers staff

We are disappointed that in the three years since your appointment as Attorney General you have declined two offers to meet with representatives from our organisation to be briefed on sex work issues. In 2009 we were granted a meeting with your advisers, but it appears that none of our concerns were noted. In 2010, as your office was preparing this draft and when our input could have proven most beneficial, nobody from the Department of the Attorney General was made available to meet with us.

We consider it untenable for the WA Government to consider such radical and hostile legislation for sex workers without seeking input from the Australian Sex Workers Association. As such, please consider this our third formal request for a face to face meeting to discuss the issues of greatest concern, prior to the introduction of your legislation to Parliament.

Thank you for providing an opportunity to comment on certain aspects of your proposal. We look forward to the Western Australian Government abandoning this model and instead creating workable and effective legislation, in consultation with the sex industry, which prioritises the best interest of sex workers and places occupational health and safety as a primary concern. Please do not hesitate to contact Scarlet Alliance should you wish to discuss any part of this submission or to arrange a meeting.

Yours Sincerely,



Elena Jeffreys
President, Scarlet Alliance

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Scarlet Alliance

Scarlet Alliance is the Australian Sex Workers Association. Through our objectives, policies and programs, we aim to achieve equality, social, legal, political, cultural and economic justice for past and present workers in the sex industry, in order for sex workers to be self-determining agents, building their own alliances and choosing where and how they work. This includes supporting the rights of private and street based sex workers to work how and where they choose.

Scarlet Alliance was formed in 1989 following the first National HIV & Sex Work Conference in 1988. Scarlet Alliance is Australia's national peak body of community-based sex worker organisations and projects, with membership made up of sex worker organisations and groups in each of the states and territories and individual sex workers from around Australia. Each year a National Forum and AGM is held, where key policies are developed, an Executive and spokespersons are elected and workshops on issues for sex workers are conducted.

Scarlet Alliance currently plays an active role in Australia's response to HIV/AIDS and has produced a range of resources in collaboration with AFAO, including: *A Guide to Best Practice, Occupational Health and Safety in the Australian Sex Industry (2000)* and *Principles for Model Sex Industry Legislation (2000)* (available at www.scarletalliance.org.au and used as the basis for *A Guide to Occupational Health and Safety in the New Zealand Sex Industry* published by the Occupational Safety and Health Service of the Department of Labour, New Zealand). Scarlet Alliance is a leader when it comes to advocating for the health, safety and welfare of workers in Australia's sex industry.

Australia has the lowest rate of HIV/AIDS amongst sex workers in the world, due to the work of community based sex worker organisations and projects who make up the membership of Scarlet Alliance, along with the response by those working in the sex industry. Scarlet Alliance member organisations and projects have the highest level of contact with sex workers in Australia of any agency, government or non-government. Our projects have close to 100% access to sex industry workplaces in the major cities. Many of our sex worker organisations and projects within Australia also have CALD (Culturally and Linguistically Diverse) or NESB (Non English Speaking Background) Projects employing bi-lingual project workers.

Scarlet Alliance has played a critical role in informing the Australian Government at all levels and informing the health sector, both in Australia and internationally, on issues affecting sex workers in the Australian sex industry. In addition, Scarlet Alliance has been active in promoting to other countries the models of service delivery which have been effective in minimising the transmission of HIV and STIs amongst Australian sex workers and their clients. Our representatives sit on the Commonwealth Attorney General's Roundtable on People Trafficking and the Commonwealth Ministerial Advisory Committee on Blood Borne Viruses and Sexually Transmissible Infections.

Many Scarlet Alliance member sex worker organisations/projects/groups provide an extensive outreach service to sex industry workplaces, thus ensuring a high level of contact with sex workers and other sex industry staff. Scarlet Alliance members also make political representation and collect first hand anecdotal evidence and information about the impact of the laws in Australia. Our associate member in Western Australia is Magenta, the Health Department-funded sex worker services organisation. Many individual Western Australian sex workers are also members of Scarlet Alliance.

Scarlet Alliance Objectives

- (a) To promote the civil and human rights of past and present sex workers and to work toward ending all forms of discrimination against them;
- (b) To lobby for legal and administrative frameworks which do not discriminate against sex workers;
- (c) To challenge any government at any time when and where it implements legislation, regulations, rules, policies or law enforcement practices which are discriminatory and/or repressive to the rights and autonomy of sex workers;
- (d) To actively promote the right of all sex workers to work in whatever area of their chosen occupation, including street, brothel, escort, private and opportunistic work;
- (e) To actively work towards guaranteeing the right of all sex workers to optimum occupational health and safety provisions. This will promote conditions where safe sex and general health knowledge can be converted to safe work practices. Furthermore, challenge any legislation, policy or process which does not so promote the rights of the worker;
- (f) To strive to eradicate sex worker stereotypes and stigmatisation in the popular consciousness and to communicate the diversity of ideas, opinions and aspirations of past and present sex workers;
- (g) To liaise with international sex worker rights groups in the development of regional and international networks, programs and objectives;
- (h) To support sex workers and sex worker organisations to become more politically active;
- (i) To enhance the capacity of sex workers to participate in advancing their rights and build networks & organisations;
- (j) To gather and disseminate sex industry related information to members;
- (k) To play an active role in Australia's response to HIV/AIDS;
- (l) To provide training and education on issues relating to the Australian sex industry and the migration of sex workers into Australia; and
- (m) To present up to date information on sex work issues at national and international forums.

These objects are undertaken in order to advance sex worker rights.

Background: Sex Work Laws in Western Australia

Sex workers in Australia were not illegal for the first 100 years of white colonisation, but were arrested under vagrancy and offensive behaviour laws. The original laws came into place as a reflection and late uptake of moralism that characterised the Victorian era in England, and ‘public soliciting’ laws were passed and enforced from the 1890s and early 20th century.

In the 1890s the WA Government attempted to introduce the Contagious Diseases Act. It was defeated at that time, but mandatory testing policies on sex workers began regardless. In 1892, both soliciting and living on the earnings of sex work were criminalised and by 1902, brothel keeping, being a landlord to a sex worker and owning a sex industry business were also criminalised. None of these laws had any material effect on the size of the sex industry in WA. In 1904 the Police Act legislated clinical examinations and incarceration of sex workers, which had a negative effect on sex worker health and safety.

In the 1950s, Australian police began to speak out about corruption and concerns of failing sex work laws. Across Australia these systems remained entrenched, with unwritten policies allowing brothels and sex workers to operate at police discretion, in many cases due to bribery. Western Australia was no different. Attempts to strengthen laws (such as 1968 legislation to further criminalise Living Off the Earnings) were unsuccessful and police remained the regulators of sex work; the containment policy allowing certain brothels to operate as long as the personal details of staff and sex workers were collected and recorded by the Vice Squad. This was described by police as ‘informal’ and ‘voluntary’ registration, but for sex workers it equated to stand over tactics, bullying and invasion of privacy. Local Councils also participated in this unwritten policy.

In 1975, Judge Norris’ Inquiry determined that containment was an “appropriate” method of regulating sex work and WA continues with a version of this state sanctioned corruption to this day.

In 2000, the Liberal Government passed legislation further criminalising street soliciting and granting police extraordinary powers to search, detain and Move On sex workers. In 2003, the Labor Government unsuccessfully attempted to introduce a licensing model that was vehemently opposed by sex workers and the health sector, and roundly condemned as a violation of civil rights and a risk to public health. In 2007, the Labor Government produced a model of decriminalisation that was, in contrast, supported and applauded by sex workers and other primary stakeholders. The legislation was passed in 2008, but an election was called before the laws were proclaimed and the incoming Liberal Government abandoned them.

And now, in 2011, the Liberal Government is attempting to introduce legislation that appears to be identical to Labor’s failed 2003 licensing model – a model not only condemned by the sex industry and health workers, but also by the Liberal Party itself.

Changes Proposed by the Liberal Government

The licensing of individual sex workers

Licensing and registration forces sex workers to choose between working within the law and putting their personal safety and wellbeing at risk.

Licensing and registration - placing one's involvement in the sex industry on the public record - is one of the primary causes of sex workers avoiding legalised frameworks and choosing to "go underground". This is not due to a 'criminal mindset' or inherent unwillingness to comply, as is often assumed by Government, but is the result of an informed process of risk assessment, where sex workers must choose between their legal status and their personal safety.

Sex industry workers have endured centuries of stigma and discrimination. Even in environments where sex work is legal, this stigma permeates all aspects of a sex worker's professional and personal life and impacts heavily on their health, safety and general wellbeing. Sex industry licensing regimes (including the WA Police Containment register) have directly led to:

- Visa applications being denied by countries where sex work is illegal
- Discrimination in housing, financial institutions, health insurance, Family Court
- disputes and future employment opportunities
- 'Leaking' or misuse of personal information, which can result in stalking, blackmail, extortion and worse
- Harassment by police and other authorities

Entrenched stigma within the police and judiciary can also limit sex workers' access to legal recourse, increasing the potential for violence and exploitation. Under the Liberal Government's proposed legislation, those sex workers forced to avoid the legal framework and "go underground" are at even greater risk of violence, theft and sexual assault, as the harsh penalties associated with working illegally (up to 3 years gaol) will completely remove their ability to report crimes committed against them.

Scarlet Alliance opposes the licensing and registration of individual sex workers, as it seeks to create a criminal register of law-abiding citizens and will increase the level of violence and discrimination experienced by Western Australian sex workers.

The licensing of sex industry business owners and operators

Onerous and expensive licensing systems encourage non-compliance. Businesses should be rewarded, not penalised, for participating in the legal framework.

It is anticipated that excessive controls and restrictions on Western Australian sex industry businesses will result in a proliferation of unlicensed premises, as it has in other states. Rather than placing heavy penalties on those who operate outside the licensing system, there should be incentives for people to operate lawfully.

Licensing systems in other states have proven not to be financially self-sustainable, with some authorities devouring millions of dollars in ongoing state funding. Attempts to pass on these costs to business owners, through increased licensing fees, impacts on profitability and discourages

participation in the legal system. Some business owners may attempt to recover costs from their staff, leading sex workers to leave legal premises and work in illegal brothels or independently. It is these disincentives to compliance that create the two-tiered systems we see in places like Victoria, where the illegal industry dwarfs the legal one.

Scarlet Alliance opposes sex industry businesses being subject to discriminatory treatment - including expensive fees, onerous licensing processes and unreasonable restrictions on operations (hours, staffing, location, advertising) - and believes the proposed system will consume considerable state funds, disadvantage legal sex industry businesses and actively encourage non-compliance.

The banning of sex work in residential areas – Private workers

Private sex workers choose their own working hours, what services they provide and what fees they charge, and do not have to share their income with a third party. This proposal will remove sex workers' ability to operate independently.

Public statements made by the Liberal Government have attempted to gloss over the issue of private (independent/home-based/sole operator) sex work. Terminology like 'quasi-brothels', 'micro-brothels' and 'residential brothels' has been employed to elicit images of large-scale residential businesses and create fear and outrage in the general community.

Over two-thirds of Western Australian sex workers currently work privately; at home, in rented apartments, or as escorts. The Government has not explicitly said private sex work will be banned, but they have stated that all sex industry businesses will be licensed and relegated to select industrial areas. It is highly unlikely that individual sex workers will be in a financial position to rent and convert industrial premises, or license themselves as an owner/operator. These barriers will exclude private sex workers from the proposed legal framework, by default.

Scarlet Alliance opposes the banning of private sex work, as it limits workplace options and removes the ability for sex workers to work independently.

The banning of sex work in residential areas – Brothels

Industrial zones are isolated, unlit and unpopulated and are not suitable locations for service-based businesses, particularly businesses primarily staffed by women.

Industrial areas are often physically distant from population centres and house businesses that operate only in daylight hours. In the daytime, predominantly female sex workers will be heavily outnumbered by predominantly male tradespeople. At night the area will be dark and deserted, creating a security risk for sex workers, their clients and visiting outreach workers. Sex workers will be located far away from shops, food vendors, support services, police and public transport.

There are also real health and safety concerns for sex workers forced to regularly work amongst businesses that produce excessive noise, smells and pollution, or handle hazardous chemicals.

Service-based businesses do not belong in industrial areas. The Liberal Government seek to protect the community from the sex industry, but any perceived risk to the 'moral' health and safety of the general public must be weighed against the actual risk to the physical health and safety of sex workers.

Scarlet Alliance opposes the relegation of sex industry businesses to isolated and dangerous industrial zones. For the safety of staff, brothels should be located in areas that are populated, accessible, secure and close to appropriate services.

Imprisonment of clients who, knowingly or unknowingly, engage the services of a coerced sex worker

Most ‘tip-offs’ about coercion or exploitation come from inside the sex industry. Harsh penalties will discourage clients from reporting suspected cases of abuse.

Clients may be the only people to come into contact with the coerced person and provide the only chance of having their situation reported. The harsh penalties attached to this offence may actively discourage clients reporting suspected abuse.

For example, it’s not unreasonable to assume that a coerced sex worker may not be comfortable talking about their situation with a complete stranger. It might take some time for a relationship to develop between the sex worker and a particular client, before they feel safe enough to disclose their predicament. This means that by the time the client discovers the sex worker has been coerced and needs assistance, they may have already paid that person for sex a number of times – which, under these proposed laws, could see that client imprisoned for between 2 and 14 years.

There is also some concern, due to popular myths and misconceptions about sex slavery and trafficking, that this law will lead to discrimination against some sex workers, particularly those from SE Asia. Clients may be afraid to engage migrant sex workers (or Australian sex workers from multicultural backgrounds) and brothels may be reluctant to hire them, for fear of being targeted by police. This discrimination is already occurring around Australia and internationally, as “migrant sex work” is increasingly conflated with “trafficking” and “Asian sex worker” becomes synonymous with “sex slave” in popular discourse.

As with many anti-trafficking provisions, this proposed offence may disadvantage, rather than assist, sex workers who find themselves in abusive or exploitative situations. There are already sufficient provisions in Federal sex slavery legislation to prosecute instances of trafficking and in Western Australia’s Criminal Code to prosecute sexual exploitation, violence or coercion.

Scarlet Alliance opposes the inclusion of this new offence, particularly the proposal to charge clients who had no way of knowing the person was coerced, as it will discourage clients from reporting suspected abuse and increase discrimination against migrant sex workers.

Increased police powers

Police cannot simultaneously act as prosecutor and protector. If the role of the police is to prosecute sex workers, they cannot be called on for protection.

Western Australian police already have extraordinary and excessive powers to use against sex workers, granted under the Prostitution Act 2000. This includes Move On Notices with no avenue of appeal; the right to enter premises without a warrant; the right to search (including cavity search), seize and detain without arrest; the removal of the right to remain silent; and the reversal of the onus of proof. It’s difficult to imagine how those powers could possibly be increased.

Western Australian police also have a long history of corruption accusations, mostly as a direct result of the Containment Policy. In an environment where individual sex workers face imprisonment of up to 3 years for working illegally, they will be more vulnerable to police abuse than ever before.

The plan to hand the responsibility of regulating and monitoring the entire Western Australian sex industry to police is ludicrous. Under a decriminalised framework, the relevant authorities deal with planning, OH&S, industrial rights and workplace conditions, and police are responsible for investigating criminal activity. Having police assume all those other functions, quite aside from the fact that they are supremely unqualified, will cost excessive amounts of money and consume police time and resources that would be better spent policing our roads and investigating real crimes.

Scarlet Alliance opposes additional powers for police and strongly opposes police involvement in the regulation and monitoring of Western Australia's sex industry.

Sex workers in rural, regional and remote areas

In regional areas, this model of regulation will lead to increased discrimination, increased stigma and decreased access to services for country sex workers.

Western Australia has a substantial regional sex industry. Well-known, large-scale establishments exist in regional cities like Kalgoorlie and Karratha, while more discrete agencies operate in the smaller regional centres. Slightly less well-known are the many private sex workers dotted throughout rural and remote areas.

With so many WA towns dominated by occupations like mining, crayfishing and farming, the ratio of single men to single women is often desperately unbalanced. A recent report by the Queensland University of Technology ('*Booze, Blokes and Brawls*') found men in these areas were coming to blows over the few available women in town and others were drinking heavily to combat loneliness. Under these conditions, sex workers provide an important and highly valued service.

In addition to the problems already raised, the Liberal Government's proposed framework will affect regional sex workers in some unique ways.

Banning sex work in residential areas

Private sex work in regional areas occurs almost exclusively in residential homes. Industrial areas in small towns are often some distance from town, have few (if any) unoccupied buildings, and may lack basic services like power or water. The expense of building or converting premises would be prohibitive for a large-scale business and completely out of reach for a private sex worker.

Licensing individual sex workers

Privacy is a priority concern for all sex workers, but the social risks associated with privacy violations are magnified for people in country areas. This is especially true where police are given an administrative role, as would likely be the case in regional areas under the proposed new laws. It is very easy for police to target and harass people in small towns, and while specialist units exist in the city, country officers are not familiar with sex industry laws or trained to deal sensitively with sex workers. This is compounded by the close-knit nature of small communities, where the police officer regulating your sex work business may also be your son's football coach, or your ex-husband's best friend.

Mandatory STI testing:

While the issue of mandatory testing has not been raised by the Liberal Government thus far, it is a component of most legalised frameworks. Mandatory testing is not recommended under *any* circumstances, as it has negative health implications for sex workers, but it becomes particularly problematic in regional areas. As I'm sure you're well aware, most WA country areas do not have adequate access to medical services. Many GPs have waiting lists of three or four weeks for non-urgent appointments, others are refusing to take on new patients and some towns have no doctor at all. In areas that do have a GP available, a visit can involve long distances and large fuel bills. Country sex workers would have difficulty complying with a strict testing regime and those that can, will be severely disadvantaged compared to their city counterparts.

Recommendations

- 1. That the proposed licensing model be immediately abandoned as unworkable, counter-productive and expensive.**
- 2. That sex work be recognised as a legitimate form of work and that all aspects of the Western Australian sex industry, including brothel, private, escort and street-based sex work, be decriminalised.**
- 3. That any future legislation sits within a framework that recognises the civil and industrial rights of sex workers, and that the health, safety and wellbeing of sex workers is prioritised over all other industry or community concerns.**
- 4. That people working in the sex industry be afforded the same legal rights as other Western Australian citizens, including police protection and access to administrative law processes.**
- 5. That sex industry businesses be afforded the same legal rights as other businesses, without arbitrary and discriminatory restrictions on advertising, employment, service provision or business location.**
- 6. That the location of brothels be determined according to the same local council guidelines as other service-based businesses and that the relegation of brothels to isolated industrial areas be recognised as inappropriate and dangerous.**
- 7. That police be removed from any administrative or regulatory role in the sex industry and instead be charged with protecting sex workers from violence.**
- 8. That the Western Australian Government recognise sex worker representatives as experts in their field that must be consulted directly on issues of sex work policy.**