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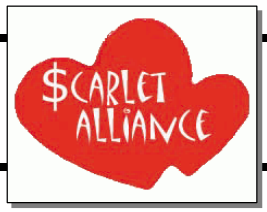

19 August 2005

Mr Paul Myers
General Manager
Program Development and Evaluation
Consumer Affairs Victoria
GPO Box 123A
Melbourne Vic 3001

RE: Victorian Government's review of the Prostitution Control Regulations

Dear Mr Myers

Thank you for the opportunity to comment on the Victorian Government's review of the Prostitution Control Regulations on behalf of Scarlet Alliance, the Australian Sex Worker Association Inc. Formed in 1989 Scarlet Alliance represents sex workers and Australian State based sex worker community organisations, projects, networks and groups at a national level. Through its objectives, policies and programs Scarlet Alliance aims to achieve equality, social, legal, political, cultural, health and economic justice for past and present workers in the sex industry.

General Comment

The Regulation Review has been structured around a series of questions specific to the existing legislation and regulations. This does not enable the level of discussion that is required to address the issues raised by the current regulations. It is our understanding that the current regulations act as a barrier to compliance, and thus create a two tiered industry, where some businesses and individual operators simply don't or won't apply for licenses of exempt registration.

The differentiation in the Act relating to the findings of the 1985 Neave Inquiry has not brought about the desired result; that is: individual self-employed sex workers being able to operate lawfully. Rather, the requirements for registration act as a barrier for these sex workers, and compliance is low. The majority of individual sex workers are working outside the system, and therefore exposed to risks from competitors, clients, the police and other parties who may take advantage of their legal vulnerability. The Act, in combination with the regulations does not allow for the natural progression from sex worker, to small business operator, to brothel or escort agency operator, as it favours only people who are well resourced, who may not be have the expertise nor be the best persons to run these businesses.

Advances in the treatment of STIs and HIV/AIDS have occurred in the last 10 years, such that the legislation and regulations are incompatible with best practice approaches to these issues. Australia has the lowest rate of HIV/AIDS of any sex industry in the world. This was not achieved through regulation; rather it is the result of education and prevention strategies endorsed by the partnerships between communities and government.

There needs to be a broader review of how the regulations work within the context of other Acts, such as the Privacy Act and the Occupational Health and Safety Act (2004). It is impossible within the framework given by this discussion paper to fully explore the real tensions here between the Prostitution Control Act, and the regulations, in relation to these later pieces of legislation.

Recommendation: Scarlet Alliance recommends that the Victorian Government review the Prostitution Control Act and the regulations in order to balance the intentions of that Act against other relevant legislation, such as the Privacy Act and Occupational Health and safety Act.

Regulation 9 Sexually Transmitted Diseases

General comments

The National HIV/AIDS Strategy 2005-2008 states:
There is a relatively low prevalence of HIV/AIDS among Australian sex workers, and there has been no recorded case of HIV transmission in a sex industry setting in Australia. Sex workers are able to negotiate high levels of condom use in their work and voluntary testing has also been an effective component of the response to HIV/AIDS…
Additionally, prevention efforts are often affected by resource constraints and sex industry legislation around anti-discrimination, occupational health and safety and privacy. The different regulatory frameworks that govern sex work in Australia have the potential to have an effect on trends in HIV infections.[1]

Scarlet Alliance recommends that the Victorian Government review sections 19 and 20 of the Act to remove all offences relating to allowing 'a prostitute to work while infected with an STD', and the related offence of 'a prostitute knowingly working' whilst infected, as these laws are outdated and clearly are unnecessary.
The Health (Infectious diseases) Regulations 2001 are sufficient to address the practical issues arising in sex industry settings, and can be taken in combination with the OH&S Act to be overarching, making regulations 19 and 20 redundant, along with the detailed list currently provided as Regulation 9.

Q1. Is the list of sexually transmitted diseases in Regulation 9 compatible and consistent with other laws or regulations?

This list is not compatible and consistent with other laws or regulations.

Sex workers are being singled out for measures that invade their privacy, have no benefits to themselves, their clients or their population group, and simply increase health risks through creating a false sense of security amongst their clients. Sex workers have better sexual health than the general population. However, the Prostitution Control Act and regulations treats sex workers as though they are at increased risk of STIs or HIV, and in need of monitoring by an external party. This is archaic, and does not match the outcomes achieved elsewhere in Australia where less intrusive and self-managed approaches are supported, and have proven more than adequate.

Inconsistent against other health measures in other occupational settings.

There are numerous infectious diseases capable of being transmitted in occupational settings (eg: Hepatitis A in catering and food preparation), and yet no category of offences have been created for either accidental or "knowingly" working whilst infected with such a disease in other occupational settings. Why retain this approach to sex work, when there is low or no risk of transmission, and the epidemiology would indicate that the risks are static (low or no risk)?

In addition, the best outcomes have been achieved through prevention education and the maintenance of access to services. Punishing those sex workers found to have a sexually transmitted infection by making the employment of such persons an offence is disempowering, and pushes those sex workers away from health services. This approach also ignores the efficacy of current treatments, and low incidence of the STDs named in the Act. These diseases simply don't warrant such a heavy handed, intrusive approach.

[1] *National HIV/AIDS Strategy 2005-2008*, Commonwealth of Australia, 2005 p 19.

Incompatible with epidemiology, and with current best practice prevention practices.

The regulations over-pathologise sex workers, who, in fact, have better sexual health than their clients and private sexual partners. The current best practice prevention is the use of condoms and safe sexual practices, as is required to be supported and acted upon under Regulations 14 and 19 in tandem, and under the Health (Infectious Diseases) Regulations 2001.

The STD's listed here are predominantly treatable and/or curable and are not considered to be life-threatening, with the exception of HIV/AIDS. The monitoring of the health of sex workers by employers (even at a distance through requiring evidence of regular testing) places undue pressure on sex workers and their employers, and burdens the health system through over-testing. The window periods for STIs (3 months in the case of HIV) can create a false sense of security and encourage risk-taking behaviors, and, in particular, gives leverage to clients demanding unprotected sex.

The practical application of these regulations has resulted in:

- sex workers being pursued by employers to provide evidence of attendance at clinics or face suspension
- disclosures of health status
- inaccurate assumptions about health status
- Suspensions, unfair dismissals or resignations.

None of this has brought any increased significant health benefits to either sex workers or their clients, as the focus is not on prevention, or health education. Victoria has slightly higher rates of STIs amongst sex workers in comparison to NSW, where no such prohibition is attempted in relation to any STI, including HIV. The NSW Public Health Act depends upon informed consent in negotiating sexual services where an STI is known to be present, and both sex workers and clients have the same obligation.

Q2. Should other sexually transmitted diseases be added or deleted from the list in Regulation 9? If yes, what additions or deletions do you think are appropriate and why?

Yes, they should be deleted.

Recommendation

All of the STD's listed should be deleted, as should those in sections 3, 19 and 20 of the Act, which are not substitutes for Occupational Health and Safety and the practice of safe (protected) sex.

If the removal of sections 3, 19 and 20 in total cannot be achieved, then the rare tropical STDs (Chancroid, LGV, Donovanosis) should be removed, as they are not known to be to be present in the population of sex workers in Victoria (nor their clients), and are clearly visible and treatable.

In addition, the STDs that are prevented by condom use, including HIV/AIDS, should also be removed.

This leaves only genital herpes and warts (when lesions are visible), as these STI's may be transmitted despite condom use due to lesions "shedding virus".

Regulation 10 Advertising Controls

General comments

The advertising controls on sex industry business are too extensive, and inhibit these businesses natural activities. For example, the prohibitions on advertising for ancillary staff seem out of place, given that these businesses are legal, and the employment of ancillary staff is also legal. Limiting the content of advertising is an unnecessary form of censorship, when there are other mechanisms for controlling the content of advertising, regardless of the particular business, that would have greater weight than these regulations.

Q3. How do the controls on advertising contained in Regulation 10 compare with advertising restrictions in other sectors?

The controls are arbitrary, and act as an unnecessary restriction on these businesses. The restriction on the size of printed advertising to 18cm x13cm seems to serve no particular purpose that would not otherwise be controlled by cost alone. All kinds of products and services can be sold on whatever scale the advertiser might wish to afford, and yet advertisements for these businesses are only able to be a maximum size (except under 10 (5)), and may only contain a discrete head and shoulders image. This is discriminatory.

Q4. Do the controls on advertising contained in Regulation 10 strike an appropriate balance between the needs of businesses to advertise and community expectations of discretion?

The existing controls on the content under Reg 10 (4)a) and b) and (6) a)-d) are sufficient to meet community expectations of discretion, as they do not enable depictions of sex, sexuality of nudity.

The requirement to include the PCA number adds a cost burden to advertising for sex industry businesses.

Q5. What is the level of compliance with the advertising controls in Regulation 10? Can compliance be improved? If yes, how?

Q6. Do you think any changes should be made to the advertising controls in Regulation 10? If yes, what are your suggested changes and why?

Recommendation

Scarlet Alliance recommends that restrictions on advertising should be removed.

Q7. What would you consider 'responsible advertising' by prostitution service providers, and how can we promote it?

Responsible advertising is advertising that is not misleading, and does not compromise the health or safety of sex workers, or the staff of service providers.

Q8. Are there practical alternatives to the advertising controls in Regulation 10, which will achieve the best outcomes for sex workers, operators and the community?

- *If yes, what are the alternatives to the controls on advertising in Regulation 10?*
- *How will the alternatives to the controls on advertising in Regulation 10 work in practice?*
- *What strategies will ensure that people will comply with the alternative approaches you suggest?*

Q9. How should the controls on advertising in Regulation 10 take into account some of the changes we have seen happen in Information and Communications Technologies, such as the availability of the internet on mobile phones?

Q10. How should the controls on advertising in Regulation 10 deal with different types of advertising such as:

- *Sponsorship and the promotion of prostitution at events;*
- *Advertising that is disguised as editorials or news reports;*
- *Outdoor signage and billboard advertising;*
- *Internet advertising;*
- *SMS and mobile phone advertising.*

Scarlet Alliance does not support discrimination against sex industry businesses in advertising or methods of advertising. These businesses are legal and legitimate and their advertising should have no specific controls placed upon it, other than those applied to all businesses under the law.

Recommendation:

Discrimination against sex industry businesses should not be played out in these regulations. There should be no arbitrary barriers to these businesses utilizing advertising strategies, or new technologies as they are developed, provided they otherwise meet legal requirements.

Regulation 11 Small Owner-Operators

Comment
Scarlet Alliance does not support models of regulation that depend upon the registration of individual sex workers. The distinction in the Act (1994) between larger and small scale operators has not brought any benefits or advantage to these small operators, and is insensitive to their needs. These regulations create a barrier to compliance, as too many other parties must be involved in approvals and permissions required by the prescribed particulars, creating privacy issues for the applicant.
The regulations fail to acknowledge that stigma and discrimination are major issues for sex workers, and that, in reality, the regulations require individual self-employed sex workers to disclose the nature of their work to a range of parties who may pose a direct health and safety risk. These include their building owner or landlord and local council staff. These parties do not need to know of other self-employed businesses of a similar scale and with limited or no amenity impacts.

The business name, address and phone number should be sufficient for the granting of an exempt PCA number, whilst neither the identity and residential address of the individual sex worker, nor their approvals and permits should be required for privacy and safety reasons.

Q11. Are the registration requirements for small owner-operators contained in Regulation 11 comparable with the registration requirements in other Acts or Regulations?

No. The regulations are onerous, and the range of information required is too great for the intended purpose.

Q12. Given that registration is required to properly identify these small owner-operators and ensure their eligibility for exemption, is the information to be provided in order to register appropriate and sufficient?

Only the business name, business address and business phone number should be required for registration, rather than the range of current requirements. The actual identity of the individual self-employed sex workers does not serve any purpose in regulating the industry, however it does act as a barrier to compliance, thus placing those who won't or can't register outside the law, and subject to risk.

Q13. Do you think the collection of all the prescribed information contained in Regulation 11 is necessary? Are there other pieces of information that should be collected, such as an ABN or other registration information?

No. As has been noted above, too much information is required in Regulation 11. These pieces of information do not assist in regulating the industry; rather they act as a barrier to compliance. New, part-time or occasional sex workers, for example, do not wish to register as too much information is required, and they are unprepared for that level of disclosure. Many prefer then to operate in ways which transgress the system, but place them at risk, as they are outside the system. For example, sex workers will take clients into private settings from contacts made whilst working for licensed brothels, effectively avoiding the system.

Q14. Do you think any changes should be made to the small owner-operator provisions in Regulation 11? If yes, what are your suggested changes and why?

Yes. Regulation 11 should only require the business name, business address and business phone number, currently requirements (b) and (c). The business operator should be contactable, not identifiable. There is little evidence that self employed sex workers are seeking to register, as the requirements are onerous, and create a privacy and safety risk for the individuals.

For example, sex workers do not wish their landlords to know the nature of their work, and are, in addition, likely to wish to operate from a residential address, which can't receive local council planning permit due to the location restrictions on brothels. This creates an impossible set of circumstances that simply locks out private sex workers from being legal and registered, leaving them effectively outside the system, and at ongoing risk for standovers, violence and threats.

The identity of an individual sex worker is not relevant to the register, as it is the business that is being registered, not the service provider. There is no tension here, as the business name and phone number used in advertising would clearly be differentiated from any other sex industry business.

Recommendation

Scarlet Alliance recommends that only the business name, business address and business phone number be required to obtain a small owner-operated PCA number.

Regulations 14 and 19 Safety Requirements

General comments

The development of appropriate Occupational Health and Safety models for the sex industry is being achieved in a range of ways across Australia. Scarlet Alliance has developed the *A guide to best practice Occupational Health and Safety in the Australian sex industry* which has recently been adopted as the framework for the New Zealand Governments Occupational Health & Safety Guidelines. Each state and territory in Australia has its own OH&S Acts that give general guidance to employers as to their roles and responsibilities. For example, in NSW the responsible authority, WorkCover NSW has conducted an education program in partnership with NSW Health and the Sex Workers Outreach Project, whilst also engaging in compliance activities to improve outcomes in sex industry workplaces.

It is important that laws and regulations support the processes which monitor and modify workplaces as risks are identified. It is not an adequate approach to develop piecemeal responses to individual risks, rather than having a comprehensive, multi-faceted, process-orientated approach.
It seems that these regulations need to be less prescriptive, and yet clearly direct the applicant to an understanding of their obligations under the appropriate legislation. With this in mind, these sections of the Act may need to be reviewed, as well as the regulations.

Q15. Are the safety provisions contained in Regulation 19 compatible and consistent with other Acts or regulations, such as the Occupational Health and Safety Act 2004*?*

No. These are not consistent with current practices in improving workplace safety. The best practice approach is a combination of activities to increase knowledge and understanding of the manner in which cycles of risk management need to be implemented in a workplace- an approach which is not captured in the current regulations.

Q16. What health and safety risks is Regulation 19 trying to address? What are the economic and social costs of not addressing these risks and who bears the costs?

Australian workplaces have an obligation to protect the health and safety of both employees and visitors to those workplaces. The risks that are being sought to be addressed by regulation 19 are those of sex workers being protected from violence, intimidation and exploitation, and to some extent, these issues are a matter for criminal law. It seems out of step with other rights to attempt to mitigate these risks solely through the regulations, rather than through a comprehensive workplace-based OH&S system, in combination with other legal options, such as criminal investigation where offences occur.

Recommendation

Regulations 14 and 19 should be replaced by more general references to the Occupational Health and Safety Act, 2004. The OH&S Act is the proper mechanism for addressing workplace risk, and developing measures to eliminate or reduce risk in any particular workplace, and within the systems of work. Workcover Victoria is the proper authority to implement education programs for the sex industry, and to develop compliance processes around OH&S requirements. Scarlet Alliance has produced *A guide to best practice Occupational Health and Safety in the Australian sex industry*[2], which can act as a reference document for the broad range of issues needing to be addressed here.

[2] *A guide to best practice Occupational Health and Safety in the Australian sex industry* Scarlet Alliance and AFAO, 2000

The sex industry should not be treated differently in relation to health and safety, for although there are unique issues within these workplaces, the overarching principles that apply to risk management are equally valid in this industry.

Q17. Can the health and safety provisions in Regulation 19 be improved? If yes, what improvements can be made? How will the improvements you suggest work in practice?

Q18. What are the alternative ways to maximise the health and safety of sex workers? How will the alternatives work? What strategies will ensure people comply with the alternatives?

Q19. If the health and safety regulations were removed, how would the industry behave?

Q20. Are there any additional matters which should be specified in Regulation 19? If yes, what are they?

In summary, Scarlet Alliance asks that you accept our comments and recommendations with consideration to our opinion that this review has been severely limited by it's focus on the Prostitution Control Regulations 1995 in isolation to the Prostitution Control Act and other legislation relevant to the Sex Industry. Our concern is that this review will not result in a comprehensive understanding of the implications of the Act and Regulations on the work and lives of Victorian Sex Workers. Subsequent changes to the Regulations, reliant on this review alone, are unlikely to effectively address the significant changes necessary to improve the Occupational Health & Safety of Victorian Sex Workers.

Scarlet Alliance would be interested in participating in any further consultation regarding Victoria's Sex Industry legislation.

Yours sincerely,

Maria McMahon for
Scarlet Alliance