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31 October, 2006

RE: SEX INDUSTRY LAW REFORM

Dear Kylie,

I am writing on behalf of the Scarlet Alliance, the Australian Sex Worker Association Incorporated. Formed in 1989, Scarlet Alliance represents sex workers and community based sex worker organisations, projects, networks and groups at a national level. Through its objectives, policies and programs, Scarlet Alliance aims to achieve equality and social, legal, political, cultural, health and economic justice for past and present workers in the sex industry.

Scarlet Alliance and our membership have the highest level of contact with Australian sex workers of any organisation or Government body. As such, we are well placed to inform sex industry legislation and proposed policy.

We welcome the Western Australian Government's decision to address sex industry law reform. The Government has a unique opportunity to improve the health and safety of sex workers by decriminalising sex work.

Scarlet Alliance recommends the decriminalisation of sex work; a model which has positive outcomes for sex workers, the community and regulators alike. Decriminalisation allows sex workers access to justice and protection of the law and enables sex industry businesses to operate openly and transparently, increasing professionalism and improving workplace standards. Decriminalisation brings sex industry businesses under the same regulation as all other businesses. Decriminalisation will be a significant demonstration of political leadership in Western Australia, asserting to the general community that sex workers deserve the same rights as all Western Australians. It will also allow for police to fulfil their appropriate role for sex workers, as protectors of justice, rather than prosecutors.

Scarlet Alliance notes from your correspondence that the working group does not intend to include street based sex work in this review, on the basis that it has already been addressed in the Prostitution Act 2000. It would be remiss of us not to point out that the Prostitution Act 2000 includes many discriminatory features and removes civil liberties and human rights from Western Australian sex workers that the rest of the community currently enjoy. Move On Notices, Restraining Orders and extraordinary police powers over sex workers' use of public spaces, their homes and their bodies, are features of the current law. Without the repeal of this Act, there can be little improvement in the lives of WA sex workers.

Street based workers are just as deserving of human rights protections as all other sex workers and it is disappointing that the working party has decided not to consider this sector of the sex industry. In March this year, Scarlet Alliance provided a submission to a New Zealand Parliamentary Inquiry on street based sex work. We ask that you read this recent submission and consider it in your discussions: http://www.scarletalliance.org.au/library/sub-nz06/file_view

Finally we would draw the working group's attention to the need to repeal sections of the Western Australian Criminal Code, enacted over 100 years ago and in current times considered discriminatory and out of step with society. These laws have not been utilised for prosecution for many years. Please see Appendix 1 "Legal Brief on the Western Australian Laws on Sex Work" for a further discussion of these laws and the Prostitution Act 2000.

In Conclusion, Scarlet Alliance notes with concern the lack of sex worker presence on the committee considering these submissions, and looks forward to developing a closer relationship with the Government members who will be driving and negotiating changes to the legislation.

Thank you for this opportunity,

Yours faithfully,

Alina Thomas
President
Scarlet Alliance, Australian Sex Workers Association

Executive Summary

Scarlet Alliance advocates for the decriminalisation of all aspects of sex work in Western Australia.

Political leadership – The current consideration of sex industry law reform by the Western Australian Government is welcomed by Scarlet Alliance. Strong political leadership on this issue will send an important message to the general public that sex workers in Western Australia deserve to enjoy the same rights at work as all other Western Australians.

Human rights - The basic principle of sex industry law reform should be to legitimise sex work as an occupation and 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.

Consultation - Legislation and/or regulations *must* be developed in partnership with sex workers. The Government cannot hope to effectively regulate an industry if it has no working knowledge of that industry.

Registration – Western Australia’s unwritten ‘Containment Policy’, enforced by the WA Police Service unit formerly known as the Vice Squad, included the registration of individual sex workers. This policy was at best ineffective, with many sex workers not registering and at worst highly discriminatory, including individuals being told they could no longer work in the industry as a result of minor offences unrelated to sex work. Privacy is a major concern for sex workers and as such, registration is incredibly unpopular and has very low participation rates in the states and territories where it is currently enforced (NT, Vic¹ and ACT).

Licensing – Licensing of the Western Australian sex industry was strongly opposed by sex workers, community groups, human rights advocates, health and legal experts in 2002. It would be unacceptable for the Western Australian Government to reconsider this failed approach.

Mandatory Testing – The sexual health of Australian sex workers is superior to that of the general community. Statistics show unprecedented success in the response to HIV/AIDS prevention in Australia by sex work communities. This is the result of peer education, funded HIV/AIDS prevention strategies, the implementation of safe sex practices and by sex workers educating their clients. This is not the outcome of ‘enforced’ or mandatory testing; rather it is the outcome of empowered and well resourced, informed and educated sex workers, able to share strategies for condom implementation and

¹ The high number of registered workers in Victoria is not an indication of participation, rather a large number of brothel owners have registered multiple names in anticipation of running small scale operations. It is estimated that 85% of the PCA numbers in Victoria are not in use.

negotiation in their workplaces. If there is one lesson which has been learned from the Australian HIV/AIDS experience, it is that education, not legislation, promotes safe sex practices.

Competition – A recently documented trend in Australia is the rise in brothel owners' unfounded public criticisms of private sex workers.² In Western Australia this has included accusations of Asian sex workers taking large slices of the market by offering services for lower prices. It is imperative that policy makers recognise these attempts to damage the reputations of the competition, as exactly that. Private sex workers choose this mode of working as it provides increased independence in decision making and allows sex workers complete control over negotiations with clients. Laws which force sex workers to work alone, rather than in pairs, put people in situations where they feel less in control of their own safety.

Terminology – 'Sex work' and 'sex worker' is the commonly used and accepted terminology in Government health policy and is the preferred terminology of sex workers. We ask that your office does not further stigmatise sex workers by continuing to use outdated and derogatory terminology, including 'prostitute' and 'prostitution'.

Criminal Code – Out of date laws regarding sex work still exist within the WA Police Act and Criminal Code. The aims of your committee to review sex industry regulation should begin with a recognition that there are particular laws that have not been utilised for decades, and it should be relatively uncontroversial to appeal them. The laws we are referring to are listed within Appendix 1 – Legal Brief on West Australian Laws relating to Sex Work.

² In Western Australia, Queensland and Victoria this year brothel owners have utilised grey areas of the law to publicly denounce their private worker competition. The criticisms are not evidence based and should raise concern about the marginalisation of private workers

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Section One:

CREATING A FRAMEWORK FOR SEX INDUSTRY LEGISLATION THAT IS CONDUCTIVE TO PUBLIC HEALTH BY REGULATING AND CONTROLLING PEOPLE INVOLVED IN THE PROVISION OF SEX WORK AND THE LOCATION OF OPERATORS OF BUSINESSES OF SEX WORK

1) Sex workers enjoy better sexual health than the general community

The late 1980's and early 1990's heralded a series of factors that converge to create the good sexual health enjoyed by sex workers in Australia today. Awareness of HIV/AIDS saw the formalisation of sex worker peer education, the establishment of sex worker organisations, the development of the national peak body for sex workers, targeted health programs with State and Federal Government policy support and funding, and, as a result close to universal use of condoms in the Australian sex industry. Sex workers and sex worker organisations have been at the forefront of responses to HIV and STIs in Australia since that time, and are recognised in the National HIV and STI Strategies as playing an important role in HIV and STI prevention in Australia.

Sex workers have consistently proven to have a *lower* incidence of sexually transmitted infections than the general community.³ It is documented that sex workers in Australia are more likely to use condoms than sexually active women of the same demographic, both at work and in their personal lives.⁴ As Dr Heather Lyttle of the Sexual Health Program of the WA Health Department stated in 2002:

*"...current information from Perth shows that the incidence of sexually transmitted diseases is much lower in Perth sex workers than the general public..."*⁵

The epidemiological, statistical and experiential evidence all concurs – sex workers enjoy better sexual health than the general community does.

*"Sex workers should have unfettered access to the same rights as any other worker covered by the "Occupational Health and Safety Act 1984," and its attendant regulatory system. There should be no distinctions drawn between sex workers and any other kinds of workers for the purposes of the application of the law."*⁶

Recommendation:

- **The working party acknowledge that sex workers have lower incidence of sexually transmitted infections and HIV/AIDS than the general West Australian community.**
- **Sex workers have access to the Occupational Safety and Health Act 1984.**

³ *Submission on the Draft Prostitution Control Bill 2002*, The Australasian College of Sexual Health Physicians, 2002

⁴ Perkins, Roberta "Sexual Health and Safety among a Group of Prostitutes" in *Sex Industry and Public Policy*, 1991, p 147 - 153

⁵ Dr P. Heather Lyttle, *Submission on the Draft Bill: Prostitution Control Bill 2002*, 2002, pg 4

⁶ Unions WA, *Prostitution Control Bill 2002 Submission*, 2002, pg 3

2) Discriminatory Health Policy has negative public health outcomes

Discrimination can increase a sex workers' vulnerability to sexually transmissible infection.⁷ Given that sex workers enjoy lower rates of STIs and HIV, and higher rates of condom use, laws or policies that unfairly target sex workers for the enforcement of sexual behaviour can only be understood as discriminatory and not based on epidemiological fact. Many policies in Australia have been introduced to regulate the sexual health of sex workers (eg. mandatory testing) that actually have had a *negative* impact on public health, with sex workers foregoing testing that they once undertook voluntarily, and clients demanding unsafe sex practices in the belief that those workers are disease-free. Discriminatory practices (such as enforced or mandatory testing) treat sex workers as a homogenous group and risk losing the proven successes of peer education, access to free and confidential sexual health care and self regulation.

Recommendation:

- **There is no necessity for sex industry specific laws in relation to health and safety in the sex industry. It is more appropriate to see sex workers included in existing Occupational Health and Safety laws, which provide Duty of Care regulations and guidelines for Personal Protective Equipment use.**
- **There is no necessity for sex industry specific laws in relation to sexual behaviour. The WA Criminal Code contains adequate provisions to prosecute people who knowingly engage in sexual conduct that endangers the sexual health of others.**
- **The introduction of health laws that are designed to specifically target sex workers would be discriminatory, not in sex workers best interests and in contravention of the Commonwealth National STI Strategy.**

⁷ Ibid, pg 28

3) Sexual Health Certificates are a failed public health measure

Some brothels in Western Australia require the viewing of a 'sexual health certificate' by brothel owners, either weekly or fortnightly. This 'enforced testing' has no beneficial outcomes for sex workers, brothel owners, clients or the public and contributes to a misconception about what is 'safe' practice in the sex industry

The sexual health certificate process in Western Australia operates in the following way:

- a) Sex workers, using a pseudonym or work name, visit the sexual health clinic.
- b) The clinic knows them only by their pseudonym or work name. Medicare card is not required.
- c) During the visit the sex worker will be told of the result of the tests taken during the last visit. If a positive test result came back, the STI will be treated and it is possible that the sex worker will not be granted a certificate on this visit.
- d) The sexual health nurse will follow a procedure that includes gathering medical samples, including urine samples and blood samples.
- e) After the samples are taken the sex worker receives a certificate to take to work with them at the brothel. The certificate does not expose any private or confidential information about the persons previous sexual health test results or identity.⁸

In Western Australia this practice has had a number of outcomes:

a) Health services become overloaded as sex workers who are at low or no risk seek STI screening simply to fulfil the requirement of work.

Enforced testing puts undue strain on sexual health care services. The sex worker may not have had any condom breakage or slippage, may have only worked one shift in the fortnight, or may not even offer sexual services that put them at risk, however the full STI screen must be completed in order for the certificate to be given. The WA Committee on HIV and Sexually Transmissible Infections argued in 2002 that "...there are many types of sex work where there is no risk of transmission..."⁹ and that there should not be undue restrictions placed on sex workers who may be performing "...no risk services..." Most sex workers will engage in these 'no risk services' at some point in their working lives and on any given shift in a brothel, a percentage of the clients who visit will receive a 'no risk service' such as a massage and hand relief.

b) Overloaded health services offer lower quality care, and become complacent in regards to sex workers health.

Due to enforced testing causing the over-servicing of sex workers, health care workers create a screening routine that is aimed at ensuring the quick and immediate granting of an STI certificate. As a result, if a sex worker is concerned about a recent risk that has taken place (condom slippage or breakage for example), it is difficult to ensure that they receive the more detailed and thorough care they deserve. Health workers in Western Australia are more used to seeing the 90% of sex workers

⁸ This practice is similar all over Australia, but each state has different methods of formulating how the tests are done. In Queensland for example an illogical, invasive and often demeaning "gloved internal exam" must be done by the nurse or doctor in order for the certificate to be granted. There is no sexual health related reason to do the "gloved internal exam" and no other individual going for a sexual health test is subject to such treatment. No evidence of sexually transmitted infection or disease can be detected by this practice. In NSW they have a much more progressive approach, where there are no internal swabs or need for the sex worker to expose her genitals to the nurse or doctor and all tests are conducted via urine and blood samples.

⁹ WA Committee on HIV and Sexually Transmissible Infections (WACHAS), *Submission on Prostitution Control Bill, 2002*

who don't have any condition whatsoever.¹⁰ Sex workers who would like a more detailed examination, or information about a recent risk they have experienced, are unlikely to be able to receive that in a rushed 'certificate oriented' visit.¹¹

c) Enforced testing results in careless attitudes by clients and more requests for unsafe sex.

A particular brothel in Western Australia has plaques inside each room assuring the clients that "Our ladies have regular health checks." Rather than assist sex workers in their safe sex negotiation, the message on this sign does the opposite. Clients argue with workers "If we both get tested, we can be safe without a condom." Testing alone is not a precaution to sexually transmissible infections and shouldn't be promoted as such. Signs produced by Worksafe in Canberra that state "This is a safe sex premises" and talk about condom use, are more useful. These signs are used extensively in the ACT, NSW and Queensland.

d) Screening and Certificates provide important information, but are not effective means of ensuring good sexual health and STI prevention.

A sexual health screen and the granting of a certificate are not a method of STI prevention, or monitoring of STIs. Better STI prevention is achieved by encouraging an informed, empowered sex industry that has easy, free and confidential access to health care. In Western Australia, this has proven to be much more reliable than enforced testing within a brothel context.

e) Certificates only indicate that a person wasn't obviously infected at their time of visit, or at the time of the previous visit.

Most STIs take some time to present, so a person with a valid certificate could still become infectious with an STI between screenings. The certificate itself does not actually represent an 'uninfected person.' Educating sex workers with knowledge of their own body, specific risks to avoid and recognising the visible signs of STIs, are much more concrete ways to ensure low rates of STIs among sex workers.

f) The only practical way to issue certificates is by using the sex workers' pseudonym or work name, so they are unable to be traced back to specific workers.

Sex workers greatly value their privacy and confidentiality. Use of pseudonyms and work names has proven to be the only way to ensure sex workers participate comfortably in enforced testing. If identifying features were to be introduced to certificates, compliance would be very low.¹²

Recommendation:

- **Consideration of sex industry law reform must consider the contemporary West Australian practise of 'enforced testing.'**
- **'Enforced testing' by brothel owners in Western Australia is not an effective means of ensuring a healthy workforce, it rather places undue pressure on health providers and lowers the standard of health care for sex workers**

¹⁰ Dr P. Heather Lyttle, *Submission on the Draft Bill: Prostitution Control Bill 2002*, 2002, pg 3 - 4

¹¹ This unintended outcome of enforced testing has also been documented in other states by Scarlet Alliance members.

¹² Anecdotal reports that HIV+ workers buy certificates from HIV- workers for the purpose of participating in the legal sector are a concern. It's an illustration of the leakage of the enforced testing system, as well as evidence that HIV+ and STI+ workers will find ways to participate in the sex industry and having knowledge of 'safe' and 'protected' practises will have more lasting outcomes for public health than enforced testing or certificates.

- **'Enforced testing' in Western Australia is not a logical, practical or productive public health measure, and contributes to client pressure on sex workers to have sex without condoms.**
- **The way to ensure good public health outcomes is to maintain a highly informed and empowered sex industry workforce.**

4) Mandatory Testing offers no positive public health outcomes

Mandatory testing violates the civil rights and privacy of sex workers, actually discourages regular STI testing and presents a great risk to public health.

a) Mandatory testing cannot be enforced without extreme violations of sex workers privacy.

For mandatory testing to occur and compliance monitored, a database of current workers must be created, using their real names and details.

b) Sex workers will choose to avoid mandatory testing and work illegally rather than risk situations that could cause disclosure of their profession.

This group of illegal sex workers are then more difficult for sex worker organisations and health workers to access and provide safe sex supplies and sexual health information to. This group would also be less likely to access justice if experiencing assault or violation as a result of their work.

c) There are more cost effective and reliable ways to ensure sex workers don't work with STIs.

Currently if a sex worker was to contract an STI, they can choose to perform a different type of service (for example, hand relief rather than intercourse) and continue to earn income during treatment, whilst not endangering the health of their clients. Peer education and maintaining high levels of knowledge of risks, are long term strategies to ensure that sex workers can make informed decisions if working with an STI.

d) Mandatory testing discourages regular screening.

Mandatory testing, compulsory reporting and exclusion from working while infected, discourages sex workers from participating in screening at all, for fear of lost income should an STI be discovered. Instead of seeking support in the case of a risky event occurring (condom slippage or breakage), sex workers will choose to avoid the clinic for fear of detection of having an STI and being disallowed from working.

e) Mandatory testing treats the sex industry as homogeneous.

Regular STI testing is inappropriate for those sex workers who work infrequently or do not offer a full sex service.

f) Mandatory testing can lower sex workers sexual health.¹³

Overly frequent testing can irritate the lining of the vagina and actually increase a sex worker's chances of contracting an STI after a condom breakage or sexual assault.

g) Mandatory testing sends the wrong message to clients

¹³ The most famous case of this is the spread of Syphilis among French sex workers in the 1700's, as the same unwashed speculum was used during large scale mandatory testing, infecting entire populations of sex workers. Many died as a result. Some linguists date the term "Speculum Rapes" to this era.

Mandatory testing gives a false sense of security to clients, who are more likely to demand unsafe sex practices or commit sexual assault without protection, believing the sex worker to be 'clean'.

Mandatory testing is detrimental to the health and safety of both sex workers and the general public. With WA sex workers, under self-regulation, already boasting a lower incidence of STI than the wider community, the obvious approach to sex worker sexual health is one of empowerment, encouragement and increased access to health services. Singling out specific groups in the community to endure mandatory sexual health testing is unfair. It is not in the interests of good public health and only serves to alienate and stigmatise the specific populations in question. Sex workers deserve a more critical approach that recognises, encompasses, supports and facilitates enabling environments for good sexual health.

Recommendations:

- **Mandatory testing is an unacceptable and redundant form of discriminatory health practises against sex workers.**
- **Mandatory testing risks public health by sending the wrong message about safe sex.**
- **Mandatory testing would be an incredibly expensive and human resource heavy exercise. The nursing and health staff would be better utilised in confidential and voluntarily attended clinics.**
- **Investment in long term and meaningful peer education will have better public health outcomes.**

5) Sex workers must be involved in the response to STIs and HIV¹⁴

"The Scarlet Alliance and our member organisations play an important role in HIV/AIDS and STI prevention education for sex workers and their clients."¹⁵

It is recognised throughout Australia and at all levels of policy development that the involvement of sex workers in the response to HIV and STIs is imperative to good public health outcomes. Scarlet Alliance, The Australian Sex Workers Association, has vast and detailed knowledge of health policy experience in relation to sex workers and public health. Our members are engaged in direct contact with sex workers, providing health information and contributing to their good sexual health.

"Unless we restore the full sense of humanity to our perceptions of women who engage in prostitution, the discussion will remain detached from reality. The relevance of any legislation regarding prostitution can only be proportional to the degree that each of our elected representatives is able to visualise these women as their own mothers."¹⁶

¹⁴ Commonwealth Department of Health and Aging: National Sexually Transmissible Infections Strategy 2005–2008, 2005, pg 28, pg 34.

¹⁵ Ibid

¹⁶ Marti Noonan of Trinity Youth Options, Perth, "The Human Face Of Prostitution," *The Voice news* 3 June 2000

“That direct consultation with industry representatives be a feature of the legislation, including representation on any advisory committee.”¹⁷

“Police Minister Michelle Roberts has revised the Prostitution Control Bill after working so long and hard on it with backbenchers. I, like so many others, would have thought that Mrs Roberts would have sought and gathered as much information as possible before putting pen to paper and producing the Bill.

If I need to know anything about my car, I ask a mechanic. If I need advice on my health, I ask a doctor, and so on. Thus, the question must be asked, why didn't Michelle Roberts talk to anybody in the prostitution industry?

Oh, of course, that is right; we are 'sex workers'. Well know this Mrs Roberts: we are also mothers, university students, wives, housekeepers, nurses, sportswomen and fine business women. I am very proud of who I am, what I do and some of the most intelligent women I have ever worked with are all of the above. My family are proud that I stand alone and strive to achieve. My son is extremely proud that his mother walks tall through life and is always 'a lady'. Do not judge us, for we are healthy Australian women who can think for ourselves and even have the intelligence to know how to vote.

Meet us, talk to us and please include us in what you propose for the future of our industry.”¹⁸

Recommendation:

- **That legislation be formulated in close association with peer educators, sex worker advocates and Scarlet Alliance, the Australian Sex Workers Association.**

¹⁷ Unions WA, *Prostitution Control Bill 2002 Submission*, 2002, pg 2

¹⁸ M. Beale, Cannington, “Proud Prostitute,” *The West Australian*, 4 April 2003, pg 23

Section Two

PROMOTES THE OCCUPATIONAL HEALTH AND SAFETY OF SEX WORKERS

1) Sex work is an occupation

As is the case for members of any other profession, sex workers cease to be conducting sex work when they leave their workplace. Sex industry legislation that negatively impacts on sex workers everyday lives - including impeding their ability to form and maintain personal relationships, restricting their movements and governing their private sex lives - is a violation of their human and civil rights as Western Australian citizens. The most effective way to reduce discrimination, stigma and prejudice against sex workers is to extend to sex workers the same laws, regulations, human rights and civil liberties enjoyed by all Western Australians. Anything short of this will further entrench the marginalisation of Western Australian sex workers.

*“All workers are equal and therefore should be treated identical in respect of laws that impact on their working lives. Unfettered access to the ‘Occupational Safety and Health Act 1984’, ‘Equal Opportunity Act 1984’, ‘Industrial Relations Act 1979’, and the ‘Workers Compensation and Rehabilitation Act 1981’, is fundamental to the rights of all working people including those persons engaged in the sex industry. The same rights of appeal, procedural fairness and natural justice should apply to all workers and their representatives, including the use of administrative provisions, irrespective of their chosen field of endeavour”.*¹⁹

Recommendation:

- **Current laws that see sex workers treated differently to other workers (ie regulated by the police) are discriminatory.**
- **The decriminalisation of sex work would result in sex work being regulated by existing labour and industry laws.**
- **‘Living off the earnings’, ‘anti-pimping’ and other laws which restrict sex workers from associating with others, have unintended consequences of criminalising sex workers partners and families.**

¹⁹ Unions WA, *Prostitution Control Bill 2002 Submission, 2002*, pg 2

2) Sex work is not necessarily a fulltime occupation

Sex work offers flexible working hours and workplace options and can be performed with little or no initial capital outlay. For these reasons, it is a viable option for those in need of immediate income, often in one-off or infrequent situations. Even those who work full or part-time in the sex industry often view their sex work employment as temporary, with many working for only short periods of time to clear debts, make major purchases and/or pay for tertiary education. Regulations that restrict a person to a particular workplace or time period (eg. workplace agreements or employment contracts) or assume regular long-term employment (eg. registration/licensing) are therefore inappropriate for the majority of sex workers.

Recommendation:

- **The working group should acknowledge the transient nature of sex work and propose that policy be flexible and adaptable to the needs of individual sex workers, rather than treating sex workers as a homogenous group.**

3) Privacy

Regardless of the legal status of the sex industry, public misconceptions and stereotyping ensure that sex workers remain stigmatised and marginalised within the community. Discovery of a person's sex work experience can result in family breakdown, police harassment, denial of visas, removal of children, discrimination in housing and finance applications and an inability to obtain employment outside of the sex industry.²⁰

Recent media reports demonstrate Federal and State Government Departments' inability to adequately protect personal information. Charges have reportedly been laid against a number of departments; including Centrelink, Victoria Police, Medicare and the Australian Taxation Office; despite strict policies in place to prevent employees' unauthorised access to databases²¹. For these reasons, which are supported by evidence, sex workers are often reluctant to provide details of their sex work to Government departments and other authorities, or provide personal details to sex industry businesses.

The registration of sex workers will not be supported by compliance. Individuals simply can not risk this level of impact on their families and personal lives.

Recommendation:

- **That the working group acknowledges the stigma and discrimination experienced by sex workers and allows for flexibility in the provision of information.**

²⁰ Scarlet Alliance "Unjust and Counter-Productive; The Failure of Governments to Protect Sex Workers from Discrimination", AFAO/Scarlet Alliance, 1999
[http://www.scarletalliance.org.au/library/unjust-counterproductive/file_view]

²¹ Herald Sun, Tanya Giles and Peter Mickelborough, *Smart card fears as public servant snoops revealed*, October 13, 2006
http://www.heraldsun.news.com.au/?from=ni_storyhttp://www.heraldsun.news.com.au/?from=ni_story

- **That regulations should not force sex workers to divulge personal information unnecessarily.**
- **That WA anti-discrimination legislation be updated to include discrimination on the basis of 'occupation, trade or calling'.**

4) Registration ²²

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. Considering that sex work is not illegal in Western Australia, a requirement for sex workers to be listed on a criminal register is completely inappropriate.

Registered 'legal' 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 and dismissals from non-sex industry employment.²³

In 2005, a sex worker based in Queensland lost her child in a Family Court dispute after registration information was subpoenaed from the Northern Territory Police Department, proving that the person had previously worked as a sex worker in the Northern Territory. When forwarding the registration information to the courts, the Northern Territory Police considered it unproblematic to release the personal records of all the other sex workers who had registered alongside the sex worker in question. ²⁴

Equally problematic are models of registration that create a new bureaucracy in order to handle the administration of costly registration models. In both Queensland and Victoria, where licensing and/or registration is handled by a Government department, the costs have far outweighed the amount collected in fees, resulting in public funds supporting another Government body.²⁵

²² Scarlet Alliance, "Sex worker registration - privacy and ethical concerns," *HIV Australia*, Vol 5, No 2, Australian Federation of AIDS Organisations, 2006

[http://www.afao.org.au/view_articles.asp?pxa=ve&pxs=103&pxsc=127&pxsgc=139&id=582]

²³ For a more detailed discussion of registration, please see: Scarlet Alliance "Unjust and Counter-Productive; The Failure of Governments to Protect Sex Workers from Discrimination", AFAO/Scarlet Alliance, 1999 [http://www.scarletalliance.org.au/library/unjust-counterproductive/file_view]

²⁴ This worker was supported by Scarlet Alliance, and eventually won back custody of her children on appeal.

²⁵ Recent independent "Regulatory Impact Statement" report into the Prostitution Licensing Authority in Queensland uncovered that it would need to triple current annual brothel licensing fees to break even.

5) 'Unofficial' Registration

Many aspects of the Containment Policy still exist today, in particular, the 'compulsory'²⁶ registration of WA sex workers. This registration process contravenes privacy and other laws regulating data collection, in that it is taken involuntarily (in many cases, under duress) and sex workers have no control over where the information is kept or who has access to it. Information often remains on the database years after the individual has ceased working in the sex industry. Stories of police having access to the register and using it to threaten or humiliate sex workers during non-sex work investigations, or even roadside questioning for traffic offences, are commonplace.

*"The first time I worked at a 'Containment' brothel in 1998, I was asked to go down to the Vice Squad in Curtin House and have my details taken. I went there during my lunch break from my 'straight' job. They asked to take my photo and I hesitated – at work I always wore a wig, never used my real name and felt that my identity was concealed. I didn't want the police to have a photo of me in my usual appearance. However they told me 'If you don't let us take your photo we can't let you start work tonight.' I felt really pressured and ended up saying yes. I still worry about my details there, that someone will find out. I panic whenever the police pull me over, that they might recognise me and say something in front of my kids."*²⁷

*"When it was announced that the 'Containment' Policy was no longer in force I went down to the old Vice Squad office and asked about having my details removed. They told me that a Royal Commission was coming up and they couldn't destroy the records in case they were needed. I felt cheated – no matter what we do the police will find ways of hanging onto our information."*²⁸

*"Vice take down the names and addresses of workers at every visit (to the brothel). (Sex) Workers were told that if they were continually found on the premises on every visit, that they would eventually get arrested.... It was believed that this was done in an effort to cause staff shortage in order to cripple the business, that is, the harassment of workers to get at the owner."*²⁹

²⁶ All sex workers within 'Containment' brothels have been expected to 'register' with Vice Squad. However since the announcement of the end of the Containment Policy in 2003, police behaviour has been erratic. For example, private workers have been approached by police and asked to come down to the station to have their photo taken for registration. The registration of some 'Containment' brothels still occurs today.

²⁷ A West Australian sex worker recounts her experience of unofficial registration at the 2002 Scarlet Alliance National Forum in Western Australia.

²⁸ A West Australian sex worker reports to SWAG in December 2003.

²⁹ A sex worker speaking of harassment at her place of work, "Case Study: Police Powers," *The Effects of the Prostitution Act 2000: A Research Study By The Sex Worker Action Group*, Submitted to the WA Police Minister in February 2003, pg 6

6) Rural and Regional Registration

All the privacy concerns and devastating consequences listed above have an even greater impact when sex workers live in a regional community. Western Australia has a number of established sex industries in rural and regional areas, including Kalgoorlie, and sex workers in those towns are already more isolated than metropolitan sex workers. Registration would only serve to isolate and marginalise them further.

*“The stigma of sex work is magnified in a small town and the ability to operate discretely and anonymously is all but impossible when the policeman holding your registration is also your neighbour or your son’s Little League coach”.*³⁰

7) Registration is unpopular among sex workers

In 2002, the Western Australian Government proposed registration for all sex workers. The response was loud and clear – sex workers were unwilling to comply. A recent Queensland Crime and Misconduct Commission inquiry found that registration was one of the few issues that all sex workers will unite against.³¹

Recommendation:

- **The Working Party recommends that registration of individual sex workers be ceased immediately.**
- **The Working Party recommends the immediate destruction of all former Vice Squad and current sex worker registration records.**
- **Policy in Western Australia should recognise that the risks associated with registration far outweigh the benefits for individual sex workers.**
- **That the Government recognises that creating a criminal database of people who have not committed an illegal act is discriminatory and a violation of civil rights.**
- **That the Government acknowledges not all sex workers live in the metropolitan area and that the needs of regional sex workers must also be considered.**

³⁰ Ibid, Regionally based West Australian sex worker.

³¹ *Regulating Outcall Prostitution*, Crime and Misconduct Commission, Queensland, October 2006, pg 85 - 86

8) Licensing

The licensing of sex industry businesses is often a misguided attempt to discourage organised crime involvement. In fact, licensing processes which 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' or bribe officials, as it has in other states, providing opportunities for corruption and organised crime involvement. Charging exorbitant fees for licenses has a similar effect.

Those business owners without the necessary 'connections' or with limited finances, may be forced to operate illegally. This creates a two-tiered sex industry, which is disadvantageous to both the legal and illegal sectors. In Victoria it is estimated that illegal brothels outnumber legal brothels, two to one.

If licensing of sex industry businesses is to occur, the process must be transparent and non-discriminatory and procedures should resemble those used in the licensing of similar personal service industries (eg. beauticians or body piercing salons). Licensing of businesses must not include the licensing of individual staff, as is the case in hotels where the publican holds a license, but bar staff do not.

Recommendation:

- **A decriminalised model of regulation relies on sex industry premises meeting the same registration requirements as any other business.**
- **Scarlet Alliance does not support licensing frameworks.**
- **Scarlet Alliance does not support the establishment of a new Government body to oversee sex industry licensing.**
- **Onerous regulations over sex industry businesses result in an increased likelihood of corruption and organised crime involvement.**
- **As it is with all other businesses, regulation of the sex industry should be related to the business, not individual sex workers or staff.**

9) Private Sex Workers

Current Western Australian laws force private sex workers to work alone, in their own home. Despite the law, most WA private workers will illegally rent anonymous workspaces away from their homes, hire a receptionist and/or work in tandem with another sex worker and employ security guards or drivers to protect their personal safety. This, of course, means they are no longer working within the law and are more open to police and council harassment, have less access to justice or assistance in emergencies and are less accessible to sex worker organisations and health services. Sex workers should not be forced to break the law in order to protect themselves from violence – likewise, they should not have to obey a law that puts their health and safety at risk.

“(The law) requires me to work alone and by law it is an offence to work with anyone else in the house. This is not only impractical and unrealistic, but it is totally offensive.... It does not take into account the tradition of working with a receptionist or fellow worker for the purposes of safety and the running of a good business.”³²

“The (laws) violate the very basic notion of, and right to, privacy. It is a legal requirement to work from my own private home, which in other words means that you are forcing me to live without privacy. My clients have my home address and phone number and at any time could just turn up or drive by whenever they feel like it. This is a very real fear for me as I am certain it is for every private worker. I resent the expectation that private workers should tolerate the potential for harassment, intimidation, and nuisance by clients.”³³

Private sex workers are also often targeted by sex industry businesses, who circulate misinformation about the sexual health or work practices of private workers. This was demonstrated recently when ‘prominent’ Perth brothel owners informed the media of “illegal/trafficked Asians” working in “suburban brothels”. Claims of these workers not paying tax, “undercutting” established businesses and “endangering public health” (a blatant attempt to insinuate that private sex workers are less likely to protect their own health than brothel workers) were presented in local and national media. The truth is, many brothels charge exorbitant rates and pass as little as possible on to the sex worker who actually performed the service. Obviously a private worker, who does not have to surrender half their income to a brothel, can charge half the price and still earn as much as a brothel-based worker. The demonisation of private workers is little more than an objection to competition and an attempt by big business to monopolise the WA sex industry.

“Self employed people should be treated no differently to all other self employed people and should be allowed to run their business as they see fit within the prevailing laws of the state.”³⁴

“Suburban brothels” are generally two or three individual sex workers, who choose to work together for increased personal safety and reduction of overheads. This form of operation is also very popular in

³² A private worker, “Case studies: Human Rights,” *The Effects of the Prostitution Act 2000: A Research Study By The Sex Worker Action Group*, Submitted to the WA Police Minister in February 2003, pg 11

³³ Ibid

³⁴ Unions WA, *Prostitution Control Bill 2002 Submission*, 2002, pg 3

South Australia, where private workers will group together in a residential area. The amenity impact of this form of cottage industry is very low.³⁵

Recommendation:

- **Repeal legislation which forces private sex workers to work in conditions that reduce their control over their health and personal safety.**
- **The working party should understand that misinformation about private sex workers is circulated by brothel owners with the sole intention of damaging the businesses and reputations of private sex workers. As such, stories of the ‘exploitation’ of private workers, when coming from brothel owners, must be questioned for accuracy.**
- **Private workers must be able to rent private workspaces, work in tandem with other workers and employ receptionists or security, and guarantee their anonymity in order to run their businesses efficiently and maintain control over their personal safety.**

Section Three

PROTECTS SEX WORKERS FROM EXPLOITATION

1) Police involvement

The introduction of the Containment Policy gave police the onerous task of regulating an illegal industry; forcing them to overlook illegal activity in some cases and prosecute the very same offence in others. These discretionary powers have led to an ingrained culture of threats, stand-over tactics and intimidation in police dealings with the WA sex industry.

“In 2001, police targeted a particular brothel operator for prosecution and after two unsuccessful attempts, focused on an incident difficult for the operator to prove her innocence in. Police ‘visits’ occurred almost daily, until some staff were too afraid to come to work. Sex workers were questioned and gave honest accounts of the facts, which did not match what the police had hoped to hear. The workers were told that unless they told the “real” truth, they would be subpoenaed to appear in court and be “all over the news”, where their families and friends would “see what kind of people they really are”. “³⁶

Many Western Australian sex workers have experienced or witnessed this type of harassment first hand, with most others at least aware of similar incidents occurring. This has resulted in a deep distrust of police, which makes sex workers reluctant to cooperate in investigations, contact authorities in emergencies or report crimes. Without access to justice and police protection, WA sex workers will continue to be targets of violence and extortion, and so-called ‘associated crimes’ will continue to occur within the relative safety of an industry afraid to attract police attention.

³⁵ UTS Professor Eva Cox pursued this area of research with students in 2004 and found that in NSW the amenity impact of private workers is lower than any other form of home based work.

³⁶ Sex workers concerns as raised to Phoenix in 2001

This situation is just as detrimental to the WA Police as it is to the sex industry. The Western Australian community automatically associates the sex industry with police corruption. While police continue to be an integral part of the regulation of sex industry workers and businesses, the potential for corruption, or accusations of corruption, will always exist.

Recommendation:

- **In the best interest of both the sex industry and the WA Police Service, police should have no involvement in the regulation of the WA sex industry.**
- **There should be no allowance for 'discretionary' powers which create the potential for inappropriate behaviour and corruption.**
- **An improved relationship between police and the sex industry empowers sex workers to contact police in emergencies and report crimes.**
- **The WA Criminal Code and other existing legislation contains adequate provisions to allow police access to sex industry premises when commission of a crime is suspected, without the need for sex industry specific extraordinary powers.**

2) Drugs and Organised Crime

Studies have shown that the incidence of drug use in the Australian sex industry is no different to that of the general community. There is also very little evidence of any 'organised crime' involvement in Western Australian sex industry businesses, with many actually being owned and operated by ex-sex workers. It is the fact that the majority of the WA sex industry operates illegally that creates the potential for organised crime involvement. Sex workers and business owners are reluctant to report illegal activity to police for fear of prosecution, particularly when the sex industry is often automatically assumed to be party to the crime being reported, rather than the victim. Decriminalisation, by removing criminal sanctions, removes barriers the major barrier to sex industry operations becoming open and accountable and gives sex workers and business owners equal access to justice and police protection.

Recommendation:

- **Legislation should reflect the reality of minimal organised crime involvement in the Western Australian sex industry and empower sex workers to report crime without fear of prejudice or prosecution.**
- **Decriminalisation of sex industry businesses encourages open and accountable operations.**
- **The WA Criminal Code contains adequate provisions for the prosecution of persons involved in organised crime and the sale or supply of illicit substances.**

3) Exploitation and/or 'forced prostitution'

Working for a 'pimp' may be a common situation in some countries, but in Australia, by far the majority of sex workers work of their own free will, for their own financial benefit.³⁷ Some workers may choose to support their partners with their earnings, however this is a very different scenario to a 'pimp'. Legislation that seeks to prevent the sexual exploitation of sex workers (eg. living off the earnings offences) only further marginalises and isolates sex workers, whose male partners can be threatened with 'pimping' charges.

Exploitation of sex workers occurs in many other situations though – including industrial abuses by employers, sexual demands from police and other authorities, higher rents demanded by landlords and several times higher fees to advertise in *The West Australian* newspaper's 'Personals' section than in any other classifieds section.

Recommendation:

- **Decriminalisation will ensure that the same industrial protections available to other workers are also available to sex workers.**
- **Anti-discrimination legislation will be necessary to protect sex workers, particularly during the phase of adjustment for businesses and Government Departments who have traditionally discriminated against Western Australian sex workers.**

³⁷ Extensive research on the Australian sex industry by Roberta Perkins and Francis Lovejoy over a 20 year period has conclusively found there to be no culture of pimping.

- **Decriminalisation of the sex industry allows sex workers equal access to justice and enables victims of exploitation to report crimes perpetrated against them, to police.**
- **The Federal Criminal Code contains contemporary provisions for the prosecution of persons involved in trafficking, sexual exploitation, and/or sex slavery.**
- **The State Criminal Code contains provisions for the prosecution of persons involved in violent crime and sexual assault.**

Section Four

PROTECTS CHILDREN FROM BEING INVOLVED IN PROSTITUTION AND FROM BEING EXPLOITED IN RELATION TO PROSTITUTION

1) Underage sex workers

The incidence of sex workers under the age of 18 in the WA sex industry is negligible. On the rare occasion that a minor is employed by a sex industry business, it is generally the result of the minors themselves presenting fraudulent identification to the operator. 'Child prostitution', when it occurs, is more likely to be a case of opportunistic sex by teenagers faced with issues such as homelessness and poverty. This generally takes place in informal settings (eg. on the streets or in pubs) and is not an example of 'sex industry exploitation', but rather a symptom of socio-economic factors.³⁸

Recommendation:

- **There is no need for additional legislation to protect children in the sex industry. The WA Criminal Code contains adequate provisions for the prosecution of persons involved in the sexual exploitation of children.**
- **Government policy responses should reflect the reality of minimal underage involvement in the Western Australian sex industry.**
- **Assistance and support of minors engaging in survival sex should be available.**

³⁸ Current legislation (Prostitution Act 2000) actually *penalises* children who perform sex for favours, rather than protecting them. A person under the age of eighteen who engages in sex work could face up to two years incarceration.

Appendix one -

Legal Brief on the Western Australian Laws on Sex Work

This information is based on WA law. The bulk of the laws listed here have not been prosecuted for many years. Human rights, civil liberties and basic rights to earn a living are seriously curtailed by many of the more recent WA laws passed in 2000.

Is It Legal?

The act of having sex for money in WA is covered by a patchwork of laws, policies and protocols from a range of legislation and institutions. Some of these laws originate from the UK as long ago as 1839 and are terribly out of date. The most recent legislation, the Prostitution Act 2000, allows for extreme police powers and police control over the sex industry.

But Is It Legal?

Actually exchanging money for sex is not technically against the law, but just about everything associated with it is...

Procuring is Illegal

In the WA Criminal Code procuring a woman who is either under 21 or not a known sex worker, with the intention of becoming an inmate of a brothel or with the intention of becoming a sex worker, can result in a penalty of two years jail. This crime is also applicable to the procurement of a man or boy for the same purposes. (see Criminal Code s191

http://www.austlii.edu.au/au/legis/wa/consol_act/cc94/s191.html)

Running a Brothel is Illegal

In the criminal code it is known as a Bawdy House and running one can be imprisoned for up to 3 years.

(see Criminal Code s 209

http://www.austlii.edu.au/au/legis/wa/consol_act/cc94/s209.html).

Behaving as a "Master" or "Mistress" of such a house will find you charged for running one, even if it is not your Bawdy House.

(see Criminal Code s213

http://www.austlii.edu.au/au/legis/wa/consol_act/cc94/s213.html)

Keeping premises for the purposes of sex work is illegal

(see Police Act 1892 s76F

http://www.austlii.edu.au/au/legis/wa/consol_act/pa189275/s76f.html)

Living on the earnings including living with a sex worker is illegal

(see Police Act 1892 s76G

http://www.austlii.edu.au/au/legis/wa/consol_act/pa189275/s76g.html)

Being a sex worker in public is illegal

“Every common prostitute wandering in the public streets or highways, or being in any thoroughfare or place of public resort, and behaving in a riotous or indecent manner” can be fined \$500 or jailed for 6 months. ‘Habitually consorting’ with sex workers, or allowing your house to be frequented by sex workers, are also offences. (See Police Act 1892 s65(8))

http://www.austlii.edu.au/au/legis/wa/consol_act/pa189275/s65.html

Allowing a sex worker to drink in your pub is illegal

Although probably no longer prosecuted by police, this law is still taught to publicans and bar staff during licensing/serving laws training.

(see Police Act 1892 s84)

http://www.austlii.edu.au/au/legis/wa/consol_act/pa189275/s84.html

Seeking a client or sex worker in public is illegal

Anywhere within view or hearing of a public place is illegal.

(see Prostitution Act 2000 s6)

http://www.austlii.edu.au/au/legis/wa/consol_act/pa2000205/s6.html

(and Prostitution Act 2000 s5)

http://www.austlii.edu.au/au/legis/wa/consol_act/pa2000205/s5.htm

Promoting employment in the sex industry is illegal

The employment may include being a sex worker or being any person in any capacity in any sex industry business. Penalty \$50,000

(see Prostitution Act 2000 s9)

http://www.austlii.edu.au/au/legis/wa/consol_act/pa2000205/s9.html

Being or seeking an underage sex worker is illegal

Sex workers who are underage receive even higher penalties for seeking clients and can be sent to prison for up to two years.

(see Prostitution Act 2000 s14a)

http://www.austlii.edu.au/au/legis/wa/consol_act/pa2000205/s14.html

Clients face a consortium of fines and jail terms, as do people living off the earnings of underage sex work. A child is defined as anyone under 18 years of age, which is confusing, because the legal age for sex is 16 and according to the Criminal Code, it is illegal to procure a person for sex work unless they are over 21 and no longer a virgin - another example of how the Prostitution Act, Criminal Code and Police Act contradict each other at times.

(see Criminal Code s191)

http://www.austlii.edu.au/au/legis/wa/consol_act/cc94/s191.html

Police can also enter a sex work premises without a warrant if they suspect a child is present (see Prostitution Act 2000 s 26)

http://www.austlii.edu.au/au/legis/wa/consol_act/pa2000205/s26.html).

Detention, Search and Seizure without Warrant

Police can detain, search and seize goods of any person (including from their car) without a warrant if they are suspected of committing a sex work related offence. (see Prostitution Act 2000 s25
http://www.austlii.edu.au/au/legis/wa/consol_act/pa2000205/s25.html)

Police may Search and Strip Search without Charge

Police can search and order the strip search of a person if they have been picked up in relation to sex work, even if there is not enough evidence to charge them for an offence. (see Prostitution Act 2000, s 29
http://www.austlii.edu.au/au/legis/wa/consol_act/pa2000205/s29.html)

Police may direct a sex worker or client to 'Move On'

This can be based on suspicion of a person intending to commit an offence. The 'Move On Notice' can be for up to 24 hours. (See Prostitution Act 2000 S 24
http://www.austlii.edu.au/au/legis/wa/consol_act/pa2000205/s24.html)

Police may seek a Restraining Order

The restraining orders are for the purpose of excluding a sex worker from a designated inner-city area. This is extremely problematic for the sex workers who live in the inner city. In this case they can apply for an exemption which allows them to remain living in the inner city, as long as they do not display 'working behaviour'. This is extremely arbitrary and of course up to the police as to what this could be understood to be! (See Prostitution Act 2000 s37
http://www.austlii.edu.au/au/legis/wa/consol_act/pa2000205/s37.html
(and Prostitution Act 2000 s38
http://www.austlii.edu.au/au/legis/wa/consol_act/pa2000205/s38.html
If a person breaches their restraining order, the fine may be up to \$5,000 (See Prostitution Act 2000 s46
http://www.austlii.edu.au/au/legis/wa/consol_act/pa2000205/s46.html)

Police may Commit Entrapment

Police may act as clients or sex workers and engage in otherwise illegal activity for the purpose of obtaining evidence to charge a person. The officer has total legal immunity at this time. (see Prostitution Act 2000 s35
http://www.austlii.edu.au/au/legis/wa/consol_act/pa2000205/s35.html)

Onus of Proof Reversed – Presumed Guilty Instead of Presumed Innocent

If police suspect that a person is frequenting a particular location with the intention of engaging in sex work (either as a client or worker), then intention is presumed unless the person can prove the opposite.

(See Prostitution Act 2000 s 52

http://www.austlii.edu.au/au/legis/wa/consol_act/pa2000205/s52.html)

If a child is on the premises of a place where sex work occurs, the accused is presumed to have permitted the child to be there, unless the person can prove the opposite.

(See Prostitution Act 2000 s51

http://www.austlii.edu.au/au/legis/wa/consol_act/pa2000205/s51.html

(and Prostitution Act 2000 s21

http://www.austlii.edu.au/au/legis/wa/consol_act/pa2000205/s21.html)

Residing with an underage sex worker that an individual is guilty of obtaining money from an underage sex worker unless the individual can prove the opposite.

(see Prostitution Act 2000 s50

http://www.austlii.edu.au/au/legis/wa/consol_act/pa2000205/s50.html

(and Prostitution Act 2000 s17

http://www.austlii.edu.au/au/legis/wa/consol_act/pa2000205/s17.html)