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TO: Prostitution Reform Feedback

Department of Attorney General

Western Australian Government

By E-mail: [prostitution\\_feedback@justice.wa.gov.au](mailto:prostitution_feedback@justice.wa.gov.au)

# Submission in response to the WA Prostitution Bill 2011

## FROM:

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## **To whom it may concern,**

We write with grave concern for the potential harms a licensing regime will unleash on the Western Australian sex industry workers and clients and wish to state our strong opposition to the proposed new laws. We are particularly concerned as it has the potential to turn thousands of normally law abiding members of the community into criminals and/or treat them as criminals - such as the proposed plan to fingerprint and register sex workers - as well as maintaining the role of the police as primary regulators. This can only have the effect of creating a two-tiered industry as exists in Victoria and Queensland and reinforcing the already underground nature of the sex industry in WA.

We respond on the basis of our considerable collective knowledge and experience of the many aspects of both the Australian and New Zealand sex industry and the varying legislative frameworks under which they exist. In so doing we take into account the views and experiences of the various sectors of the sex industry and its representative bodies, research findings, National HIV and STI Strategies and international bodies such as the UN and the WHO. We also draw upon the proven successful outcomes of decriminalisation as adopted by the NSW and New Zealand Governments. The benefits of these reforms removed the potential for police corruption and legislated to treat the sex industry as any other business with the same rights and responsibilities; while optimising the health and safety of sex workers. It has also contributed to the improvement of management practices and ensuring good amenity and public health outcomes.

We make this submission in the interests of finding a realistic and workable legal framework that fairly embraces all sectors of the sex industry and protects and supports the human and occupational health and safety rights of sex workers whether they be in private employment or work for commercial operators. We now have an unprecedented opportunity in Australia - through the Law and Sex Worker Health Study (LASH) led by Professor Basil Donovan<sup>1</sup> - to compare the researched outcomes of the three differing legislative frameworks that exist in Australia (prohibition, licensing and decriminalisation) and to know that licensing and prohibition increases generally negative outcomes for all.

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<sup>1</sup> Donovan B et al, (2010) The Sex Industry in Western Australia A Report to the Western Australian Government, National Centre in HIV Epidemiology and Clinical Research, University of NSW, Sydney

## **Who we are**

Through our respective consultancies, we provide a range of training and advisory services. These include town planning, health and safety advice and related information to the NSW sex industry, State & Local Government, research institutions and other stakeholders on various aspects of sex industry related legislation and local government regulation, occupational health and safety and disability and research needs.

We are also sex workers with many years of experience working in a variety of legal settings - from prohibition through to licensing and decriminalisation - and are well placed from this perspective alone to inform the current proposed legislation.

In the interests of informed decision making we outline our concerns and rationale under the following headings:

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## Western Australia deserves an evidence-based approach that reflects best practice

Speaking broadly, we support evidence-based sex industry legislative and regulatory approaches that:

- enable the rights of sex workers to safely engage in their work in a range of scales and types of sex industry premises free of harassment and discrimination;
- enable the rights of people with disabilities, including sex workers and clients the right to gain access, in a safe and dignified manner befitting the individual's level of ability, to the range of various scales and types of sex industry premises that occur within any given Local Government Area (**LGA**), without experiencing discrimination or systemic barriers;
- enable the right of commercial operators to perceive of themselves as legitimate service providers with the same rights and responsibilities as other business operators.

The above aims can be achieved by following guiding principles, such as those that stakeholders negotiated together in NSW - which balance the rights and responsibilities of the sex industry, local government and local communities.

- *Appropriate planning for sex services premises can provide councils with greater control over the location, design and operation of sex services premises;*
- *Sex services premises should be treated in a similar manner to other commercial enterprises, and should be able to rely on consistency and continuity in local planning decisions;*
- *Planning provisions should acknowledge all types of sex services premises and ensure that controls relate to the scale and potential impacts of each premises;*
- *Planning regulations and enforcement actions have direct implications for the health and safety of workers and their clients;*
- *Establishing planning controls which are reasonable (rather than unnecessarily restrictive) is likely to result in a higher proportion of sex services premises complying with council requirements, with corresponding benefits to council operations, the local community and health service providers;*
- *Assumptions made of sex services premises can be factually incorrect and can lead to inappropriate policy and decision-making processes as well as continued stigmatisation of the industry. Many premises are well run, low impacting, and capable of being located where other types of similar scaled premises may be located; and*

- *Community engagement and professional development strategies can assist the community and professionals to understand the nature of sex services premises and to recognise that they are a legitimate land use to be regulated through the .. planning system.*

*Maintaining a focus on these guiding principles can assist all parties, including councils, the sex industry and the local community, by providing clarity and consistency of regulation, minimising amenity impacts and ensuring the health and safety of workers and clients.<sup>2</sup>*

## **Decriminalisation has proven positive outcomes**

It is important to understand that decriminalisation of the sex industry in NSW has had proven positive outcomes. In January 2000 a Brothels Task Force was established by the NSW Attorney General and the Minister for Urban Affairs and Planning. It was comprised of representatives from The Cabinet Office Attorney General's Department, Department of Local Government, Department of Urban Affairs and Planning, Ministry for Police, WorkCover NSW, NSW Health, Police Service, and the Local Government and Shires Association. This Task Force was commissioned to monitor the regulation of brothels by local councils and to assess the success of occupational health and safety programs for sex workers, their clients and the public. The Report conclusion in relation to Occupational Health & Safety issues noted:

*"Decriminalisation of prostitution has had a positive impact on access for workers to health services and occupational health and safety programs. However, care must be taken to ensure that planning controls do not create barriers to the implementation of effective public health policies and services directed at sex workers in all facets of the sex industry. It is proposed that occupational health and safety programs for sex workers should continue."*

[Source: Report of the Brothels Task Force, 2001, p. 28]

Decriminalisation and the ability to openly engage in a legitimate business has had a flow on effect in NSW of enabling sex industry operators and sex workers to perceive of themselves as legitimate service providers with the same rights and responsibilities as others and seek to locate their businesses in areas and zones where they are permissible. Benefits of the reforms have led to improved working conditions for sex workers from an occupational health and safety perspective.

## **Licensing is a failed model in Australia**

An objective review of the experiences of the Victorian and Queensland licensing models will show that they have both failed to achieve a realistic and workable legal framework that fairly embraces all sectors of the sex industry, and which protects and supports the human and occupational health and safety rights of sex workers in those jurisdictions.

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<sup>2</sup> *Sex Services Premises Planning Guidelines* (2004), NSW Department of Planning, p.3

In Queensland independent sex workers are not permitted to work together and just recently a female sex worker working alone was raped, beaten and axed and left to die. In Victoria recently a sex worker had a gun pulled on her by a client insisting on unsafe sex. The woman concerned is taking legal action in which she claims the licensed brothel she was working in did not take adequate steps to support workers in getting clients to use condoms.

Both Queensland and Victoria have a burgeoning illegal industry where outreach workers have difficulties accessing those segments of the industry that remain outside of the licensing framework. By comparison, the findings of the LASH study found that in NSW there was extensive peer-based outreach to all sex work venues and that restrictive sex work related laws and policing such as in Victoria, adversely affect the delivery of health services and health promotion programs to sex workers.

Additionally, the small number of businesses that have sought to establish businesses in Queensland shows that licensing and the associated extra costs and controls act as a disincentive for people to legitimise their businesses. And, as the examples of abuse and violence above show, licensing does little to protect and support sex workers occupational health and safety rights.

### **No evidence in of support of licensing of brothels**

In regards to the current proposal to introduce a brothel licensing system in WA one needs to question the rationale. Will it improve the health and safety of sex workers; will it encourage commercial operators to apply for development consent; will it guide and inform local councils, industry operators and the broader community and will it improve work place conditions and support safe sex policies and practices?

If this proposal is simply for political expediency or was in response to a minor case of pre-election moral panic, it is putting the lives and livelihood of sex workers in harm's way as it simultaneously ignores the proven benefits of decriminalisation from a public health and human rights perspective. The UN and the WHO are calling on countries around the world to decriminalise the sex industry as has occurred in NSW and New Zealand, as a best practice approach to minimising the impact of HIV, and hold up the model of decriminalisation as an example of best practice<sup>3</sup>. It would be a pity if these world-leading gains in terms of public health outcomes and enabling the rights and safety of sex workers in NSW and New Zealand were denied sex workers and clients in the WA sex industry.

Rather than adopt an overly restrictive and unworkable legislative approach that ignores all the relevant research, it is preferable that the current proposed legislation be discarded in favour of a new round of consultations. Any new consultation process should include representatives of the sex industry and public health officials as key informants. This process could then draw upon all available research with a mandate

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<sup>3</sup> The UNAIDS report on the global AIDS epidemic 2010, Chapter 5: Human rights and gender equality, p.137

to enhance the human, legal and industrial rights of sex workers and their clients. Only then can law reform be adequately debated and a workable framework found.

Available evidence from the LASH study proves decriminalisation in NSW works from a public health and OH&S perspective.

This option is a whole lot easier and cheaper than introducing layers of complex controls and licensing bodies and enforcement processes that will have no benefit to anyone - apart from those who want to close brothels for either anti-competitive reasons or on the basis of their moral objection to the sex industry in general.

It is appropriate for the WA government to prescribe a workable legal framework that protects both the interests of sex workers and the wider community and has an unprecedented opportunity, based on current research, to remedy the deficiencies of prohibition without resorting to a licensing model that has been shown to fail.

### **Consultation is always required to avoid negative unintended consequences**

As stated above, any discussion concerning the regulation of the sex industry must be done in consultation with stakeholders, including representatives of the industry and public health officials, in order to avoid unleashing unintended negative consequences. Importantly, representatives from WA local councils which have successfully managed the whole of their sex industry to date, that is, the private and commercial sectors - without negative political, amenity or financial consequences - should also be asked to provide guidance.

The two most significant problems identified by senior Liberal politicians<sup>4</sup> during debate of the Brothels Legislation Amendment Bill in NSW in 2007 were: (a) legislation being written without sufficient consultation with stakeholders; and (b) Government providing very little guidance to local councils as to how to use their planning powers to effectively regulate the industry.

### **Implications of the Bill for HIV prevention**

We are aware of, and fully endorse, the personal submission and recommendations provided by Kane Matthews dated 27 July 2011 - regarding the issues the proposed Bill may have on HIV prevention strategies aimed towards Western Australian sex workers,

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<sup>4</sup> The Hon Don Harwin and Rob Stokes - Member for Pittwater

## Requiring independent sex workers to gain consent from council

This is unacceptable and unworkable. Under no circumstances would it be acceptable or reasonable to require sex workers working from residential areas to gain development consent of any kind from their local council in order to be able to work from their home. In fact the SSPP Guidelines note that there are no known advantages in requiring development consent from private sex workers - only disadvantages, as follows:

- *sex workers are unlikely to comply with it, as gaining a DA or Complying Development Certificate [i.e. consent from council] reveals sex workers' addresses, making them vulnerable to abuse and violence from the public and coercion from operators of larger premises. As a result, home occupations would continue to exist illegally within council areas, which is to be discouraged as it keeps them 'underground' and isolated from sex worker peer support and health services;*
- *it is inequitable as there is no evidence that home-based sex work has any more impact than other home occupations e.g. an architect working from home, accountant, tax agent, photographer etc;*
- *the low, or negligible, impact does not warrant a DA, which involves considerable cost and time and raises the possibility of neighbour objections; and*
- *it drives home occupations underground with most of them operating unauthorized. This then provides opportunities for corruption, which the Disorderly Houses Amendment Act 1995 specifically sought to redress.*

*The Report of the Brothels Taskforce (2001) stated (p.12):  
"The identification of individual sex workers through the development application process is also contrary to the recommendations of the Legal Working Party of the Intergovernmental Committee on AIDS Organisations (AFAO) and the AIDS Council of NSW. Such requirements are also counter to the UN Declaration of Commitment on HIV/AIDS, 2001."*

*Advice from the Sex Workers Outreach Project NSW and the Private Worker Alliance as discussed in the report to the Marrickville Council Development and Environmental Services Committee Meeting 02/02, 5 March 2002, is that for instance, situations have been reported where men claiming to be council officers demand free sexual services or financial benefits in return for not disclosing unauthorised home occupations.<sup>5</sup>*

One of the primary intentions of the decriminalisation of sex work is to reduce the potential for corruption of the industry by the Police or other regulatory agency. Requiring development consent is the equivalent of trying to enforce a prohibition of home-based sex work. This is unreasonable and unjustifiable and it would unnecessarily increase the potential for corruption.

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<sup>5</sup> Sex Services Premises Planning Guidelines (2004), NSW Department of Planning, p. 54

## **Requiring sex workers to have a 'prostitutes licence' and be fingerprinted**

These strategies are an unacceptable breach of privacy laws and human rights. They will have a detrimental impact on the individual's opportunities to seek other forms of employment and engage in further studies. It further marginalises and stigmatises an already vulnerable and stigmatised sector of our community. Sex workers will choose non-compliance over registration in order to protect themselves and their family from the types of vilification that comes from being identified as a sex worker without it being your choice to disclose. Non-compliance leads workers to be highly vulnerable to corruption, abuse, demands for unsafe sex and other standover tactics. Yet they will be without the option of being able to report these serious crimes because of their illegal working status.

## **Requiring sex workers to be an Australian citizen or permanent resident**

This strategy is racist, discriminatory and unjustifiable. In a civil society we treat all members of the community with dignity and respect. This includes guests in our country who may be in Australia on working and study visas. Sex work is a legitimate and acceptable form of employment for many millions of people around the world and Australian states must honour the Federal government's visa arrangements of individuals who come to Australia for work and/or study.

### **Recommendation**

**In order to achieve optimal outcomes for all stakeholders, laws must be framed on the basis of reliable evidence and reflect identified best practice. The current Bill is unreasonable and unworkable across so many areas it must be considered totally unacceptable to any reasonable person. Therefore this Bill must be discarded in its entirety and a new round of consultation be called to examine alternative approaches prior to the drafting of further legislation.**