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Victorian Law Reform Commission  
GPO Box 4637  
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4 August 2015

**RE: Use of Regulatory Regimes in Preventing the Infiltration of Organised Crime into Lawful Occupations and Industries**

Thank you for the opportunity to submit our comments and concerns regarding the consultation paper published on the proposed use of regulatory regimes to prevent or reduce the influence of organised crime in the sex industry as a lawful occupation and industry. We note that sex workers are the *key stakeholders* in the process of assessing the usefulness of regulatory regimes in the sex industry.

Scarlet Alliance, the Australian Sex Workers Association, is the peak national sex worker organisation in Australia. Formed in 1989, the organisation represents a membership of individual sex workers and sex worker organisations. Scarlet Alliance and our member organisations and projects have the highest level of contact with sex workers in Australia of any agency, government or non-government. Through our project work and the work of our membership we have high levels of access to sex industry workplaces in the major cities and many regional areas of Australia. Scarlet Alliance and many of our member sex worker organisations and projects within Australia have CALD (culturally and linguistically diverse) projects employing bi-lingual project workers.

Based on a high level of interface with its membership Scarlet Alliance submits that the assumptions underpinning the consultation paper are fundamentally flawed and that there is no evidence to suggest that organised crime is a part of the sex industry in Victoria, or that organised crime is likely to infiltrate the industry.

Indeed, Scarlet Alliance would argue that increased levels of regulation, surveillance, licensing or registration will only exacerbate the current weaknesses of Victoria's licensing system and would instead propose a decriminalised model which has been shown to be successful in NSW combatting organised crime and in protecting the health and safety of sex workers.

## **ORGANISED CRIME IN THE SEX INDUSTRY**

Large scale organised crime and 'pimping' is not a characteristic of the sex industry in Australia.<sup>1</sup> Research and anecdotal evidence from the Scarlet Alliance member organisations, who actively interface with sex workers in their daily operations, and our membership of individual sex workers supports this assertion. The practice of peer sex worker organisations providing peer support to sex workers and outreach to sex worker workplaces has successfully supported a culture of occupational health and safety whereby sex workers can access information and support when needed.

Various government inquiries have also been unable to find the presence of organised crime in the sex industry; instances identified in the 1980's in the Wood Royal Commission<sup>2</sup> and Fitzgerald Inquiry<sup>3</sup> led to reforms, and subsequent investigations have been unable to find any evidence of organised crime in the sex industry.<sup>4</sup>

Anecdotal evidence of organised crime from other agencies in Victoria mentioned in the consultation paper are references taken from construction and education inquiries, whereas actual inquiries focusing on sex work have not found any evidence to support the assumptions underpinning this Inquiry.<sup>5</sup>

Assumptions about the existence of organised crime in the sex industry come from moral viewpoints and misperceptions of the sex industry from people who do not actually engage with the majority of sex workers, if any. The recognition of sex work as work supports a positive environment where sex workers

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1. B. Donovan et al, 'The Sex Industry in New South Wales: a Report to the NSW Ministry of Health' (Kirby Institute, University of New South Wales, 2012); C Harcourt, 'Whose Morality? Brothel Planning Policy in South Sydney', *Social Alternatives* No. 3, July 1999.

2. New South Wales, *The Royal Commission into the New South Wales Police Service* (1997).

3. Queensland, *Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct* (1989).

4. State of Victoria, *Inquiry into Prostitution, Final Report* (1985) 59–60: to the extent permitted by the terms of reference, the inquiry was unable to find evidence of organised crime group control of prostitution in Victoria; Criminal Justice Commission, *Regulating Morality? An Inquiry into Prostitution in Queensland* (1991); Select Committee of the Legislative Assembly upon Prostitution, Parliament of New South Wales, *Report of the Select Committee of the Legislative Assembly upon Prostitution* (1986) 229–33: the inquiry found limited and declining involvement of organised crime groups in prostitution in New South Wales.

5. Senate Education and Employment References Committee, Parliament of the Commonwealth of Australia, *Government's Approach to Re-establishing the Australian Building and Construction Commission* (2014) 59; evidence to Education and Employment References Committee, Parliament of the Commonwealth of Australia, Canberra, 17 March 2014, 11

(Deputy Commissioner Graham Ashton, Victoria Police): the transcript of evidence indicates that Victoria Police's evidence concerned organised crime activity, not criminal activity more generally

can access support for workplace issues and removes incentives for serious group based offending on an ongoing basis.

### **THE FAILURE OF LICENSING AND REGULATION**

Victoria's licensing framework creates a two-tiered system, criminalising or applying significant fines to those who are unable to comply with the excessive requirements of the licensing scheme. The model creates significant barriers to compliance for both sex industry businesses and individual sex workers.<sup>6</sup>

In comparison to a decriminalised model of regulation, that promotes compliance, the licensing model promotes the development of a two-tiered industry whereby many are excluded from operating legally – often because meeting the requirements of licensing is excessive or unreasonable.<sup>7</sup> In this way non-compliance is an inherent flaw of the licensing model – creating an ongoing and costly problem for governments as it requires a high level of administration to ensure compliance, exacerbated by the complexity of the system, which itself acts as a barrier to compliance. It also requires a high level of police involvement in enforcing regulation, which maximizes the risk of corruption. The licensing system in Victoria stigmatises, alienates and disenfranchises sex workers. In contrast, the NSW model of decriminalisation was introduced in response to high levels of police corruption, and has been found to have reduced police corruption and improved the health and safety of sex workers.<sup>8</sup>

The Kirby Institute's 2012 report on the Sex Industry in NSW to the NSW Ministry of Health clearly states that licensing is a threat to public health and recommends that licensing should not be regarded as a viable legislative response. Best practice occupational health and safety outcomes are not supported by a licensing system.<sup>9</sup> Restrictions on the number of rooms and workers in brothels, planning restrictions that limit brothels to industrial areas, and restrictions on private sex workers working together isolate workers, making outreach more difficult and jeopardizing the safety of sex workers and businesses.

Under the Victorian licensing system, brothels are compelled to ensure their workers undergo mandatory STI and HIV testing every 3 months, which studies indicate is excessive and places an unnecessary burden on sexual health clinics which are already beyond capacity.<sup>10</sup> The cost of over-testing is high - screening sex workers for HIV every 12 weeks costs \$4mil for every one HIV infection

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6. AIDS, UNFPA, UNDP, *Sex Work and the Law in Asia and the Pacific*, 2012, UNDP Thailand.

7. C. Harcourt et al., 'Sex Work and the Law', *Sexual Health* 2(3) 121–8 at 125.

8. B. Donovan et al, 'The Sex Industry in New South Wales: a Report to the NSW Ministry of Health', Kirby Institute, University of New South Wales, 2012; Brothels Taskforce, *Report of the Brothels Taskforce*, NSW Department of Planning, 2001.

9. D. Edler, *A Guide to Best Practice: Occupational Health and Safety in the Australian Sex Industry*, Australian Federation of AIDS Organisations, [http://www.afao.org.au/library\\_docs/policy/ohs\\_sexwork.pdf](http://www.afao.org.au/library_docs/policy/ohs_sexwork.pdf)

10. E. Jeffreys, J. Fawkes and Z. Stardust, "Mandatory Testing for HIV and Sexually Transmissible Infections among Sex Workers in Australia: A Barrier to HIV and STI Prevention," *World Journal of AIDS*, Vol. 2 No. 3, 2012, pp. 203-211.

averted.<sup>11</sup> A Victorian study stated that 'screening intervals for sex workers should be based on local STI epidemiology and not locked by legislation' noting that 'the incidence and prevalence of STIs in sex workers are very low, especially since there is almost universal condom use at work'.<sup>12</sup>

The Victorian laws are a wholesale failure in regard to street based sex work. Recommendations for reform of this legislation and establishment of safe houses date back to (and before) the *Attorney General's Advisory Group into Street Prostitution 2002*, however failure to enact legislative reform has placed street based sex workers' health and safety at risk. Heavy policing of sex workers and clients of sex workers, including under Operations Nocturn, Biscuit and Wafer,<sup>13</sup> have made it harder for sex workers to work in ways that enable greater control over health and safety.

These laws and high levels of policing mean that street based sex workers face the risk of further surveillance or conviction if they are to report an offence to police – creating a sector of our community unable to access justice or protection afforded to other members of the community.<sup>14</sup>

Increased levels of regulation, surveillance, licensing or registration will only exacerbate the current weaknesses of Victoria's licensing system.

## **CONTEXT OF TRAFFICKING**

Anti-trafficking interventions focusing on the sex industry in Australia have been disproportionate to the extent and nature of trafficking in the sex industry. Despite the significant financial resources invested into identifying trafficking in Australia, evidence shows that the media estimated incidence of trafficking in Australia is significantly inflated.<sup>15</sup>

In 2003, Chris Ellison, then Minister of Justice, said, 'no significant' sex slavery problem existed in Australia.<sup>16</sup> Despite enormous surveillance, heavy police investigation including several years of high

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11. D Wilson, K Heymer, J Anderson, J O'Connor, C Harcourt and D Donovan (2009), 'Sex workers can be screened too often: a cost-effective analysis in Victoria, Australia', *Sexually Transmitted Infections*, October 2009.

12. D Wilson, K Heymer, J Anderson, J O'Connor, C Harcourt and D Donovan (2009), 'Sex workers can be screened too often: a cost-effective analysis in Victoria, Australia', *Sexually Transmitted Infections*, October 2009.

13. Operation Nocturn involves police officers working undercover as sex workers to target clients of street based sex workers. As part of Operation Biscuit, the police are highly visible along strolls and areas known for street based sex work, fining and issuing banning notices to sex workers and their clients. Operation Wafer is said to be aimed at targeting underage sex workers but specifics are not known at this stage. See [www.lephcon.com.au/files/9613/.../David-Morrow-LEPH-Nov2012.pp](http://www.lephcon.com.au/files/9613/.../David-Morrow-LEPH-Nov2012.pp)

14. A. Quadara, 'Sex workers and sexual assault in Australia: Prevalence, risk and safety' *Australian Centre for Sexual Assault* March 2008

15. Australian Government, *Trafficking in Persons: The Australian Government Response*, 1 July 2013 – 30 June 2014, The Sixth Report of the Anti-People Trafficking Interdepartmental Committee

16. 'Stepping up the Fight Against Slavery', *The Age*, 27 October 2003, cited in Mary Crock, *Seeking Asylum Alone: A Study of Australian Law, Policy and Practice Regarding Unaccompanied and Separated Children*, Themis Press: Sydney, 44.

levels of sex industry business raids, substantial investment in a criminal justice approach, and legislation that widened the type of offenses that are now covered by anti-trafficking laws, there have been only 14 cases successfully convicted under Australia's anti-trafficking legislation. These relate to charges obtained in 9 matters, 7 relating to the sex industry.<sup>17</sup> Furthermore, in all the finalised trafficking cases that have involved migrant sex workers, not one sex worker had been deceived as to the fact they would be sex working and they had all consented to working as a sex worker in Australia. Some had previously worked as sex workers and none of the cases involved deception or trickery about the fact they would be sex working in Australia.

It is not reasonable to assume that the small numbers of cases of trafficking in the sex industry are due to difficulties in surveillance, prosecution or laws being inadequate. What we know from anecdotal evidence and from our extensive contact with sex workers is that trafficking in the sex industry is not a widespread phenomenon in Australia.<sup>18</sup>

Often the absence any evidence of widespread organised crime and trafficking in the sex industry is seen as evidence of a large hidden problem. However, the sex industry is visible in operation, requiring advertising and a customer base in order to operate. The UNODC in their 2009 *Global Report on Trafficking in Persons* states:

“... most of the victims of forced labour often work in hidden locations, such as agricultural fields in rural areas, mining camps and garment factories or within the closed environment of a house in the case of domestic servitude. As a consequence, the detection of victims of trafficking for forced labour is less probable than the identification of victims of trafficking for forced prostitution.”

Frequently the presence of trafficking in the sex industry in Australia is inferred from inflated global statistics that is not relevant in the Australian context. The evidence base in Australia is vastly different to other nations. This is in part due to sex worker organisations, strong peer education and the recognition of sex work as work within aspects of certain policies. . Additionally the AIC warns, “extreme caution should be exercised in extrapolating from the under-reporting of domestic crimes to transnational crimes, as Australia enjoys the natural protection provided by being both an island and geographically remote and has extensive border protection mechanisms.<sup>19</sup>

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17. Australian Government, ‘Trafficking in Persons: The Australian Government Response 1 July 2013 – 30 June 2014’, The Sixth Report of the Anti-People Trafficking Interdepartmental Committee, Table 3, 22-23

18. Scarlet Alliance, ‘Submission to Joint Standing Committee on Foreign Affairs, Defence and Trade Inquiry into Slavery, Slavery-like conditions and People Trafficking’, September 2012.

19. Putt, J. ‘Human Trafficking To Australia : A Research Challenge’, *Trends & Issues In Crime And Criminal Justice* no. 338. Australian Institute of Criminology: Canberra, June 2007.

## CONSULTATION PAPER QUESTIONS

1. *What changes or additions would you make to the information presented in Table 1 (pages 23–26) and Table 2 (pages 31–32) regarding the purposes of infiltration? You may wish to comment on occupations or industries that are not listed in Tables 1 or 2.*

The idea that sex industry businesses are useful for recruiting people for organised crime (page 24), with no other industry listed as being used for this reason is unreasonable and not supported by the available evidence. As is the assertion that clients of brothels are an accessible customer base for sexual slavery and that other staff in the brothel provide a good cover for hiding trafficked sexual slaves. These ideas of how the sex industry would be attractive for organised crime are based on false assumptions of how the sex industry and legal sex industry businesses operate.

The assertion that clients of the sex industry seek out “trafficked” or “enslaved” sex workers is based upon false assumptions. In fact, clients have been instrumental in reporting instances of mistreated brothel staff to authorities, including in the prosecuted trafficking case.

The idea that using trafficked sexual slaves reduces business costs over usual brothel employees is also based on a misunderstanding of how sex industry businesses work. It is an industry norm that the business splits the amount charged for the service with the worker, usually 50/50. If the profit area of using sexual slaves is keeping the full amount, that profit would be significantly diminished when considering the time, money and effort it costs to house, feed and control a person around the clock. Staff usually don’t live at the brothel (or pay a fee to do so at places that do provide accommodation), and often provide their own food, transport, clothing and other living expenses.

It is more cost-effective for businesses to employ legitimate sex workers than use sexual slaves or people who have been trafficked. There is no shortage of willing sex workers in Australia, and no evidence to support the idea that brothels source trafficked people to staff their businesses. In reality the risks and costs of using trafficked people for sexual slavery far outweighs any financial benefit.

Intermingling of lawful and unlawful revenue is possible in any business, particularly where cash payments are common. However the assertion that sex industry premises are more susceptible to unlawful activity such as drug dealing is not supported by the evidence. Drug use by sex workers is comparable to the general public, with tobacco being the most used drug amongst sex workers.<sup>20</sup> There is no evidence to suggest that widespread drug dealing is a feature of the sex industry in Australia.

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<sup>20</sup> B. Donovan et al, ‘The Sex Industry in New South Wales: a Report to the NSW Ministry of Health’ (Kirby Institute, University of New South Wales, 2012); C. Harcourt et al, ‘The health and welfare needs of female and transgender street sex workers in New South Wales’ *Health and Work*, 25(1) 84-89.

2. *Is the draft model for assessing the risk of infiltration (pages 32–37) a helpful way to assess the risk of organised crime group infiltration of lawful occupations and industries?*
3. *What changes or additions would you make to the draft model for assessing the risk of infiltration (pages 32–37)?*

Sex industry businesses fulfill very few of the key characteristics that make a business vulnerable for infiltration by organised crime. Of 15 key characteristics, only one applies to sex industry businesses, though four more have been incorrectly applied in the *Use of Regulatory Regimes in Preventing the Infiltration of Organised Crime into Lawful Occupations and Industries* consultation paper. Whilst the intermingling of lawful and unlawful revenue is possible through sex industry businesses, this is true of almost all businesses that allow cash transactions.

In Victoria the barriers to entry (3.75) for businesses in the sex industry are quite high given the onerous licensing requirements. Paragraphs 3.69 and 3.72 have been addressed above as being based on false assumptions about the use of brothels clients and staff as consumers of, and covers for, women who have been trafficked. 3.73 ignores the fact that it is very risky and highly impractical for a brothel to partner with human traffickers given strict licensing requirements, regular compliance checking, and the fact that it is not cost-effective. There are enough voluntary sex workers in Australia of all backgrounds to staff brothels; peer education, support and outreach in brothels have also been highly successful. It is both impractical and unlikely that a licensed brothel would partner with traffickers to house sex slaves, given the cost, risk and lack of reward.

4. *Having regard to the regulatory tools described in Chapter 4, which regulatory tools are, or might be, useful in addressing each of the risks identified in the draft model for assessing the risk of infiltration (pages 32–37)?*

Regulatory tools have not proven to be useful for regulation of the sex industry.<sup>21</sup> Tools verified to improve the health and safety of sex workers include decriminalisation, peer education, outreach and support, community led programs, and rights based organisations.<sup>22</sup> These tools also discourage organised crime as sex work businesses are governed by the same workplace legislation that applies to other industries, and regulated in a whole of government approach.

Sex workers overwhelmingly provide the most useful tools for improving the sex industry. As the 2012 *Sex Work and the Law in Asia and the Pacific* report from UNAIDS, UNFPA, and UNDP states:

“It is critically important that sex workers are centrally involved in efforts to improve legal environments. Sex workers and, where they exist, sex workers’ organizations should be supported to participate in setting national priorities for an agenda for action to improve the legal environment for sex workers.”<sup>23</sup>

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21. UNAIDS, UNFPA, UNDP, *Sex Work and the Law in Asia and the Pacific*, 2012, UNDP Thailand, page 6.

22. B Donovan, C Harcourt, S Egger, C Fairley, (2010), ‘Improving the Health of Sex Workers in NSW: Maintaining Success’, *NSW Public Health Bulletin* 21(3-4) 74–7.

23. UNAIDS, UNFPA, UNDP, *Sex Work and the Law in Asia and the Pacific*, 2012, UNDP Thailand, page 6.

5. *For the purpose of preventing organised crime group infiltration of lawful occupations and industries, what are the advantages and disadvantages of regulation by:*

- a. *traditional occupation or industry regulator such as the Business Licensing Authority*
- b. *Victoria Police*
- c. *both a traditional regulator and Victoria Police?*

The sex industry in Victoria is already heavily regulated by Consumer Affairs, the BLA and Police. Police as regulators of the sex industry has been (and is still being) experienced in criminalised states in Australia. This has overwhelmingly negatively impacted the health and safety of sex workers, and facilitated the exploitation and harassment of sex workers by the police and high levels of police corruption.<sup>24</sup> Furthermore, sex workers' ability to report crime is removed when police play a regulatory role. Despite the fact that it is not part of their role in Victoria, sex workers have reported anecdotal evidence of police contacting sex workers regarding advertising and other regulatory matters; this is inappropriate and outside of their jurisdiction, which should be limited to enforcing criminal law, but demonstrates a failure to fully understand the limitations of their role.

6. *If a regulator is required to prevent the infiltration of organised crime groups into an occupation or industry, how does this affect, or how might this affect, the pursuit of its other regulatory purposes and objects (whether positively or negatively)?*

Non-compliance is an inherent flaw of licensing and regulatory models used to regulate the sex industry. It is ongoing and costly problem in Victoria, with high administrative costs from CAV and the BLA, and additional resources from local government and police carrying out compliance inspections.

7. *In seeking to prevent the infiltration of organised crime groups into lawful occupations and industries, is it useful to regulate entry into an occupation or industry (for example, by requiring would-be entrants to obtain a license)?*

The licensing system currently used in Victoria to regulate the sex industry has shown that creating obstacles to entry creates a two-tiered system, where some workers are unable to comply with the current onerous licensing requirements.<sup>25</sup> Onerous entry requirements have not been useful in regulating the sex industry and have served only to disadvantage marginalised workers and jeopardise the safety of sex workers. Regulating entry to an occupation largely only occurs in other industries where those working in the industry are in a special position of power or working with children, or where the license denotes a particular specific occupational trade skill. This cannot be said for sex industry licensing which functions more as a character judgment and a method of surveillance or a way to track sex workers.

High levels of stigma and discrimination, exacerbated by licensing regulatory schemes, result in sex workers considering privacy and control over their personal information as imperative. A significant

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24. J Fawkes, 'Sex Work Legislation Stands in the Way of Australia's Commitments' *HIV Australia* 12(2) July 2014.

25. Christine Harcourt et al., 'Sex Work and the Law', *Sexual Health* 2(3) 121–8 at 125.

limitation to registration systems is when there is greater incentive to not comply. Privacy concerns and the considerable negative impacts that sex workers have experienced when their occupation is known (loss of custody of children, limitations on travel and lack of employment potential in some occupations eg. teachers, public servants, or loss of housing) demonstrate that the majority of sex workers cannot comply with registration requirements.<sup>26</sup> This is not reduced when registration or licensing information access is limited as sex workers are well aware of the limitations of this type approach.

*8. In seeking to prevent the infiltration of organised crime groups into lawful occupations and industries, what are the costs and benefits of any of the following:*

- a. positive licensing regimes*
- b. negative licensing regimes*
- c. registration schemes*
- d. rules relating to the effective control of a business*
- e. rules relating to who may be employed in a business*
- f. rules relating to re-entry*
- g. other entry-regulation tools that you would like to comment on?*

Over-regulation of the sex industry in Victoria has not made sex work safer, or more lawful. It has instead marginalised and criminalised sex workers, risking the health and safety of many sex workers. Sex work is still highly stigmatised; stigma and discrimination weigh heavily in the minds of sex workers making the decision about providing information for licensing that could be misused in future, endangering the safety of sex workers.

Non-compliance is an inherent flaw of licensing and regulatory models used to regulate the sex industry. It has become an ongoing and costly problem for governments, requiring high levels of administration from CAV and the BLA, and additional resources from local government and police carrying out compliance inspections.

*9. In seeking to prevent the infiltration of organised crime groups into lawful occupations and industries, what are the costs and benefits of group-based license exclusions?*

Group-based licensing exclusions already exist as a part of Victorian sex industry licensing. Operators or managers with criminal records are excluded from obtaining a license or exemption. Group-based license exclusions as they currently exist are both discriminatory and impractical given the fact that sex work is still criminalised in many states and some types of sex work are still criminalised in Victoria. This would prevent sex workers who have a previous conviction from becoming compliant, further reinforcing non-compliance by turning potentially compliant sex work industry applicants away from legal avenues of sex work.

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26. Prostitution Licensing Authority, Queensland, *Annual Report 2001-2*, Table 9, page 63.

*10. In seeking to prevent the infiltration of organised crime groups into lawful occupations and industries, is it useful to monitor an occupation or industry?*

Excessive monitoring under the umbrella of licensing and compliance checking is already a feature of sex industry regulation in Victoria. This is costly, ineffective, and does not protect the human rights of sex workers to be able to work safely, freely and without the threat of police harassment.<sup>27</sup>

Monitoring of sex workers and sex industry businesses does not improve working conditions, workplace health and safety or ensure the fair treatment of sex workers. What has been proven to support those outcomes is peer education and support, and outreach services delivered and implemented by community-led organisations underpinned by a supportive legal framework, that is, decriminalisation.<sup>28</sup>

*11. When monitoring an occupation or industry in order to prevent or detect the infiltration of organised crime groups, what are the costs and benefits of any of the following:*

- a. short licence periods/regular licence renewals*
- b. a complaints-based model versus an inspection-based model*
- c. investigative powers (or particular investigative powers)*
- d. prohibited practices*
- e. record-keeping obligations*
- f. continuous disclosure obligations*
- g. other monitoring tools that you would like to comment on?*

*Costs and benefits may apply to a range of stakeholders, including regulators, Victoria Police, business operators, business employees, and business customers.*

Experiences in Queensland and Victoria demonstrate that licensing of sex work, sex industry businesses and auxiliary or management staff is ineffective, expensive and unworkable. Licensing of sex work has enormous administrative expense, low compliance and huge public health consequences. Licensing imposes unnecessary costs on businesses and community and the costs of the license exceed its benefits. The frequent inspection of lawful sex industry businesses is expensive, unnecessary and fosters a poor relationship between sex workers and regulatory bodies, Immigration and Police.

When probity checks and entry requirements have been proposed or used to regulate sex industry businesses they have been discriminatory, particularly against marginalised groups such as sex workers who use drugs or migrant sex workers. These checks have not supported their stated aims and have, by their nature, created an illegal sector by limiting available avenues for sex workers to work.

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27. Scarlet Alliance and the Australian Federation of AIDS Organisations, *Unjust and Counter-Productive: The Failure of Governments to Protect Sex Workers From Discrimination*, 1999, 19; Centre for Refugee Research, Australian National Committee on Refugee Women, and Human Rights and Equal Opportunity Commission, *Women's Human Rights Workshop*, University of New South Wales, 17-19 June 2004; A. Quadara, 'Sex workers and sexual assault in Australia: Prevalence, risk and safety' *Australian Centre for Sexual Assault* March 2008

28. B Donovan, C Harcourt, S Egger, C Fairley, (2010), 'Improving the Health of Sex Workers in NSW: Maintaining Success', *NSW Public Health Bulletin* 21(3-4) 74-7.

The Kirby Institute's report to the NSW Health Department in 2012 recommends that licensing of sex work should not be regarded as a viable legislative response. They state:

“For over a century systems that require licensing of sex workers or brothels have consistently failed – most jurisdictions that once had licensing systems have abandoned them. Under licensing systems most sex workers remain unlicensed, so criminal codes remain in force, leaving the potential for police corruption. Licensing systems are expensive and difficult to administer, and they always generate an unlicensed underclass. That underclass is wary of and avoids surveillance systems and public health services: the current systems in Queensland and Victoria confirm this fact. Thus, licensing also represents a potential threat to public health.”<sup>29</sup>

*12. What are the most useful ways of detecting people (particularly organised crime groups) who are operating in a lawful occupation or industry without the required authorisation (such as a licence)?*

Decriminalisation has proven to be a low cost, high compliance model of regulation for the sex industry resulting in positive occupational health and safety outcomes for sex workers. A decriminalised system amplifies opportunities for outreach, magnifies capacity for peer education, supports sex worker self-determination, maximises compliance, increases transparency and minimises discrimination.<sup>30</sup>

Calls for the Swedish Model are calls to reduce sex workers control and choice of working environment,<sup>31</sup> and do not recognise the role clients have played in raising awareness of the small number of trafficking cases and being the conduit between sex workers and the police. Additionally in the small number of identified trafficking cases in the sex industry, the victims have reported experiencing social and cultural isolation.<sup>32</sup> Culturally and linguistically appropriate peer education has demonstrated its effectiveness in addressing those gaps and providing information, referral and support when needed.

Monitoring and surveillance of sex industry businesses has not been successful in improving working conditions, workplace health and safety, or ensuring the fair treatment of sex workers. However, it has

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29. B. Donovan et al, 'The Sex Industry in New South Wales: a Report to the NSW Ministry of Health', Kirby Institute, University of New South Wales, 2012.

30. C Harcourt, J O'Connor, S Egger, C Fairly, H Wand, M Chen, L Marshall, J Kaldor, B Donovan, (2010), 'The Decriminalisation of Prostitution is Associated with Better Coverage of Health Promotion Programs for Sex Workers', *Australian and New Zealand Journal of Public Health*, 34:5 482.

31. S. Dodillet and P. Ostergren, 'The Swedish Sex Purchase Act: Claimed Success and Documented Effects' Conference paper presented at the International Workshop *Decriminalizing Prostitution and Beyond: Practical Experiences and Challenges* The Hague, March 3 and 4 2011, page 3; B. Wallace, *The Ban on Purchasing Sex in Sweden*, Office of the Prostitution Licensing Authority Queensland, 19.

32. Australian Government, *Trafficking in Persons: The Australian Government Response*, 1 July 2010– 30 June 2011, The Third Report of the Anti-People Trafficking Interdepartmental Committee, Commonwealth of Australia, Canberra, 2011, 78

isolated sex workers who are unable to comply with licensing requirements, making it more difficult for sex workers to access health services, and support, and reducing the likelihood that marginalised sex workers will access police or justice services if needed.

*13. Which enforcement measures are useful, or might be useful, in preventing organised crime group infiltration of lawful occupations and industries?*

Peer education and support in Australia, by and for sex workers, has been successful in creating positive norms in the sex industry and promoting a culture where sex workers can seek support if required. Evidence supports that decriminalisation has brought improved work safety, high rates of safer sex practices, low rates of sexually transmitted infections, and no evidence of organised crime or serious group based offending on an ongoing basis. Decriminalisation means sex workers can access police and other justice support in the event of a crime. A decriminalised environment supported by sex worker peer organisations providing culturally and linguistically appropriate sex worker peer education is the best way to support good working conditions and prevent organised crime infiltration.

*14. In seeking to prevent the infiltration of organised crime groups into lawful occupations and industries, is it useful to regulate the exit of people from an occupation or industry? Which tools are, or might be, useful for this purpose?*

Exit programs already exist for sex workers; however they have a very narrow view of sex work and the reasons that sex workers perform the work they do. Licensing and mandatory registration of sex workers is what creates the largest barriers for sex workers seeking to leave the sex industry. This is due to the requirement to disclose names on a register which creates barriers to pursuing a career in other industries due to stigma and discrimination.

*15. Are there any problems with current information-sharing arrangements? If so, how might these problems be overcome? Information-sharing arrangements can refer to information sharing between regulators and Victoria Police, between different Victorian regulators, between Victorian and interstate regulators, and between any other agencies that hold relevant information.*

The Victorian Police and the BLA are both heavily involved in sex work regulation in Victoria, resulting in crossing of boundaries, and confusion of roles. Information sharing between the various agencies that are involved in the licensing of the sex industry in Victoria appears to occur without regulation or concern for privacy or confidentiality. There are a number of anecdotal reports of police inappropriately contacting sex workers for matters that are clearly regulated as role of BLA, which has been seen by sex workers as harassment and intimidation.

Regulatory bodies and police overstepping their roles, and excessive compliance checking of sex workers and brothels, is not supportive of fair and safe regulation of the sex industry. Rather, it facilitates the harassment of, and discrimination against, sex workers – particularly migrant sex workers.

*16. Please comment on the extent to which regulatory tools that may be used to prevent the infiltration of organised crime groups into lawful occupations and industries may:*

- a. insufficiently protect the rights of people affected by decisions of the regulator*
- b. insufficiently protect the rights of any other stakeholder*
- c. impose additional burdens on regulators, courts and/or tribunals in relation to the provision of reasons for decisions and opportunities for review.*

Regulatory tools that have been used to monitor, regulate and license the sex industry in Victoria have disadvantaged sex workers, insufficiently protected the rights of marginalised groups and enabled the unfair treatment of sex workers by Victoria Police, Immigration, and the AFP. This has not resulted in safer or fairer workplaces; these bodies have not found any evidence of human trafficking despite regular compliance checks of licensed brothels, and managed only to deport migrant sex workers working of their own volition.<sup>33</sup>

These tools do not support a rights-based response to regulating the sex industry and are not useful in maintaining workplace health and safety standards. Instead the licensing model in Victoria has facilitated institutional discrimination and infringed upon the human rights of sex workers.

*17. In seeking to prevent the infiltration of organised crime groups into lawful occupations and industries:*

- a. What issues are, or might be, better dealt with through legal responses other than occupation/industry-based regulatory regimes (including but not limited to the 'other legal responses' described at pages 66–68)?*
- b. What issues are, or might be, better dealt with through occupation/industry based regulatory regimes rather than other legal responses?*

Legal responses to actual criminal activity are the only method of dealing with organised crime theoretically infiltrating the sex industry that doesn't directly disadvantage sex workers. Regulatory regimes in Victoria (and Queensland) have demonstrated the failure of these jurisdictions to protect sex workers or create an enabling environment to facilitate best practice health and safety outcomes.

Evidence from jurisdictions that have decriminalised sex work (New Zealand and New South Wales) indicates that this approach enables sex work to be defined as legitimate labour, empowering sex workers, increasing access to HIV and sexual health services, and is associated with very high rates of condom use and very low STI prevalence.<sup>34</sup> HIV transmission within the context of sex work in decriminalised jurisdictions is understood to be extremely low or nonexistent.

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33. Maria Carnovale, 'Trading in Lives' *Police Life* Autumn 2015 pages 10-11.

34. UNAIDS, UNFPA, UNDP, *Sex Work and the Law in Asia and the Pacific*, 2012, UNDP Thailand, page 6.

In a decriminalised context, the sex industry can be subject to the same general laws and guidelines regarding workplace health and safety and anti-discrimination protections as other industries, without the costs and pitfalls of a licensing model.<sup>35</sup>

## CONCLUSION

Scarlet Alliance recommends the decriminalisation of sex work, sex workers' workplaces and our clients supported by anti-discrimination coverage for all sex workers in Victoria. In particular, our organisation has publicly called for the repeal of registration, licensing, the criminalisation of street based sex workers and clients, mandatory testing, and criminalisation of sex workers living with HIV or an STI. Many ongoing problems are a result of the Victorian system of regulation itself.

In summary, Scarlet Alliance submits the following:

- Sex industry businesses fulfill only one of the 15 key characteristics that make an occupation vulnerable to the infiltration of organised crime;
- The sex industry in Victoria is already heavily regulated through licensing, which has been detrimental to the health and safety of sex workers;
- Organised crime as serious group based offending on an ongoing basis is not a facet of the sex industry in Australia;
- Licensing and regulatory tools such as probity checks have proven to be inefficient and have not been effective in regulating sex industry businesses;
- Decriminalisation provides transparency in sex industry businesses and allows the industry to be regulated in a whole of government approach;
- Police are not a suitable party to inform policy or law reform for the sex industry.

Sex work has to a large degree been decriminalised in New South Wales since 1995. Decriminalisation is world renowned as a best-practice model, recognised by the United Nations Secretary General, United Nations Population Fund, UNAIDS and sex worker communities globally as best for sex worker occupational health and safety, industrial rights and human rights. NSW has 'one of the healthiest sex industries' ever recorded,<sup>36</sup> including among migrant sex workers. Evidence from the Kirby Institute, Australia's National STI and HIV Strategies and case studies demonstrate that decriminalisation has brought improved work safety, high rates of safer sex practice, low rates of sexually transmissible infections, low incidence of trafficking, little to no amenity impacts, no increase in the size of the industry and no evidence of organised crime. Evidence shows that these health outcomes are *because* of decriminalisation, community-driven health promotion and peer education.

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35. UNAIDS, UNFPA, UNDP, *Sex Work and the Law in Asia and the Pacific*, 2012, UNDP Thailand, page 6.

36. Professor Basil Donovan, 'The Sex Industry in NSW' (Media Release, 23 March 2012).

If you require further information please contact our Chief Executive Officer Janelle Fawkes on (02) 9690 0551.

Regards,

  
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