



Phone – 02 9517 2577

Fax – 02 9517 2488

Post – PO Box 854,

Newtown NSW 2042

Street – Suite 203,

1 Erskineville Road,

Newtown NSW 2042

Email – [info@scarletalliance.org.au](mailto:info@scarletalliance.org.au)

Web – [www.scarletalliance.org.au](http://www.scarletalliance.org.au)

04 October 2019

To the Economic Policy Scrutiny Committee,

Thank you for the opportunity to submit to the inquiry on the Northern Territory Sex Industry Bill 2019.

Scarlet Alliance, Australian Sex Workers Association is the national peak body representing our membership of individual sex workers, and sex worker networks, groups, projects, collectives and organisations from around Australia since 1989. Through our objectives, policies and programs, Scarlet Alliance aims to achieve equality, social, legal, political, cultural and economic justice for past and present workers in the sex industry, in order for sex workers to be self-determining agents, building their own alliances and choosing where and how they work.

Scarlet Alliance is a leader when it comes to advocating for the health, safety and welfare of sex workers in Australia. Through our work and that of our membership we have the highest level of contact with sex workers in Australia of any agency, government or non-government. This ensures we are able to represent the issues affecting our members and sex workers Australia wide. Scarlet Alliance represents sex workers on a number of government and non-government committees and advisory mechanisms.

Please find our submission attached. If you have any questions relating to our submission please do not hesitate to contact, CEO Jules Kim at [ceo@scarletalliance.org.au](mailto:ceo@scarletalliance.org.au) or on 02 9517 2577.

We look forward to the opportunity to provide any further information to this process.

Regards,

Jules Kim  
Chief Executive Officer  
Scarlet Alliance, Australian Sex Workers Association

## Introduction

The full decriminalisation of sex work ensures sex industry businesses are regulated in the same way as other businesses and subject to a range of existing laws and regulatory mechanisms, such as Northern Territory (NT) Government Planning Scheme's planning and zoning regulations, WorkCover and the Australian Taxation Office. In NSW the sex industry is subject to a whole-of-government regulation including Work Health and Safety (WHS), council, business, industrial, taxation, migration, planning, health and criminal laws and regulations. Decriminalisation enhances the regulation and transparency of the sex industry.

By repealing laws specific to the sex industry, sex workers are able to access the same rights and protections afforded to other employees, contractors and small business owners in the NT. Decriminalisation improves sex workers' occupational choices by supporting autonomy, control, WHS and industrial rights. Decriminalisation will mean sex workers can report crime to the police without fear of prosecution as police are not a primary regulator of the sex industry. A decriminalised system amplifies opportunities for outreach, magnifies capacities for peer education, supports sex worker self-determination, maximises compliance, increases transparency and minimises discrimination.

There is an accumulating body of evidence globally and locally supporting the full decriminalisation of sex work as it ensures sex workers access to our human and industrial rights, and improved workplace health and safety and public health outcomes. In NSW, decriminalisation has brought improved work safety, high rates of safer sex practice and low rates of sexually transmitted infections with no evidence of organised crime.<sup>1,2,3,4,5</sup> The Lancet Series on HIV and sex workers showed that decriminalisation of sex work would have the greatest effect on the course of HIV epidemics across all settings, averting 33–46% of HIV infections in the next decade.<sup>6</sup>

Decriminalisation is supported by United Nations, UNAIDS, UNFPA, UNDP, Amnesty International, International Labor Office (ILO), World Health Organisation, Lancet Medical Journal, Global Alliance Against Trafficking in Women, Global Network of Sex Work Projects, Asia Pacific Network of Sex Workers, and within Australia's National BBV and STI Strategies.

Scarlet Alliance applauds the intention to fully decriminalise sex work in the Northern Territory. The current antiquated model of sex industry regulation in the NT of registration and licensing has been

---

<sup>1</sup> Donovan, B., Harcourt, C., Egger, S., Smith, L. W., Schneider, K., Wand, H., . . . Tabrizi, S. (2012). *The sex industry in New South Wales: a report to the NSW Ministry of Health*. Retrieved from Kirby Institute, Sydney: [https://kirby.unsw.edu.au/sites/default/files/kirby/report/SHP\\_NSW-Sex-Industry-Report-2012.pdf](https://kirby.unsw.edu.au/sites/default/files/kirby/report/SHP_NSW-Sex-Industry-Report-2012.pdf). Pg 8.

<sup>2</sup> Ibid. Pg vi.

<sup>3</sup> Department of Health. (2018b). *Eighth National HIV Strategy 2018-2022*.

<http://www.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1//File/HIV-Eight-Nat-Strategy-2018-22.pdf>. Pg 14.

<sup>4</sup> Department of Health. (2018a). *Fourth National Sexually Transmissible Infections Strategy 2018–2022*

<http://www.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1/File/STI-Fourth-Nat-Strategy-2018-22.pdf>. Pg 14.

<sup>5</sup> Minister for Innovation and Better Regulation. (2016). *NSW Government Response to the Legislative Assembly Inquiry into the Regulation of Brothels*. Sydney: Parliament of NSW Retrieved from <https://www.parliament.nsw.gov.au/committees/listofcommittees/Pages/committee-details.aspx?pk=185#tab-governmentresponses>.

<sup>6</sup> Shannon, K., Strathdee, S. A., Goldenberg, S. M., Duff, P., Mwangi, P., Rusakova, M., . . . Pickles, M. R. (2015). Global epidemiology of HIV among female sex workers: influence of structural determinants. *The Lancet*, 385(9962), 55-71.

a failure and we recognise the government's commitment to implement legislation to provide health, safety and rights to all Territorians. While Scarlet Alliance supports the passing of the Sex Industry Bill 2019 (the *Bill*), we assert some minor amendments are made to amplify *the Bill's* impact on improving the health, safety and wellbeing of sex workers.

Sex workers in the Northern Territory have long been campaigning for the full decriminalisation of sex work. The passing of this Bill will provide an unparalleled opportunity to capitalise on prior experience in other states and research to inform a world leading example of regulation for the sex industry and effective, practical and accessible protections for sex workers.

### **a. Whether the Assembly should pass the Bill.**

Scarlet Alliance supports the passing of *the Bill*. The changes proposed in *the Bill* are critical elements in ensuring sex workers in the NT are able to access workplace health and safety and industrial protections and rights. *The Bill* repeals the current problematic laws under the Prostitution Act 1992, allows sex workers to work together and employ staff, prohibits exploitation of sex workers and our right to refuse clients. The Bill supports sex workers access to justice in the event of a crime, and protection and redress for exploitative work conditions. Consistent with the intention of decriminalisation the Bill enables the sex industry to operate in accordance with existing laws and regulations, including laws governing employment, occupational health and safety, workers compensation and rehabilitation, planning, taxation and discrimination.

#### ***Scarlet Alliance supports the Bill's move to update stigmatising terminology***

Scarlet Alliance supports *the Bill's* move to update stigmatising terminology with up-to-date, internationally accepted terminology, such as "sex work", "sex service business" and "sex worker". The use of these terms is crucial to positioning sex work as work and encouraging non-judgemental, non-discriminatory and inclusive treatment of sex workers in the NT.

#### ***Scarlet Alliance supports the exemption from registration and removal of powers and functions of police officers in relation to sex work under the Public Health and Environment Health Act 2011.***

Scarlet Alliance supports *Clause 6(2)* that exempts sex workers and sex service businesses from registration under the *Public and Environmental Health Act 2011* (NT) and removes powers and functions of police officers in relation to sex work. *Clause 6(2)* is crucial to encouraging compliance. By contrast the requirement for registration has demonstrated, in other parts of Australia, to: create a two tiered system with the majority of the sex industry operating outside of the legal sector; to be an expensive system; and, to result in high levels of non compliance and reinforce police as regulators. Evidence in other states demonstrates that registration creates an illegal, 'underground' industry that cannot be quantified.

Additionally police have been proven to be inappropriate regulators of the sex industry. The NSW model of decriminalisation was introduced in response to high levels of police corruption, and has been found to have reduced police corruption. Moreover, when police are in a regulatory role over the sex industry, it creates significant barriers to sex workers accessing justice in the event of a crime. For these reasons we believe clause 6(2) is essential in maximising compliance and limiting potential harms.

***Scarlet Alliance supports the clauses in Part 2 Sex Work Generally of the Bill.***

**Clause 7: Contract for sex work not void**

This provision allows for the agreements made in a sex work context to be protected and legal regardless of other legal or public policy positions. “Contracts” refers to an agreement made by a sex worker and a client, which is usually a verbal contract with conditions agreed upon by both parties. It can also refer to a contract between an employer and a sex worker, which in many cases can also be verbal. This is an important provision that will enable sex workers to be able to access legal redress in cases when the contract/s for services are breached.

**Clause 8: Adoption and promotion of safe sex practices.**

This provision makes it a requirement for sex service operators and sex workers to “take all reasonable steps to adopt and promote safe sex practices”. However, it is worth noting that it is peer education and outreach that have retained the world-renowned low rates of HIV and STIs among sex workers in Australia<sup>7,8</sup>, not legislating the promotion or use of safer sex practices. Legislating safer sex, sexual health and condom use has been a costly failure that is difficult to enforce, leading to entrapment of sex workers by police and barriers to sex workers access to health and justice services. By contrast evidence-based strategies that are known to retain low rates of STIs and BBVs among sex workers such as peer education and outreach are effective in cost and outcomes.

**Clause 9 Refusal to perform sex work**

This clause ensures a sex workers can refuse to undertake sex work at any time. Even though there is a contract for sex work, i.e. an agreement between sex worker and client, a sex worker can refuse to provide, or refuse to continue to provide services at any time. The contract does not mean consent under criminal law, if the sex worker does not consent or withdraws consent at any time. This provision means that a sex worker who does not consent to services or withdraws their consent, can pursue criminal charges against anyone who forces them against their will. Consent is an ongoing and fundamental requirement for sex work and this clause makes it clear that any agreements made do not constitute a defense against assault or sexual assault of a sex worker. This provides important protection for sex workers to refuse clients or services at any time.

*Clause 9(3)* states that other parties have the right to reimbursement in the event of a breach of contract consistent with general common law position that applies to all contracts. However, the explanatory memorandum makes it clear that this *Clause 9(3)* does not apply in a situation where the conduct of the other party constitutes a criminal offence. If the sex worker is an employee, general employment law provides that the employer is liable for any reimbursement, but it does not mean that employers can seek reimbursement from employees in the event a booking is refused or discontinued.

---

<sup>7</sup> Department of Health. (2018a). *Fourth National Sexually Transmissible Infections Strategy 2018–2022* [http://www.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1/\\$File/STI-Fourth-Nat-Strategy-2018-22.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1/$File/STI-Fourth-Nat-Strategy-2018-22.pdf). Pg 26.

<sup>8</sup> Department of Health. (2018b). *Eighth National HIV Strategy 2018-2022*. [http://www.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1/\\$File/HIV-Eight-Nat-Strategy-2018-22.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1/$File/HIV-Eight-Nat-Strategy-2018-22.pdf). Pg 14.

## **Part 6 Repeal and transitional matters**

### ***Scarlet Alliance supports the repeal of the existing outdated regulations governing sex work in NT***

#### **Clause 25 Acts repealed**

This clause repeals *the Prostitution Regulation Act 1992 (Act No 6 of 1992)*, *the Prostitution Regulation Amendment Act 1993 (No 47 of 1993)*, and *the Prostitution Regulation Amendment Act 2000 (No 69 of 2000)* on the commencement of the *Sex Industry Act 2019*. Scarlet Alliance strongly support the removal of these problematic regulations, allowing for the decriminalisation of sex work in the NT. Sex workers in NT have detailed the devastating impact of these regulations on their rights, health and safety. The removal of these regulations is welcomed by sex workers and will have a positive impact on sex workers workplace health and safety, industrial rights and access to justice.

### ***Scarlet Alliance supports the destruction of personal information held in NT registration records***

#### **Clause 26 Destruction of certain records created under Prostitution Regulation Act 1992**

This is an important clause that means that once the Sex Industry Act commences, all personal information held in registration records will be destroyed. Currently the NT is the only jurisdiction in Australia to still have a system of police registration of sex workers. This approach is discriminatory and provides no positive outcomes for sex workers, instead has branded sex workers on what is a lifelong register, with no means of having our details removed from the register. Destruction of the personal information on the register will be significant for sex workers who continue to be negatively impacted by these records. This clause does not assign a time frame or process for the destruction of personal information on the register to occur. Furthermore, a process to ensure that this provision applies to destroy any personal information that was shared from the register to other agencies is essential.

### ***b. Whether the Assembly should amend the Bill***

There are only a couple of areas of the Bill we would like to see amended, specifically in relation to the advertising restrictions that carry forward the unworkable restrictions in the existing Prostitution Regulations Act 1992 and in relation to suitability certificates that require operators engaging more than 2 workers to obtain a suitability certificate. The Bill also provides an important opportunity to address much needed anti- discrimination and vilification protections for sex workers and to destroy criminal records for sex work through necessary amendments to the Spent Convictions Act 1992. Further comments in relation to those areas are detailed below.

Any further amendments to the Bill are not recommended as they will impact on the ability of the Bill to provide its intended benefits and protections. Any divergence from the full decriminalisation of sex work would be detrimental to the intended, well documented and widely supported impacts of decriminalisation.

#### ***Scarlet Alliance does not support Clause 15 Non-compliant advertising.***

*Clause 15* retains the advertising regulations that exist in the current, problematic *Prostitution Act 1992* (NT). The current advertising regulations are inconsistent with the intentions of *the Bill* and singles out sex workers for unnecessary advertising restrictions.

When sex workers advertise services, it provides us with an important opportunity to clearly outline the services we provide. Advertising provides sex workers with our first line of screening for client. This initial line of screening is often followed by the screening of clients that takes place when we negotiate our services directly with the client. The arbitrary restrictions on what sex workers can publish on our advertisements reduces our ability to utilise the advertising process to screen clients and enhance our safety.

The current advertising regulations also restricts the types of photographs sex workers can include in our advertising to only our head and face- no other parts of the body. This is completely illogical as it forces sex workers to risk our confidentiality in order to advertise with a photograph. Advertising using a photograph is a widely used marketing strategy utilised by sex workers.

Standard advertising restrictions should apply to sex work ads instead of these unworkable restrictions which comprise our ability to maximise our safety and protect ourselves from stigma and discrimination. Sex workers often do not want to include headshots and we need to be able to describe ourselves and clearly describe our services.

*Clause 15(4)* also prohibit sex service businesses or other independent sex workers from advertising for sex workers (as staff or co-workers) within the NT. Given the intention of the Bill to decriminalise sex work, sex workers should be able to advertise safely and transparently. Sex services businesses should be able to advertise transparently for employees just as any other legal businesses. As defined under the *Fairwork Act 2009* (Cth), transparency in advertising positions for employment as a sex worker, driver, manager, receptionist, cleaner must be clear before people apply for the work, to ensure employees are protected from:

- adverse action
- coercion
- undue influence or pressure
- misrepresentation.

***Scarlet Alliance does not support Part 4: Suitability certificates.***

*Part 4* requires sex service businesses who engage more than 2 sex workers to hold a “suitability certificate”. Requirements for operators to hold “suitability certificates” for sex work in practice has not achieved the intended results and have instead resulted in high levels of non-compliance. The requirements for “suitability certificates” should be removed from the Bill.

*Clause 18* states that any sex service business that engages more than 2 sex workers are required to obtain a “suitability certificate”. In New Zealand (NZ), the requirement for “suitability certificates” applies to sex service business with more than 4 workers and recent amendments by the South Australian (SA) Attorney General to *the SA Decriminalisation of Sex Work Bill 2018* only requires this for businesses with more than 5 workers. The requirement for operators of businesses with more than 2 sex workers to obtain a “suitability certificate” is overly onerous and excessive.

Sex workers who are working together and do not manage or employ each other should not be required to hold a “suitability certificate”. It is common practice for sex workers to work together or share a premise, and/or support staff. Requiring independent sex workers to hold “suitability certificates” constructs a similar situation to the current registration requirements in NT and creates barriers for independent sex workers to retain their safety and access justice. These clauses must

explicitly exclude independent sex workers who are working together without an employment or management relationship to each other.

Additionally, *Clause 21* states that the Commissioner will investigate and revoke a person's "suitability certificate" upon receiving information that the person has breached an offence under *the Bill* or "a law of the Territory, guideline or standard governing the operation of the business". It is unclear who will monitor "suitability certificate" holders to ensure that breaches to *the Bill* or other laws, guidelines and standards are reported to the Commissioner for investigation.

***Sex workers must be consulted on any changes to sex industry regulations.***

*Clause 24* Regulations states that the Administrator can make regulation under this Act that may prescribe fees payable, set out requirements for advertising, and provide for the requirements of suitability certificates and matters relevant to revocation of suitability certificates. It is crucial that any such regulations cannot be made without a consultative process with sex workers. It is of notable concern that the areas specified relate to areas where there are already concerns with the current clauses in this Act, such as advertising restrictions and suitability certificates.

***Historical convictions in relation to sex work must be taken to be spent on the commencement of the Sex Industry Act.***

**Division 3 Criminal Records (Spent Convictions) Act 1992**

Clause 31 and 32 merely repeals section 15(f) and 15(g) of the Criminal Records (Spent Convictions) Act 1992 which will have no operation when the Prostitution Regulation Act 1992 is repealed.

This is missing an important opportunity to destroy criminal records for sex work with the introduction of the Sex Industry Act. Similarly when homosexuality was no longer considered criminal, previous convictions for homosexuality were spent.

Historical convictions in relation to sex work must be taken to be spent on the commencement of the Sex Industry Act. This has been a crucial issue in NSW where this was omitted creating barriers to sex workers employment in other industries, prohibiting travel, preventing sex workers from being able to leave sex work if they wish to do so. Furthermore, these criminal records for sex work have created issues in other legal matters for sex workers such as custody cases.

***Anti-Discrimination Protections are essential for the implementation of full decriminalisation***

Anti-discrimination protections are essential for sex workers and important to supporting the implementation of full decriminalisation. At the inquiry into the proposed *Modernisation of the NT Anti-Discrimination Act*, both Scarlet Alliance and SWOP NT submitted advocating for the important inclusion of "sex work" and "sex worker" as protected attributes and for inclusion in the modernisation of the *Anti-Discrimination Act's* protections against vilification.

Anti-discrimination protections for sex workers are essential for providing necessary protection against widespread and persistent stigma and discrimination that sex workers face in every facet of our lives. It will also be a crucial element in supporting the implementation of the decriminalisation of sex work. These protections must be included in the NT *Anti-Discrimination Act 1992* and *the Bill* is a key opportunity to move forward these amendments and provide sex workers with necessary protections against discrimination and vilification.

**c. whether the Bill has sufficient regard to the rights and liberties of individuals**

Scarlet Alliance support the Government's conclusion that *the Bill* is compatible with human rights as it does not raise any human rights issues. Instead it provides much needed protections for sex workers and removes the current violation of rights against sex workers in the NT. *The Bill* promotes the welfare and occupational health and safety of sex workers, safeguards the human rights of sex workers and protects us from exploitation and is the best framework for positive public health outcomes. It enhances sex workers ability to refuse clients and sex work, and to seek alternative employment if desired. Consistent with the evidence, *the Bill* provides a fully decriminalised and transparent framework for sex work that is the best way to address exploitation and trafficking. Criminalisation and licensing have been recognised as extremely harmful to the rights of sex workers and to increase vulnerabilities to exploitation and trafficking.

The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) framework on state obligations requires State parties to take appropriate and effective measures, "immediately" and "without delay" to overcome all forms of discrimination against all women. This requires states to act with due diligence in combating any forms of discrimination or rights violations against sex workers and ensuring practical realisation of our rights. Consistent with the states obligations under CEDAW, the Bill respects, protects, promotes and fulfils the rights of sex workers to an enabling and safe work environment, provides access to legal protections and to ensure sex workers are able to access justice in cases of discrimination or violence.

The CEDAW Committee has consistently recommended that sex workers be decriminalised including in its recently adopted General Recommendation (GR 35) on gender based violence against women. The Committee has also noted that the continued criminalisation of the sex sector has had a disproportionate, negative impact on women.<sup>9</sup> The Committee has also expressed concern about "discrimination against women sex workers and the lack of State party's action aimed at ensuring safe working conditions..."<sup>10</sup> and as such the Committee recommended that the State party "... (a) dopt measures aimed at preventing discrimination against sex workers and ensure that legislation on their right to safe working conditions is guaranteed at national and local levels."<sup>11</sup>

In line with Australia's obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR), *the Bill* recognises every individual's right to choose their occupation and the right to just, favourable and safe work conditions.

Consistent with United Nations Human Rights Frameworks to which Australia is a party to, the Bill affirms sex workers rights to equality and freedom from discrimination; the right to liberty and security of person; the right to equal protection under the law; and the right to participation of individuals and groups in the determination of issues affecting them. The Bill, through the full decriminalisation of sex work, ensures the protection of the rights and liberties of all individuals.

---

<sup>9</sup> CEDAW Concluding Observations China, CEDAW/C/CHN/CO/6 (2006), para. 10; CEDAW Concluding Observations Fiji, CEDAW/C/FJI/CO/4 (2010), para. 25; CEDAW Concluding Observations Albania, CEDAW/C/ALB/CO/3 (2010), para. 29.

<sup>10</sup> CEDAW Committee, Concluding Observations, Hungary, 2013 CEDAW/C/HUN/CO/7-8 (2013), para. 23(e)

<sup>11</sup> CEDAW Concluding Observations Hungary, CEDAW/C/HUN/CO/7-8 (2013), para. 23(e)



#### **d. Whether the Bill has sufficient regard to the institution of Parliament.**

*The Bill* allows for the transparent operation of the sex industry. It aligns sex work with existing regulatory frameworks and laws. *The Bill* allows parliamentarians to affirm the best regulatory model to govern sex work in the NT that will assure the best outcomes for the whole NT community. *The Bill* does not endorse sex work, instead it enables parliamentarians to effectively govern the sex industry. Under the current regulation and any other model of regulation other than decriminalisation, the sex industry is driven underground, and operates outside of legal frameworks. Decriminalisation of sex work enables sex work to be regulated under the existing laws and regulations that govern other industries.

#### **e. Other matters**

##### ***Licensing and Registration***

Decriminalisation does not include registration or licensing. Registration and licensing has never succeeded and do not provide an accurate picture of the sex industry. The majority of sex work businesses are unable to comply with the onerous requirements of licensing and forced to operate outside of the legal framework. Queensland and Victorian sex industry laws have a licensing framework and provide comprehensive evidence of the model's failure. 50% -80% of the sex industry cannot operate/work legally in Victoria and Queensland respectively where sex work is licensed. In ACT where individual sex workers were required to register from 1994 until the laws were repealed in August 2018, only 14 sex workers had ever registered demonstrating the failure of registration.

The Kirby Institute's 2012 *Report to the NSW Ministry of Health* states that licensing is a "threat to public health" and should not be regarded as a viable legislative model.<sup>12</sup>

It would be a mistake if the NT government decided to implement a system that included either sex industry business or individual sex worker registration or licensing. This approach has demonstrated, in other parts of Australia, to create a two tiered system with the majority of the sex industry operating outside of the legal sector; to be an expensive system; and, to result in high levels of noncompliance and reinforce police as regulators. Evidence in other states demonstrates that licensing and registration creates an illegal, "underground" industry that cannot be quantified.

##### ***Registration of home based private or independent sex workers***

Requiring home based private sex workers to be subject to the same requirements as brothels or to registration conditions not required of any other home occupation is discriminatory and fosters stigma against sex workers. Enforcing unnecessary and discriminatory regulation creates an inevitable underclass of "illegal" sex workers who are unable to comply with restrictive and invasive registration systems and who face significant barriers to accessing essential support, services and justice, such as reporting crime to the police.

---

<sup>12</sup> Donovan, B., Harcourt, C., Egger, S., Smith, L. W., Schneider, K., Wand, H., . . . Tabrizi, S. (2012). *The sex industry in New South Wales: a report to the NSW Ministry of Health*. Retrieved from Kirby Institute, Sydney: [https://kirby.unsw.edu.au/sites/default/files/kirby/report/SHP\\_NSW-Sex-Industry-Report-2012.pdf](https://kirby.unsw.edu.au/sites/default/files/kirby/report/SHP_NSW-Sex-Industry-Report-2012.pdf). Pg 7.

Research from NSW has demonstrated that there are minimal amenity and safety impacts to the community as a result of home-based private sex workers.<sup>13</sup> Another study which surveyed the perception of 401 residents in two neighbourhoods in NSW found that, despite residents assumptions around public nuisances and private sex work, “43% of respondents were unaware of living or were uncertain that they lived near a sex premise, while a further 30% were aware but noted no impact”.<sup>14</sup> The study found that “those who had been aware of sex premises operating in their neighbourhood for a number of years appeared less likely to report negative impacts than those who had more recently become aware of their existence, suggesting that established sex premises had acted to mitigate any negative local impacts, or simply that residents had realised that sex premises created few problems”.

### **Mandatory Testing**

*The Eighth National HIV Strategy and The Fourth National Sexually Transmissible Infections Strategy* explicitly identifies mandatory testing of sex workers as a key barrier to evidence based prevention, and access to testing and healthcare services

Mandatory testing ‘endorses a false sense of security in the form of a “certificate”, which, due to window periods, doesn’t actually confirm a sex worker’s sexual health status, but instead just indicates that the sex worker has participated with the states’ mandatory testing regime. Mandatory testing places an unnecessary burden on sexual health clinics which are already beyond capacity. Sex workers in need of access to sexual health service quickly are particularly marginalised by mandatory testing regimes. The cost of over-testing is high - screening sex workers for HIV every 12 weeks costs \$4mil for every one HIV infection averted.<sup>15</sup>

Mandatory testing of sex workers is considered a rights violation by a number of international human rights organisations, such as by the United Nations Human Rights Office of the High Commission for Human Rights and UNAIDS. In Australia, mandatory testing has had negative consequences for sex workers confidentiality, human rights and industrial rights.

### **Private or Independent sex workers**

Independent sex workers should not be restricted from working with other workers for their safety, to share costs, to reduce isolation and to enable peer support. Independent sex workers who are not in a management or employment relationship to each other can legally work together in Tasmania, NZ and in some parts of NSW without negative legal or amenity impact. Sex workers have reported greater flexibility, improved WHS, reduced overheads and a greater sense of security. In states where sex workers must work alone or illegally, sex workers have reported frequent police entrapment, harassment and arrest. These independent sex workers report being forced to work longer hours in order to cover the costs of operating and reduced control over their work and safety strategies. Not all private sex workers want to or will always work with another sex worker.

---

<sup>13</sup> Prior, J., & Crofts, P. (2015). Is Your House a Brothel? Prostitution Policy, Provision of Sex Services from Home, and the Maintenance of Respectable Domesticity. *Social Policy and Society*, 14(1).

<sup>14</sup> Hubbard, P., Boydell, S., Crofts, P., Prior, J., & Searle, G. (2013). Noxious neighbours? Interrogating the impacts of sex premises in residential areas. *Environment and Planning A: Economy and Space*, 45(1). Pg 8.

<sup>15</sup> Jeffreys, E., Fawkes, J., & Stardust, Z. (2012). Mandatory testing for HIV and sexually transmissible infections among sex workers in Australia: a barrier to HIV and STI prevention. *World Journal of AIDS*, 2(03).

However, in the instance that a private worker should chose to do so, they should not be subject to entrapment and criminalisation as a consequence.

### ***Street Based Sex Workers***

Prohibition or laws seeking to control of street-based sex workers are ineffective and creates increased risks and barriers for sex workers. It places sex workers safety at risk as they must prioritise evasion of authorities over safety strategies. It limits the ability for sex workers to safely screen clients and negotiate their services. Criminalisation and police enforcement disrupts peer networks and displaces sex workers from usual places of work, making it difficult for outreach services to find people and hindering sex workers ability to organise. It creates significant barriers for street-based sex workers to report crime to the police in fear that reporting will result in charges being laid against them.

### ***Zones, 18+ Precincts or Isolated Industrial Areas***

Restricting sex workers to isolated industrial areas is a risk to the safety of sex workers. Issues have been highlight by sex workers forced to work in industrial zones where they have no access to public transport, poor lighting and no amenities. This risk is exacerbated for the large number of sex workers who work at night.

Sex workers strategically choose the location of their work based on access to essential services, public facilities including public transport, access to client's visibility, lighting and safety. Zoning of sex industry premises to isolated, poorly lit, under resourced and unsafe areas undermines sex workers' safety.

### **Summary**

Scarlet Alliance supports the passing of the *Sex Industry Bill 2019* with a few amendments. Sex workers in NT have long being campaigning for the full decriminalisation of sex work. These important changes will be a critical element in ensuring sex workers are able to access workplace health and safety protections. The *Bill* will ensure industrial protections and rights are afforded to sex workers as they are to all Territorians.

This *Bill* also supports sex workers ability to access justice in the event of a crime, and protection and redress for exploitative work conditions. The *Bill* enables sex workers and sex services businesses to be able to operate within existing laws and regulations, including employment, occupational health and safety, workers compensation and rehabilitation, planning, taxation and discrimination.

While we are supportive of the intention of the NT Government to fully decriminalise sex work, we would like to see amendments to the following areas:

- *Clause 15 Non-compliant advertising* is removed from *the Bill*. Sex workers and sex industry businesses must be regulated by standard advertising regulations;
- *Part 4: Suitability certificates* is removed from *the Bill*;
- Historical convictions in relation to sex work must be taken to be spent on the commencement of the Sex Industry Act; *and*

- To ensure sex workers are protected against discrimination and vilification and the inclusion of “sex work” and “sex worker” as protected attributes in the NT Anti-discrimination Act.

Additionally we support the development of WHS Guidelines in line with such guidelines developed in NSW by Scarlet Alliance, SWOP NSW, Touching Base, Worksafe and Department of Health. In the NT it will be critical to develop these guidelines to ensure appropriate workplace health and safety protections for sex workers, in conjunction with Scarlet Alliance, SWOP NT, Unions NT and NT Worksafe.

Further, any changes to regulations must be completed in consultation with sex workers and sex worker organisations. Scarlet Alliance also recommends the inclusion of a review process to assess the impact of the Act. The review committee should be appointed by the NT Attorney General and similar to the constitution of the review committee outlined in the NZ Prostitution Reform Act, the committee must include SWOP NT, Sex Worker Reference Group and Scarlet Alliance representatives.

Any further amendments to the Bill are not recommended as they will impact on the ability of the Bill to provide its intended benefits and protections. Any divergence from the full decriminalisation of sex work would be detrimental to the intended, well documented and widely supported impacts of decriminalisation.

Scarlet Alliance supports most of the amendments proposed in the Sex Industry Bill 2019 and applaud the intention to fully decriminalise sex work in the NT.