LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Economic Policy Scrutiny Committee

Inquiry into the Sex Industry Bill 2019

November 2019

Contents

Chair's Preface

This report details the Committee's findings regarding its examination of the Sex Industry Bill 2019. The sex industry in the Northern Territory (NT) has been operating under a partially decriminalised model since the passing of the *Prostitution Regulation Act 1992*. Since that time, the profile of the sex industry in the NT has changed substantially with most lawful sex work provided by solo sex workers rather than escort agencies. The current framework requires sex workers to register with police and is considered discriminatory and stigmatising. As a consequence, sex workers face significant barriers in accessing health, safety and legal protections and are exposed to risks that are not experienced by other workers. The aim of this Bill is to decriminalise sex work and to enable the sex industry to operate in accordance with laws that apply to all individuals and businesses generally.

The inquiry has generated significant community interest, with 46 submissions made to the inquiry and 18 witnesses appearing at a public hearing. The majority of submissions supported the Bill but a number of these proposed amendments. Submissions reflected a clear polarisation of views on whether the most effective way to regulate the industry is through decriminalisation or through partial criminalisation as adopted in Sweden. Submitters who opposed the Bill generally did so on policy grounds, with many expressing a preference for the Swedish or 'Nordic' model over the proposed decriminalisation model. The Committee emphasises that the purpose of the inquiry is not to assess or change government policy but to ensure that the proposed legislation accurately reflects government policy and is unambiguous and drafted in a sufficiently clear and precise manner. Consequently, this report does not examine whether decriminalisation or partial criminalisation is the best form of regulation but focuses on the clarity of the clauses and the extent to which the legislation achieves a balance between the rights and needs of sex workers and expected community standards.

The key issues raised by those who supported the Bill focused on suitability certificates, advertising, spent convictions and anti-discrimination measures. In addition, the Committee's legal counsel raised technical issues in relation to offences prohibiting the involvement of children in sex work and the requirement for sex services businesses to hold suitability certificates. The Committee has recommended five amendments to the Bill, with the majority of these being technical amendments to ensure that clauses are unambiguous and drafted in a sufficiently clear and precise manner. Of particular importance are Recommendations 2 and 4. Recommendation 2 aims to ensure that there is no risk that a child involved in sex work can be prosecuted while Recommendation 4 proposes that penalties for non-compliance with the requirement to hold a suitability certificate be prescribed in the regulations. The Committee has also proposed that the legislation be reviewed between 3-5 years after commencement (Recommendation 6).

On behalf of the Committee I would like to thank all those who made submissions, or appeared before the Committee, for their insightful advice and clarification of complex issues. The Committee also acknowledges the Department of the Attorney-General and Justice for their assistance and advice. I also thank my fellow Committee members for their bipartisan commitment to the legislative review process.

Mr Tony Sievers MLA
Chair

Committee Members

	**Tony Sievers MLA** Member for Brennan	
	Party:	Territory Labor
	Committee Membership	
	Standing:	House, Public Accounts
	Sessional:	Economic Policy Scrutiny
	Chair:	Economic Policy Scrutiny
	**Kate Worden MLA** Member for Sanderson	
	Party:	Territory Labor
	Parliamentary Position	Government Whip
	Committee Membership	
	Standing:	Public Accounts, Standing Orders and Members' Interests
	Sessional:	Economic Policy Scrutiny Social Policy Scrutiny
	**Lia Finocchiaro MLA** Member for Spillett	
	Party:	Country Liberals
	Parliamentary Position:	Deputy Leader of the Opposition
	Committee Membership	
	Standing:	Privileges
	Sessional:	Economic Policy Scrutiny Social Policy Scrutiny
	**Lawrence Costa MLA** Member for Arafura	
	Party:	Territory Labor
	Committee Membership	
	Standing:	Public Accounts
	Sessional:	Economic Policy Scrutiny
	**Jeff Collins MLA** Member for Fong Lim	
	Party:	Independent
	Committee Membership	
	Sessional:	Economic Policy Scrutiny
From 21 October 2019, the Member for Daly, Mr Gary Higgins MLA, substituted for the Member for Spillett, Mrs Lia Finocchiaro MLA.		

Committee Secretariat

Committee Secretary:	Jennifer Buckley
Administration Assistant:	Kim Cowcher
Contact Details:	GPO Box 3721 DARWIN NT 0801
	Tel: +61 08 8946 1485
	Email: EPSC@nt.gov.au

Acknowledgements

The Committee acknowledges the individuals and organisations that provided written submissions, or oral evidence at public hearings, and the Department of the Attorney-General and Justice for its advice.

Acronyms and Abbreviations

AFAO	Australian Federation of AIDS Organisations
NSW	New South Wales
NT	Northern Territory
NTG	Northern Territory Government
The Department	the Department of the Attorney-General and Justice
NTWLS	Northern Territory Women's Legal Service
SIN	Sex Industry Network (South Australia)
SWAAP	Spokeswoman for Survivors West Australia Against Prostitution
SWLRV	Sex Work Law Reform Victoria Inc.
SWEAR WA	Sex Work; Education, Advocacy & Rights, Western Australia
SWOP NT	Sex Workers Outreach Program Northern Territory
SWOP NSW	Sex Workers Outreach Program New South Wales
SWRG	Sex Workers Reference Group (NT)
NTAHC	Northern Territory AIDS and Hepatitis Council

Terms of Reference

Sessional Order 13

Establishment of Scrutiny Committees

(1) Standing Order 178 is suspended.

(2) The Assembly appoints the following scrutiny committees:

  (a) The Social Policy Scrutiny Committee

  (b) The Economic Policy Scrutiny Committee

(3) The Membership of the scrutiny committees will be three Government Members and one Opposition Member nominated to the Speaker in writing by the respective Whip and one non-party aligned Member to be appointed by motion.

(4) The functions of the scrutiny committees shall be to inquire and report on:

  (a) any matter within its subject area referred to it:

    (i) by the Assembly;

    (ii) by a Minister; or

    (iii) on its own motion.

  (b) any bill referred to it by the Assembly;

  (c) in relation to any bill referred by the Assembly:

    (i) whether the Assembly should pass the bill;

    (ii) whether the Assembly should amend the bill;

    (iii) whether the bill has sufficient regard to the rights and liberties of individuals, including whether the bill:

      (A) makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review; and

      (B) is consistent with principles of natural justice; and

      (C) allows the delegation of administrative power only in appropriate cases and to appropriate persons; and

      (D) does not reverse the onus of proof in criminal proceedings without adequate justification; and

      (E) confers powers to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer; and

      (F) provides appropriate protection against self-incrimination; and

      (G) does not adversely affect rights and liberties, or impose obligations, retrospectively; and

(H) does not confer immunity from proceeding or prosecution without adequate justification; and

(I) provides for the compulsory acquisition of property only with fair compensation; and

(J) has sufficient regard to Aboriginal tradition; and

(K) is unambiguous and drafted in a sufficiently clear and precise way.

(iv) whether the bill has sufficient regard to the institution of Parliament, including whether the bill:

(A) allows the delegation of legislative power only in appropriate cases and to appropriate persons; and

(B) sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly; and

(C) authorises the amendment of an Act only by another Act.

(5) The Committee will elect a Government Member as Chair.

(6) Each Committee will provide an annual report on its activities to the Assembly.

Adopted 24 August 2017

Recommendations

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Sex Industry Bill 2019 with the proposed amendments set out in recommendations 2-6.

Recommendation 2

The Committee recommends that the Bill be amended by inserting a clause after clause 14 stating words to the effect that 'no person under 18 years of age may be charged as a party to an offence committed on or with that person against sections 12, 13 and 14'

Recommendation 3

The Committee recommends that clause 18(1) be amended by removing the words 'more than 2' and replacing them with the words '3 or more'

Recommendation 4

The Committee recommends that clause 24(2) of the Bill be amended to provide that regulations may prescribe penalties for not complying with the requirement to hold a suitability certificate.

Recommendation 5

The Committee recommends that clause 20 be amended to:

- Make it clear that where a certificate holder leaves the sex services business it is only that person's certificate which expires.
- Provide for the expiration of all suitability certificates including those held by sole traders or partners both of which are currently excluded by clause 20 which only relates to certificate holders of a body corporate as specified in clause 18(2).

Recommendation 6

The Committee recommends that the Bill be amended to include a clause stating that a review of the impact of the legislation be undertaken no sooner than the expiry of three years, but before the expiry of five years, after commencement and that the composition of the panel undertaking the review be similar to that outlined in the *Prostitution Reform Act 2003* (NZ) and include representatives from the sex industry.

1 Introduction

Introduction of the Bill

1.1 The Sex Industry Bill 2019 (the Bill) was introduced into the Legislative Assembly by the Acting Attorney-General and Minister for Justice, the Hon Gerry McCarthy MLA, on Wednesday 18 September 2019. The Assembly subsequently referred the Bill to the Economic Policy Scrutiny Committee for inquiry and report by Tuesday 26 November 2019.[1]

Conduct of the Inquiry

1.2 On 20 September 2019 the Committee called for submissions by 8 October 2019. The call for submissions was advertised via the Legislative Assembly website, Facebook, Twitter feed and email subscription service. In addition, the Committee directly contacted a number of individuals and organisations.

1.3 As noted in Appendix 2, the Committee received 46 submissions to its inquiry. The Committee held a public briefing with the Department of the Attorney-General and Justice (the Department) on 24 September 2019 and public hearings with 18 witnesses in Darwin on 29 October 2019.

Outcome of Committee's Consideration

1.4 Sessional order 13(4)(c) requires that the Committee after examining the Bill determine:

(i) whether the Assembly should pass the bill;

(ii) whether the Assembly should amend the bill;

(iii) whether the bill has sufficient regard to the rights and liberties of individuals; and

(iv) whether the bill has sufficient regard to the institution of Parliament.

1.5 Following examination of the Bill, and consideration of the evidence received, the Committee is of the view that the Legislative Assembly should pass the Bill with proposed amendments as set out in recommendations 2-6.

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Sex Industry Bill 2019 with the proposed amendments set out in recommendations 2-6.

[1] Hon Gerry McCarthy MLA, Acting Attorney-General and Minister for Justice, *Draft - Daily Hansard – Day 2 – 18 September 2019*, p. 3, http://hdl.handle.net/10070/754522.

Report Structure

1.6 Chapter 2 provides an overview of the policy objectives of the Bill and the purpose of the Bill as contained in the Explanatory Statement.

1.7 Chapter 3 considers the main issues raised in evidence received.

2 Overview of the Bill

Background to the Bill

2.1 The sex industry in the Northern Territory (NT) has been operating under a partially decriminalised model since the passing of the *Prostitution Regulation Act 1992*. Under the current Act sex workers can work legitimately but only in strictly limited circumstances. Brothels are illegal and it is an offence to solicit in a public place. Escort agencies are legal but must be licensed unless the agency is run by a solo worker with no employees. Although licences are issued by the Director-General of Licensing applications are vetted by the Commissioner of Police who provides advice to the Director-General to inform their decision. Under the current Act, police play a strong role in monitoring and enforcement within the industry and authorised members of the Police Force can enter and inspect premises at any time.[2]

2.2 The profile of the sex industry in the NT has changed substantially since the passing of the *Prostitution Regulation Act 1992*. Currently, most lawful sex work in the NT is provided by solo sex workers rather than escort agencies, with no escort agency licences in operation as at August 2018.[3] By contrast, when the Act first commenced in 1993, 18 escort agency licences were issued. Although it is difficult to determine the extent of sex work in the NT, there is evidence of the presence of 'illegal brothels purporting to act as massage parlours'.[4]

2.3 In recognition of continued weaknesses in the way the sex industry is regulated the Government reviewed other options for regulation and conducted public consultation on the reform of the industry in April 2019. The discussion paper released for the consultation presented decriminalisation as the preferred regulatory model and invited feedback to assist with refining this model for the NT context.[5]

2.4 The discussion paper, *Reforming Regulation of the Sex Industry in the Northern Territory*, examined options for reform and reviewed the regulatory frameworks of other jurisdictions. It classified the regulation of sex work under three broad models: decriminalisation; licensing; and criminalisation. Under decriminalisation the criminal element is removed and sex services and workers operate under general business related laws including those related to workplace health and safety, taxation, immigration, employment, planning, and industrial laws. Under a licensing model, a jurisdiction determines the legal conditions under which the industry can operate, with this resulting in full or partial licensing. The NT currently operates under a partial

[2] Northern Territory Government (NTG), Department of the Attorney-General and Justice, Discussion Paper, Reforming Regulation of the Sex Industry in the Northern Territory, March 2019, p. 5, https://haveyoursay.nt.gov.au/44180/documents/100576

[3] Northern Territory Government (NTG), Department of the Attorney-General and Justice, Discussion Paper, Reforming Regulation of the Sex Industry in the Northern Territory, March 2019, p. 5, https://haveyoursay.nt.gov.au/44180/documents/100576.

[4] NTG, Department of the Attorney-General and Justice, Discussion Paper, *Reforming Regulation of the Sex Industry in the Northern Territory,* March 2019, p. 8, https://haveyoursay.nt.gov.au/44180/documents/100576

[5] Northern Territory Government (NTG), Department of the Attorney-General and Justice, Discussion Paper, Reforming Regulation of the Sex Industry in the Northern Territory, March 2019, p. 5, https://haveyoursay.nt.gov.au/44180/documents/100576

licensing system, for example, escort agencies with a licence can operate legally but brothels, and soliciting in public places, are illegal. Models which criminalise sex work may do this fully (both the selling and buying of sex services is illegal) or partially (buying or selling is illegal but not both). In practice, regulation of the industry is often implemented through a mix of one or more models.

2.5 When presenting the Bill to the Assembly the Acting Attorney-General and Minister for Justice, the Hon Gerry McCarthy MLA, commented that the current restrictions on legitimate sex work limited the ability of workers to access support and exposed them to risks that are not experienced by other workers. The Acting Attorney-General further commented that the current framework:

> establishes barriers which inhibit the ability for workers to access appropriate health and safety protections, and that the registration requirements on workers are discriminatory and oppressive. The registration requirements also stigmatise workers which further influences whether workers seek assistance from authorities, including police, and the level of assistance workers might receive if they do.[6]

Purpose of the Bill

2.6 The Sex Industry Bill 2019 repeals the *Prostitution Regulation Act 1992* and establishes a regulatory framework for the provision of sex work in the Northern Territory. As noted in the Explanatory Statement, the purpose of the Bill is to:

(a) decriminalise sex work and legalise contracts relating to sex work;

(b) enhance worker, client and public health and safety through:

i. applying the Public and Environmental Health Act 2011 to operators of sex services businesses;

ii. allowing sex workers to work together and/or employ support staff; and

iii. providing a mechanism to ensure the suitability of operators of commercial scale sex services businesses;

(c) prohibit exploitation of sex workers and enshrine the right of those workers to refuse to engage in sex work;

(d) prohibit the use of children for, and in, sex work; and

(e) enable the sex industry to operate in accordance with the laws of the Territory and the Commonwealth as they apply to all individuals and businesses generally, including, but not limited to, laws governing employment, occupational health and safety, workers compensation and rehabilitation, planning, taxation and discrimination.[7]

[6] The Hon Gerry McCarthy MLA, Acting Attorney-General and Minister for Justice, *Draft - Daily Hansard – Day 2 – 18 September 2019, p. 1, http://hdl.handle.net/10070/754522*.

[7] Explanatory Statement, *Sex Industry Bill 2019 (Serial 105),* p. 4, https://parliament.nt.gov.au/committees/EPSC/105-2019.

3 Examination of the Bill

Introduction

3.1 The inquiry has generated significant community interest, with this demonstrated by the receipt of 46 submissions to the Committee. Submissions reflected a clear polarisation of views on whether the most effective way to regulate the industry is through decriminalisation or through partial criminalisation as adopted in Sweden. This polarisation is not atypical and its antecedents are summarised by Schmidt in *The regulation of sex work in Aotearoa/New Zealand: An overview*. Schmidt's overview encapsulates the underlying principles that inform the tension between those for and against the decriminalisation of the sex industry. The views presented in this overview are highly reflective of the opposing positions put forward in submissions received by the Committee for this inquiry and an extract has been included below to enhance understanding of the context which frames the Bill.

> As we shift into a social and political climate marked by a more secular and rights-based approach to morality, and a more feminist approach to gender relations, perspectives on the sex industry have tended to take one of two approaches. These are summed up by Alison Laurie: 'To regard the right to sell sex as an aspect of a woman's right to choose what she will do with her body, or to see prostitution as degradation and an aspect of male control over women's bodies' (2010, p. 85). Both feminist and non-feminist perspectives regarding sex work often cleave along these lines, seeing sex work either as 'coercion and sexual subordination', or as 'a job, much like any other' (Weatherall & Priestley, 2001, p. 325). Contemporary regulatory approaches to prostitution have tended to utilise one or the other of these approaches to serve as their framework, and to inform the intended outcomes of legislation and policy.
>
> The first of these, commonly referred to as the 'Swedish model', is inspired by the radical feminist understanding that prostitution is inherently oppressive and/or exploitative, 'a quintessential expression of patriarchal power relations' (Weitzer, 2009, p. 214). Indeed, a factsheet produced by the Swedish government with respect to its legislation on the purchase of sexual services explicitly refers to prostitution as 'a form of exploitation' and states that 'Prostituted persons are considered as the weaker party, exploited by both the procurers and the buyers' (quoted in McCarthy et al., 2012, p. 259). Legislation adopting the 'Swedish model' seeks to eradicate prostitution by making the *purchase* rather than the *sale* of sexual services illegal (Abel & Fitzgerald, 2010a). This theoretically protects sex workers from the harms of engaging in illegal activities and places men, not women, firmly under the moral gaze of the law. …
>
> The second approach is, to a large extent, informed by a more liberal feminist analysis of the sex industry and contemporary notions of human rights. It focuses on prostitution as 'work', akin to the selling of any other service, and seeks to reduce the harms historically associated with the sale of sexual services (Weitzer, 2009). This approach is generally aligned with the perspectives of sex workers themselves, who are less likely to articulate their occupation as the sale of their 'bodies' per se, and rather describe it as 'allowing clients conditional access to their bodies for the purpose of providing specific, pre-negotiated sexual services' (Armstrong, 2014b, p.215). Conceptualising sex work as provision of a service was the perspective taken by those organisations and individuals submitting in support of the Prostitution Reform Bill who identified as feminist (Laurie, 2010). Although feminist theorising from this perspective may also position prostitution as something that 'involves human agency, and may be potentially empowering for workers' (Weitzer, 2009, p. 215), legislators are less likely to be interested in these theoretical concerns, and more likely to focus on protecting the rights of

> sex workers and conditions of sex work. As Carol Harrington (2012) notes, this results in a situation in which neither the commercialisation of the sex industry nor the effects of gendered social relations are critically examined, but rather a more liberal approach emphasising respect for diversity and freedom of choice is dominant. [8]

3.2 Twenty seven submitters supported the decriminalisation framework being implemented by the Bill.[9] Although strongly supportive of the Bill a substantial number of these submitters recommended amendments, with these primarily focused on suitability certificates, non-compliant advertising, spent convictions and anti-discrimination measures.

3.3 Nineteen submitters were fundamentally opposed to the decriminalisation of sex work and many expressed a preference for the Swedish or 'Nordic' model.[10] The majority of these submissions objected to the policy underpinning the Bill and did not address specific clauses of the Bill.

3.4 In addition to the above, the Committee's legal counsel raised technical issues in relation to clauses 12 – 14 (offences relating to children and sex work) and clauses 18 and 20 (suitability certificates).[11]

Clause 4 – Definitions

3.5 In clause 4, sex work is defined as 'the provision by a person of services that involve the person participating in sexual activity with another person in return for payment or reward'. The Northern Territory Women's Legal Service (NTWLS) expressed concerns that the use of the word "reward" could leave 'sex workers vulnerable to exploitation as well as an expectation to work for inadequate return'.[12] They noted that 'in colloquial use, "payment" is able to include more than an exchange of monies' and recommended that the word "reward" be removed from the proposed definition of sex work.

3.6 The Committee sought clarification from the Department regarding the effect on the operation of the Bill of removing the word "reward" and was advised that:

> The term "reward" was included in the definition of "sex work" to ensure that the Act applied to all workers regardless of the form of compensation they receive for providing their services. While the term "payment" has connotations that extend beyond money, it is generally understood to relate to a monetary transaction.
>
> The inclusion of the term "reward" in the setting of "in return for payment or reward" is intended to make it clear that, for the purposes of the law in the Northern Territory, a worker will be considered to be a worker regardless of how they are compensated. This supports the legitimisation of the worker and affords the worker access to protection from exploitation.[13]

---

[8] Schmidt, Johanna, 'The Regulation of Sex Work in Aotearoa/New Zealand: an Overview', *Women's Studies Journal*, Vol. 31, No. 2, December 2017, pp. 42-43
[9] Submission numbers: 5; 9; 13-15; 18-23; 26; 28-33; 36-38; 40-43; 45-46 (see Appendix 1)
[10] Submission numbers: 1-4; 6-8; 10-12; 16-17; 24-25; 27; 34-35; 39; 44. (see Appendix 1)
[11] Professor Ned Aughterson, Legal advice on the Sex Industry Bill 2019, 8 October 2019.
[12] Submission 46 – Northern Territory Women's Legal Services (NTWLS), p. 3.
[13] Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Responses to Written Questions,* p. 2, https://parliament.nt.gov.au/committees/EPSC/105-2019.

Committee's Comments

3.7 The Committee is satisfied with the Department's advice.

Sex work contracts (cl 7) and ability to refuse sex work (cl 9)

3.8 Clause 7 provides that 'no contract for or to arrange sex work is illegal or void on public policy or similar grounds' while clause 9 provides that: a person may refuse to perform sex work; entering into a sex work contract does not constitute consent for the purposes of criminal law; and where a person breaches the contract, for example by applying the rights provided in clause 9(1), the other party may be entitled to reimbursement.

3.9 The sex industry welcomed the legalising of contracts for sex work, with Jules Kim, the chief executive officer for Scarlet Alliance commenting that it would enable sex workers to 'access legal redress in cases when the contract/s for services are breached'[14]. By contrast, submitters from outside the sex industry critiqued this clause on the grounds that it strengthened 'the position of sex-buying customers relative to prostituted women' and would force sex workers 'to acquiesce to the demands of customers'. They considered that this would reduce the likelihood that a sex worker would exercise their right to refuse consent due to fear of potential legal action for breach of contract.[15]

3.10 Concerns were also raised regarding who would be liable if a sex worker refused to provide services agreed to between the employer and a client, with one submitter commenting that it is 'doubtful that the brothel owner would be prepared to pay compensation as the sex worker is the party that does not provide the service to the client'.[16] However, as clearly indicated in the Explanatory Statement, brothel owners would be subject to the same law as employers in any other business:

> Likewise, if the worker is an employee, that worker would not be liable to reimburse an employer (operator) if that employer were obliged to pay compensation because the worker refused to provide the services agreed to between the employer and the client. Under general employment law, the employer is vicariously liable for actions of its employees, and is obliged to indemnify them for any actions they have done in good faith. In addition, public policy precludes an employer seeking compensation from an employee where that employee is exercising a statutory right in favour of the employee's health and safety (such as that provided under subclause (1)).[17]

3.11 The Committee sought clarification from the Department regarding measures that might be put in place to assist sex workers to understand their legal rights and to combat fears regarding action that might be taken against them for exercising their rights and was advised that:

[14] Submission 40 – Scarlet Alliance, p. 4.
[15] Submission 1 – Caroline Norma, pp. 1-2; Submission 27 – Australian Christian Lobby, p. 7.
[16] Submission 27 – Australian Christian Lobby, p. 7.
[17] Explanatory Statement, Sex Industry Bill 2019 (Serial 105), p. 4, https://parliament.nt.gov.au/committees/EPSC/105-2019

> As with any other contract, a contract for sex work requires the express agreement between the parties about the services being provided. The intention of clause 9 relating to refusal is to reinforce the worker's right to determine the terms on which services may be provided, and to enable the withdrawal of consent where the terms are not being met, particularly where a worker's safety and security is at risk.
>
> Any potential legal action arising from the withdrawal of consent will depend on the circumstances of the individual case. Additionally, it would be limited to the reimbursement of any payment made by the client in respect of the services not provided as agreed in the contract for service. A breach of contract which results in an application for damages would also require determination of damages by a court.
>
> Industry groups, such as Scarlet Alliance and Sex Worker Outreach Program, have committed to undertaking education and information programs for workers and businesses on the operation of the Act. This would likely include informing workers of rights in relation to consent.[18]

3.12 There appears to be considerable misunderstanding regarding the purpose and effect of these clauses, with one submitter hypothesising that employer/employee contracts could result in sexual indenture, sexual servitude and trafficking.[19] One submitter recommended that clause 7 be strengthened by amending it to ensure that contracts cannot be enforceable if they are in direct conflict with international and national workers' rights, human rights and women's rights principles for the protection of the women working in brothels.[20]

3.13 The Committee sought clarification from the Department regarding the legislation currently in force in relation to issues such as human trafficking and slavery and was advised that:

> Australia is a signatory to a number of United Nations charters providing for human rights, including women's rights and worker rights. The implementation of these charters is led by the Commonwealth and supported by states and territories. Particularly relevant to sex work are human rights issues relating to human trafficking and slavery. Collaborative arrangements exist between police services and justice agencies under the National Action Plan to Combat Human Trafficking and Slavery, which includes the detection, investigation and enforcement of Commonwealth and state/territory offences.
>
> Reflecting this, the Northern Territory Criminal Code includes an offence prohibiting conduct that amounts to forced or compulsory labour where elements of assault and/or deprivation of liberty are present (noting the offence may be committed by merely attempting or conspiring to commission the offence, and may be constituted by non-physical elements, including threats).
>
> For workplace contracts (if the Bill is passed), the same laws that govern contracts of service or for service as they apply to other industries will apply to contracts within the sex industry. Inclusion of a clause as suggested would unnecessarily complicate the application of general laws and likely lead to confusion in their application.[21]

[18] Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Responses to Written Questions*, p. 3, https://parliament.nt.gov.au/committees/EPSC/105-2019.
[19] Submission 27 – Australian Christian Lobby, pp. 6-7.
[20] Submission 44 – Andrea Tokaji, p. 20.
[21] Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Responses to Written Questions*, p. 3, https://parliament.nt.gov.au/committees/EPSC/105-2019.

Committee's Comments

3.14 The Committee is satisfied with the Department's advice and is of the view that clauses 7 and 9 support the rights of sex workers rather than detract from them. In addition, the Committee notes that legal sex services businesses will be subject to the same industrial laws as other businesses, with this providing sex workers with supports they currently lack, particularly with respect to terms of employment and work, health and safety conditions.

Clauses 12 to 14 – Children and sex work

3.15 Clauses 12 to 14 create offences where the sex work involves children. Although the intention of these provisions is to 'prohibit a child being engaged or used to perform sex services' they are worded in a way that could result in child sex workers being prosecuted and convicted.[22] Similar provisions are included in the *Prostitution Reform Act 2003* (New Zealand) but in order to avoid the risk of child sex workers being inappropriately criminalised by such offences, the New Zealand legislation includes a provision making it clear that such offences do not apply to a child sex worker, with s 23(3) of the New Zealand Act stating that 'No person under 18 years of age may be charged as a party to an offence committed on or with that person against this section'.[23]

3.16 The Committee raised its concerns regarding the potential for child sex workers to be convicted with the Department and was advised that:

> While it is conceivable that a child may be charged as a result of conduct contrary to the offence provisions in the Bill, such as by procuring another child to perform sex work, there are considerations that apply when determining whether to charge a child. If the offender is a child, the ordinary prosecutorial discretion and culpability/capacity about children applies, including the principle of doli incapax for children under 14.[24]

3.17 The Committee sought further advice from the Department regarding the effect on the Bill of including a provision similar to that in s 23(3) of the *Prostitution Reform Act 2003* (New Zealand). In response, the Department raised concerns that providing such an exemption could result in children who procure other children for sex work not being prosecuted. This is, however, not the case, as the exemption from conviction only applies to a child *on whom* or *with whom* the offence has been committed; it would not apply to a child who committed an offence on or with another child.

Committee's Comments

3.18 The Committee notes that the intent of these provisions is not to prosecute child sex workers except in instances where the deliberate procuring of children is undertaken

[22] Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Responses to Written Questions*, p. 4, https://parliament.nt.gov.au/committees/EPSC/105-2019.
[23] *Prostitution Reform Act 2003* (New Zealand), s 23(3).
[24] Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Responses to Written Questions*, p. 4, https://parliament.nt.gov.au/committees/EPSC/105-2019.

by another child. It is important to ensure that this is adequately reflected in the Bill and the Committee is of the view that the insertion of a clause similar to section 23(3) in the New Zealand *Prostitution Reform Act 2003* would ensure that child sex workers are not prosecuted except in instances where the child had procured another child.

Recommendation 2

The Committee recommends that the Bill be amended by inserting a clause after clause 14 stating words to the effect that 'no person under 18 years of age may be charged as a party to an offence committed on or with that person against sections 12, 13 and 14'

Clause 15 - Non-compliant advertising

3.19 Under clause 15(1) it is an offence to advertise sex work other than in accordance with the regulations, while sub clauses (2) and (4) prohibit the advertising of employment opportunities for sex workers. Clause 24 provides for the Administrator to make regulations prescribing requirements for advertising.

3.20 Submissions from sex workers and associated organisations indicated a clear preference for advertising restrictions to be removed.[25] Several of these submitters considered the imposition of special restrictions on advertising to be at odds with clause 3(e) which states that an object of the Act is to enable the sex industry to operate in the same way as other businesses.

3.21 More specifically, submitters commented on the importance of transparent advertising for negotiating a clear contract for sex work in terms of the services to be provided, with Scarlet Alliance stating that:

> 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[s]. 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.[26]

3.22 The current regulations restrict photographs for advertisements to head and shoulder shots and do not allow sex workers to describe their physical attributes. Several peak body organisations for sex workers stated that using head and shoulder photographs is not popular with sex workers as it compromises their privacy and increases their risk.[27] Sex Work Law Reform Victoria Inc (SWLRV) commented that in Victoria,

[25] Submission 4 – Sienna Charles; Submission 14 – Corvus Keithley; Submission 15 – Sex Work Law Reform Victoria Inc; Submission 18 – Magenta WA; Submission 19 – Northern Territory Anti-Discrimination Commissioner; Submission 20 – Northern Territory AIDS and Hepatitis Council; Submission 21 – Name With-held; Submission 22 – Decrim QLD and Respect Inc.; Submission 26 – Fiona Bucknall; Submission 28 – Astrid Leigh; Submission 29 – SWOP NSW; Submission 30 – SWEAR WA; Submission 31 - Law Society NT; Submission 32 – Sam Jacob; Submission 37 – Gina Machado; Submission 38 – Stella Night; Submission 40 – Scarlet Alliance; Submission 41 – AFAO; Submission 42 – Gala Vanting; Submission 43 – SWOP NT.

[26] Submission 40 – Scarlet Alliance, p. 6.

[27] Submission 15 – Sex Work Law Reform Victoria, p. 2; Submission 40 – Scarlet Alliance, p. 6; Submission 43 – SWOP NT, p. 13.

restrictions on advertising of sex services is associated with low levels of compliance and enforcement, with only 45 recorded offences over the 2005-2018 period despite there being a large number of sex work advertisements published online that would be non-compliant with section 17 of the *Sex Work Act 1994* (Vic).[28]

3.23 Several submitters recommended that restrictions on the advertising of sex worker employment opportunities be removed, with Scarlet Alliance stating that this would lead to greater transparency and ensure that prospective employees are protected from 'adverse action, coercion, undue influence or pressure, and misrepresentation'.[29] Sex Work Law Reform Victoria Inc also emphasised the importance of transparency and commented that:

> Sex worker safety is best protected when businesses and individuals can advertise for sex working staff in a transparent manner so that both employer and employee/contractor are made aware of the nature of the job being advertised. In contrast, regulations that encourage oblique advertising for sex workers can only confound applicants as to the true nature of the work involved, thereby potentially leading to circumstantial entrance to the industry.[30]

3.24 These sentiments were also reflected in the submission from the Law Society NT and both the Law Society and the Anti-Discrimination Commissioner commented that not allowing employment opportunities to be advertised will perpetuate the stigma associated with the industry.[31]

3.25 The Committee sought clarification from the Department regarding the rationale for maintaining the restrictions on advertising and was advised that:

> Clause 15 reflects government's policy decision to retain the current restrictions on advertising as found in section 19 of the *Prostitution Regulation Act 1992* and regulation 4 of the *Prostitution Regulations 1992.*[32]

3.26 The Committee notes that other jurisdictions generally have similar advertising restrictions to those in the Bill, including New South Wales and New Zealand both of which have adopted a decriminalisation approach. Victoria also has similar restrictions but in 2016 lifted regulations restricting descriptions of sexual orientation, race, colour or ethnic origin of sex workers.[33]

Committee's Comments

3.27 The Committee is conscious of the significant polarisation of views regarding the decriminalisation of the sex industry and considers it important to achieve a balance between ensuring adequate health, employment and legal protections for sex workers while at the same time being cognisant of existing community standards. Taking community standards into account, the Committee is of the view that

[28] Submission 15 – Sex Work Law Reform Victoria, p.
[29] Submission 15 – Sex Work Law Reform Victoria, p. 3; Submission 40 – Scarlet Alliance, p. 6; Submission 43 – SWOP NT, p. 13;
[30] Submission 15 – Sex Work Law Reform Victoria, p. 3
[31] Submission 19 – Anti-Discrimination Commissioner, p. 2; Submission 3 – Law Society NT, p. 1.
[32] Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Responses to Written Questions*, p. 5, https://parliament.nt.gov.au/committees/EPSC/105-2019.
[33] Submission 15 – SWLRV, p. 2.

advertising restrictions should remain in place, however, it considers that issues associated with advertising should be included in any future review of the legislation.

Suitability Certificates

3.28 The Bill provides for the certification of sex service businesses that engage more than two workers and requires the operator and, where relevant, each executive officer and nominee of a business, to obtain a suitability certificate. Applications for certificates will be made through the Commissioner for Consumer Affairs and clause 24 provides for the regulations to prescribe requirements for suitability certificates.

Issues raised regarding the requirement to obtain a suitability certificate

3.29 Submissions from the sex industry sector expressed strong reservations regarding the implementation of a certification system and generally recommended that the requirement for suitability certificates be removed.[34] Key concerns related to: potential non-compliance due to onerous requirements; the view that sex work does not require special regulation and should be regulated through the same laws as other businesses; and the number of employees that would trigger a requirement for a certificate. These concerns are discussed below.

Potential non-compliance

3.30 Scarlett Alliance, the Sex Workers Outreach Program/Sex Workers Reference Group (SWOP NT/SWRG) and Magenta WA commented that certificate systems can result in high levels of non-compliance and the continuance of underground operations,[35] with Magenta WA stating that they:

> have been shown to contribute to corruption rather than alleviating it. This risks forcing large sections of the sex industry underground and away from the benefits of decriminalisation'.[36]

3.31 Scarlet Alliance also expressed concern that the requirement to obtain a suitability certificate would not be limited to sex work businesses but would also require independent sex workers who shared premises, but did not manage or employ each other, to also obtain a certificate, noting that:

> Requiring these independent sex workers to hold suitability certificates recreates the same issues with the current registration requirements that exist in the NT.[37]

3.32 The Committee sought clarification from the Department regarding whether independent sex workers sharing premises but not employing or managing each other would be required to obtain a suitability certificate and was advised that:

[34] Submission 14 – Corvus Keithley; Submission 18 – Magenta WA; Submission 20 – Northern Territory AIDS and Hepatitis Council; Submission 22 – Decrim QLD and Respect Inc.; Submission 26 – Fiona Bucknall; Submission 30 – SWEAR WA; Submission 38 – Stella Night; Submission 40 – Scarlet Alliance; Submission 41 – AFAO; Submission 42 – Gala Vanting; Submission 43 – SWOP NT.
[35] Submission 18 – Magenta, p. 2; Submission 40 Scarlet Alliance.
[36] Submission 18 – Magenta, p. 2.
[37] Committee transcript, public briefing, open session, 29 October 2019, p. 3, https://parliament.nt.gov.au/committees/EPSC/105-2019#PB

> The requirement to obtain a suitability certificate applies to business operators who engage more than two workers. A sex services business that is operated by a sole trader (e.g. an independent sex worker) would not need to obtain a suitability certificate unless that operator engaged two other workers to work for them. The fact that an independent worker may share some facilities with another independent worker will not, of its own, change the nature of those independent businesses.[38]

3.33 It is important to emphasise that suitability certificates are not the same as the current registration system. Under the current Act, individual sex workers are required to register with police. Suitability certificates do not require individual sex workers to register nor will they require the operators, executive officers or nominees of a sex services business to provide personal details of the sex workers they employ. As advised by the Department, the object of suitability certificates is to:

> distinguish between commercial operations who employ a number of workers and have a larger client base and independent sex workers so as to provide some level of guarantee that workers and clients of commercial scale businesses will not be taken advantage of or exploited.[39]

3.34 The Department further advised that the criteria that will be used to assess the suitability of an applicant includes:

> (a) whether the applicant:
>
> (i) has been previously found guilty of a relevant indictable offence;
>
> (ii) has been declared bankrupt, or is presently an undischarged bankrupt;
>
> (iii) has been, or has been associated with an entity that has been, previously subject to proceedings for failure to comply with occupational health and safety laws;
>
> (iv) was previously certified (or equivalent), and if the certification was revoked; and
>
> (b) any historical and contextual nature of the matters in (a).[40]

3.35 In contrast to other submissions from the sex industry, SWLRV, rather than objecting to suitability certificates per se, recommended the benefits of a "light touch" system similar to that in New Zealand as this would be more likely to encourage compliance. They noted that overly restrictive licensing requirements in Victoria had driven large portions of the sex industry underground and commented that a certification system should:

- Not be focussed on revenue raising as a result of excessive prescribed fees as this would create barriers to entry into the market and contribute to "underground" businesses;
- Provide for an efficient administrative structure so that certificate processing times are kept low;

[38] Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Responses to Written Questions*, p. 6, https://parliament.nt.gov.au/committees/EPSC/105-2019.
[39] Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Responses to Written Questions*, p. 6, https://parliament.nt.gov.au/committees/EPSC/105-2019.
[40] Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Responses to Written Questions*, p. 1, https://parliament.nt.gov.au/committees/EPSC/105-2019.

- Only refuse suitability certificates in limited circumstances e.g. where a person has been found guilty or been convicted of a serious crime;
- Only apply to those individuals who manage or employ other sex workers;
- Be enforced/administered by authorities other than the police.[41]

3.36 The Committee notes that, with the exception of fees and certificate processing, which are yet to be determined and are outside the scope of this Bill, the provisions for suitability requirements are in line with the criteria identified by SWLRV.

Sex work does not require special regulation

3.37 The NT Anti-Discrimination Commissioner queried whether suitability certificates were really necessary and emphasised the importance of ensuring that the certification process is comparable to other business regulation and is consistent with paragraph (e) of the Objects of the Act.[42] This view was echoed in a number of submissions from the sex industry sector, with Stella Night commenting that:

> The clause regarding 'Suitability Certificates' also needs removing, sex industry businesses do not need singling out for 'special' or 'extra' regulation than other businesses. I am concerned this process feeds into the harmful stigma and negative stereotypes about the industry that increase danger to workers …[43]

3.38 Leanne Melling, coordinator of SWOP NT considered that a focus on certification may limit the extent to which businesses implement their new obligations under the general legislation applicable to all businesses in the NT and may similarly limit the development of awareness among sex workers of the rights they have under employment and work, health and safety laws. Ms Melling commented that:

> We are asking that suitability certificates not be the main focus for sex workers' rights because we know the way businesses operate here, for instance, if there is registration in place, the businesses that employ sex workers as subcontractors, agencies or parlours, will say, 'We are registered, so that is enough.' We do not want that same approach of, 'We are complying and we have certification, that's enough. Work for us.'
>
> We want the focus to be more on the intersection of regulations—work health and safety regulations, the Return to Work Act, worker's compensation, and superannuation. That also intersects into advertising as well, as transparency. We want the whole ability for people to be fully informed upon entering the industry and fully informed about their rights in different positions.[44]

Threshold for requiring a sex services business to obtain a suitability certificate

3.39 The majority of submitters from the sex work industry recommended that if the requirement for suitability certificates is retained in the Bill then the number of sex workers engaged by a business before a certificate is required should be increased from more than two sex workers to more than four, as in New Zealand, or more than five, as proposed by the Bill currently under scrutiny in South Australia.[45]

---

[41] Submission 15 – SWLRV, p. 4.
[42] Submission 19 – Anti-Discrimination Commissioner, p. 2.
[43] Submission 38 – Stella Night, pp. 1-2.
[44] Transcript, public briefing, closed session, 29 October 2019, https://parliament.nt.gov.au/committees/EPSC/105-2019#PB
[45] Submission 40 – Scarlett Alliance, p. 6.

3.40 The Committee sought clarification from the Department regarding the reason for why clause 18(1) specified 'more than 2 workers' as the threshold for requiring a suitability certificate and was advised that:

> The number of workers forms the basis on which to distinguish between small scale operations and commercial scale ventures. The number is somewhat arbitrary: New Zealand opted for four, South Australia opted for five.
>
> The Northern Territory's Bill has settled on two workers being the delineation based on interactions with the Northern Territory Planning Scheme in relation to home occupation use of premises under that scheme. The rationale is that operators who cannot operate out of a residential premises due to the size of their operation (i.e. more than two workers) would ordinarily be considered commercial scale.
>
> Consideration was given to a higher number of workers, however this would not work with the Northern Territory Planning Scheme for home occupation use of premises. Community amenity is a consideration for home occupation use of premises.[46]

Committee's Comments

3.41 The Committee acknowledges the concerns of submitters but is of the view that the requirement for suitability certificates is not unreasonable given the nature of the sex services industry. It notes that applications for liquor licences are considerably more stringent and emphasises that sex workers are not required to obtain a suitability certificate if they work independently or employ less than 3 workers. Sex workers should be entitled to the same rights and protections as other workers, however, the highly personal nature of sex work and the potential for criminal elements to enter the industry, justifies the provision of additional safeguards to reduce risk within the industry.

3.42 The Committee is satisfied with the Department's advice regarding the rationale for choosing more than 2 sex workers as the threshold at which a business must obtain a suitability certificate, however, it considers that clause 18(1) would be clearer if reworded as set out in the recommendation below.

Recommendation 3

The Committee recommends that clause 18(1) be amended by removing the words 'more than 2' and replacing them with the words '3 or more'

No offence provided for not obtaining a suitability certificate

3.43 Legal advice provided to the Committee noted that while a sex service business engaging more than two sex workers 'must' hold a suitability certificate, there is no separate provision for general penalties under the Bill for breaching that requirement.[47] Although clause 24(2) enables regulations to provide for the 'requirements of suitability certificates' and 'matters relevant to the revocation of

[46] Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Responses to Written Questions,* p. 6, https://parliament.nt.gov.au/committees/EPSC/105-2019.
[47] Professor Ned Aughterson, Legal advice on the Sex Industry Bill 2019, 8 October 2019, p. 6.

suitability certificates' it does not provide for penalties. This is in marked contrast to the New Zealand *Prostitution Reform Act 2003*, which includes a penalty of up to $10,000 for failing to hold the equivalent 'operator's certificate' (s 34).

3.44 The Committee sought clarification from the Department regarding the reason for not including an offence and was advised that:

> The intent of the Bill is to change the regulatory nature for the business of sex work. In supporting the move from prohibition to permitting the operation of sex service businesses, consideration has been provided to how it is best regulated. This includes considering matters of potential non-compliance. Most business regulation does not automatically result in the commission of an offence for non-compliance. In determining whether to provide non-compliance as an offence, the nature of the operational requirement is considered. It is also open to the regulator, in this case the Commissioner of Consumer Affairs, to seek compliance through civil injunctive action in the courts, which has a lower burden of proof threshold than criminal matters.
>
> Additionally, the experience under the current *Prostitution Regulation Act 1992,* and in jurisdictions elsewhere, has also shown that an overly criminal regulatory environment can create difficulties for enforcement measures in establishing the standard of beyond reasonable doubt required for offences.
>
> The focus of the Bill is also to ensure that sex workers have access to the same workplace rights as other workers such as a safe and healthy work environment.[48]

Committee's Comments

3.45 The Committee considers that the absence of a penalty for not complying with certification requirements results in legislation that is of questionable enforceability. It further notes that it is rare for compliance to be sought through civil injunctive action in the courts and that without an offence there is little incentive for sex work businesses to obtain a suitability certificate. This is likely to result in low levels of compliance and greater potential for "unsuitable" employers to enter or remain in the industry, as they would be able to operate a sex services business with relative impunity.

Recommendation 4

The Committee recommends that clause 24(2) of the Bill be amended to provide that regulations may prescribe penalties for not complying with the requirement to hold a suitability certificate.

Duration of suitability certificates (clause 20)

3.46 The meaning of clause 20(a), as drafted, is unclear. It provides that a suitability certificate remains in force 'until there is a change to *any* of the certificate holders' of a body corporate and appears to mean that where an executive officer or nominee is

[48] Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Responses to Written Questions*, p. 7, https://parliament.nt.gov.au/committees/EPSC/105-2019

replaced 'the suitability certificate expires for all certificate holders of that corporation'.[49]

3.47 The Committee sought clarification from the Department regarding the intent of this provision and was advised that:

> Under clause 18(b), the corporate operator and each executive officer/nominee must hold a suitability certificate. The suitability certificate is issued on an individual basis, not a collective basis. The suitability certificate remains in force while there is no change in the circumstances of the person holding the certificate. For example, if an executive officer leaves a body corporate, the certificate issued to the body corporate operator will remain in force under clause 20(a) if the body corporate remains the operator. Under this scenario, the certification of the executive officer would automatically lapse as the person is no longer an officer of the body corporate.[50]

3.48 The Committee further notes that clause 20(a) only relates to body corporates as specified in clause 18(2) and does not make any provision for the duration of certificates held by sole traders or persons in partnerships, each of which could be an 'operator' without being a body corporate.

Committee's Comments

3.49 The Committee considers that the intention of clause 20(a) is not adequately reflected in the wording. In addition, the certificates of sole traders or persons in partnerships could be held for an unlimited time because clause 20(a) does not provide for their duration. The Committee considers that the Bill needs to be amended to ensure that the provisions on duration of suitability certificates are clear and unambiguous.

Recommendation 5

The Committee recommends that clause 20 be amended to:

- **Make it clear that where a certificate holder leaves the sex services business it is only that person's certificate which expires.**
- **Provide for the expiration of all suitability certificates including those held by sole traders or partners both of which are currently excluded by clause 20 which only relates to certificate holders of a body corporate as specified in clause 18(2).**

Destruction of certain records created under *Prostitution Regulation Act 1992*

3.50 Clause 26 provides for all personal information obtained under Part 2, Division 2 of the *Prostitution Regulation Act 1992* and all personal information held in the registers referred to in Part 3, Division 7 of the Act, to be destroyed as soon as practicable. Part 2, Division 2 includes offences relating to escort agency businesses while Part 3, Division 7 relates to the Public and Private registers of Escort Agency Licences.

[49] Professor Ned Aughterson, Legal Advice on the Sex Industry Bill 2019, p.
[50] Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Responses to Written Questions*, p. 8, https://parliament.nt.gov.au/committees/EPSC/105-2019

The personal information referred to in clause 26 includes personal information on owners, operators, and managers as well as sex workers.

3.51 Scarlet Alliance and Sienna Charles, while welcoming the destruction of personal information held in registration records, commented on the importance of ensuring that the provision applied to any personal information that was shared from the register to other agencies.[51]

3.52 The Committee sought clarification from the Department regarding the processes for destroying this information and was advised that:

> By operation, the requirement to destroy that information will apply to any person who holds that information regardless of who or where that person is. In addition, the Northern Territory's Information Privacy Principle 4.2 (made under the *Information Act 2000)* requires a public sector organisation to destroy personal information if it is no longer needed for the purpose it was acquired. That information will no longer be needed on repeal of the *Prostitution Regulation Act 1992.* Similar requirements exist under the *Commonwealth's Privacy Act 1988* (Australian Privacy Principle 11.2) and in other jurisdictions.
>
> Consequently, all personal information will be required to be destroyed no matter how it is held.[52]

Committee's Comments

3.53 The Committee is satisfied with the Department's response.

Expungement of criminal records

3.54 A number of submitters emphasised the importance of expunging the criminal records of sex workers for offences related to the criminal model, noting that such convictions have adverse effects for sex workers in terms of future employment and educational opportunities, travel, and other legal matters such as custody cases.[53] Scarlet Alliance commented that:

> 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.[54]

3.55 No provision is made for expungement of these convictions on commencement of the Bill.

3.56 The Committee sought clarification from the Department regarding whether consideration has been given to expunging the criminal records of sex workers and was advised that:

---

[51] Submission 5 – Sienna Charles; Submission 40 – Scarlett Alliance, p. 5.
[52] Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Responses to Written Questions*, p. 9, https://parliament.nt.gov.au/committees/EPSC/105-2019
[53] Submission 5 – Sienna Charles; Submission 18 – Magenta, p. 3; Submission 20 NTAHC; Submission 22 – Respect Inc/DecrimQld; Submission 31 Law Society, p. 1; Submission 19 – Anti-Discrimination Commissioner, p. 2.
[54] Submission 40 – Scarlett Alliance, p. 7.

> It is understood that since commencement of the *Prostitution Regulation Act 1992,* 11 individuals have had one or more charges that were brought against them under the Act proven. However, only one of those individuals has had a conviction recorded, with fines imposed in relation to the offences of being an unlicensed escort agency, and carrying on escort agency without a manager.
>
> The policy considerations to provide for expungement of criminal records would consider the type of offence or offences for expungement and the need to address convictions that relate to conduct which once was illegal but is now legal. It is noted that carrying on a sex service business will no longer be illegal and consideration could be given to exploring the implications of providing for expungement in due course.[55]

Committee's Comments

3.57 The Committee considers it to be important to expunge past convictions for conduct that will no longer be illegal once the legislation is passed and supports Government giving further consideration to this matter.

Concerns regarding location and conditions in sex work businesses

3.58 A number of submitters expressed concerns regarding the regulation of the location, size and working conditions of sex service businesses, with Caroline Norma commenting that the Bill:

> imposes no restrictions on the size of prostitution businesses, their number of rooms, the numbers of women who may be available for prostitution onsite, or conditions in which business managers can dispatch women in outcall arrangements for prostitution.[56]

Committee's Comments

3.59 The Committee notes that if passed, the Sex Industry Act 2019 will not commence until amendments have been made to the *Planning Act 1999*. These amendments will take into account aspects of the sex worker industry such as the location of sex work businesses. Issues relating to work conditions will be covered under other legislation, such as the *Public and Environmental Health Act 2011*, and the *Work, Health and Safety (National Uniform Legislation) Act 2011*. The Committee considers these arrangements to be satisfactory.

Review of the operation of the Bill after commencement

3.60 Scarlet Alliance and NTWLS recommended that the Bill be amended to include a review process to assess the impact of the Act, with Scarlet Alliance recommending that 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*

[55] Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Responses to Written Questions*, p. 10, https://parliament.nt.gov.au/committees/EPSC/105-2019

[56] Submission 1 – Caroline Norma, p. 1.

Reform Act, the committee must include SWOP NT, Sex Worker Reference Group and Scarlet Alliance representatives'.[57]

Committee's Comments

3.61 The Committee notes that the Bill introduces significant changes to the way the sex industry is regulated and considers that it will be important to assess the impact of the changes. The Committee supports the request for a review and emphasises the importance of ensuring that the composition of the review panel adequately represents the interests of the sex work industry, relevant government departments and the broader community. In New Zealand, the requirement for a review was specified in sections 42 and 43 of the *Prostitution Reform Act 2003*, with this including detailed specifications regarding the Review and the composition of the Review Panel.

Recommendation 6

The Committee recommends that the Bill be amended to include a clause stating that a review of the impact of the legislation be undertaken no sooner than the expiry of three years, but before the expiry of five years, after commencement and that the composition of the panel undertaking the review be similar to that outlined in the *Prostitution Reform Act 2003* (NZ) and include representatives from the sex industry.

Anti-Discrimination protections for sex workers

3.62 Several submitters commented on the importance of anti-discrimination protections for sex workers, with Scarlet Alliance stating that:

> 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.[58]

Committee's Comments

3.63 The Committee acknowledges the importance of amending the *Anti-Discrimination Act 1992* to incorporate protections against discrimination faced by sex workers, however, it notes that comprehensive reforms to this Act are currently being considered by the Government subsequent to completion of an extensive consultation process. Given the comprehensive nature of the proposed reforms the Committee considers it more appropriate for amendments relating to sex workers to

[57] Submission 40 – Scarlet Alliance, p. 12; Submission 46 – NTWLS, p. 8.
[58] Submission 40 – Scarlet Alliance, p. 7; Submission 19 – Anti-Discrimination Commissioner, p. 1; Submission 43 – SWOP NT/SWRG, p. 7.

be incorporated as part of the overall modernisation of the *Anti-Discrimination Act 1992*.

Appendix 1: Submissions Received

Submissions Received

1. Caroline Norma
2. Susie Remulla
3. John Neagle
4. Mary Maxey
5. Sienna Charles
6. Frances Booth
7. Leith Phillips
8. Spokeswoman for Survivors – West Australia Against Prostitution
9. Riley Alexander
10. Nick and Leslie Beissel
11. Name Withheld
12. Eunice De Kock
13. Kat Morrison
14. Corvus Keithley
15. Sex Work Law Reform Victoria Inc.
16. Jenny Holland
17. Lara Stoll
18. Magenta WA
19. NT Anti-Discrimination Commission
20. NT AIDS and Hepatitis Council
21. Name Withheld
22. Decrim QLD and Respect Inc.
23. Nancy de Castro
24. Priceless
25. Ernie Mitchell
26. Fiona Bucknall
27. Australian Christian Lobby
28. Astrid Leigh
29. Sex Workers Outreach Program (SWOP) NSW
30. Sex Work, Education, Advocacy & Rights WA (SWEAR WA)
31. Law Society NT
32. Sam Jacob
33. YWCA Australia
34. James McKenna
35. Lynnette Bigg
36. Name withheld
37. Gina Machado
38. Stella Night
39. Nordic Model Australia Coalition (NorMAC)
40. Scarlet Alliance, Australian Sex Workers Association
41. Australian Federation of AIDS Organisations (AFAO)
42. Gala Vanting
43. Sex Worker Outreach Program NT (SWOP NT) and the Sex Worker Reference Group
44. Andrea Tokaji
45. Sex Industry Network (SIN)
46. Northern Territory Women's Legal Services

Note

Copies of submissions are available at: https://parliament.nt.gov.au/committees/EPSC/100-2019.

Appendix 2: Public Briefing and Public Hearings

Public Briefing – 24 September 2019

Department of the Attorney-General and Justice

- Douglas Burns, Senior Policy Lawyer
- Hannah Clee, Senior Policy Lawyer

Public Hearing – 29 October 2019

Scarlet Alliance

- Jules Kim, Chief Executive Officer

Northern Territory Women's Legal Services

- Caitlin Weatherby-Fell Senior Solicitor, Top End Women's Legal Service, Representative, Northern Territory Women's Legal Services

Member of Coalition Against Trafficking in Women Australia

- Dr Caroline Norma

Australian Christian Lobby

- Wendy Francis
- Ally-Marie Diamond

Private Citizen

- Sienna Charles
- Partner

Priceless

- Matthew Davis, Spokesperson
- Sabrinna Valisce, former prostitute in New Zealand

Sex Worker Outreach Program NT and Sex Worker Reference Group

- Leanne Melling, Peer Educator
- Polly Raise, Peer Educator
- Skye Ozanne, Peer Educator
- Addison Wood, Peer Educator
- Desirae August, Peer Educator and Chair of the Scarlet Alliance Aboriginal & Torres Strait Islander Sex Workers Working Group

NT AIDS and Hepatitis Council

- Genevieve Dally, Executive Director
- Heath Paynter, Deputy CEO, Australian Federation of AIDS Organisations
- Leanne Melling, Coordinator, Sex Worker Outreach Program NT

Department of the Attorney-General and Justice

- Doug Burns, Senior Policy Lawyer, Legal Policy
- Hannah Clee, Senior Policy Lawyer, Legal Policy

Note

Copies of hearing transcripts and tabled papers are available at: https://parliament.nt.gov.au/committees/EPSC/105-2019

Bibliography

Consumer Affairs and Fair Trading Act 1990 (NT)

Criminal Records (Spent Convictions) Act 1992 (NT)

Explanatory Statement, Sex Industry Bill 2019 (Serial 105), https://parliament.nt.gov.au/committees/EPSC/105-2019

Hon Gerry McCarthy MLA, Acting Attorney-General and Minister for Justice, *Draft - Daily Hansard – Day 2 – 18 September 2019*, http://hdl.handle.net/10070/754522

Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Responses to Written Questions,* https://parliament.nt.gov.au/committees/EPSC/105-2019

Northern Territory Government, Department of the Attorney-General and Justice, Discussion Paper, *Reforming Regulation of the Sex Industry in the Northern Territory,* March 2019, https://haveyoursay.nt.gov.au/44180/documents/100576

Professor Ned Aughterson, Legal advice on the Sex Industry Bill 2019, 8 October 2019

Prostitution Control Act 1994 (Vic)

Prostitution (Operator Certificate) Regulations 2003 (NZ)

Prostitution Reform Act 2003 (New Zealand)

Prostitution Regulation Act 1992 (NT)

Prostitution Regulations 1992 (NT)

Public and Environmental Health Act 2011 (NT)

Prostitution Act 1999 (QLD)

Restricted Premises Act 1943 (NSW)

Schmidt, Johanna, 'The Regulation of Sex Work in Aotearoa/New Zealand: an Overview', *Women's Studies Journal*, Vol. 31, No. 2, December 2017, pp. 42-43, https://pdfs.semanticscholar.org/3101/9929e842b8dbac50997e138c30fe458fa2e6.pdf?_ga=2.59575023.316427535.1574206831-1948091722.1574206831

Sex Work Act 1992 (ACT)

Sex Work Act 1994 (Vic)

Work, Health and Safety (National Uniform Legislation) Act 2011 (NT)