

Tuesday, 8 October 2019

*Economic Policy Scrutiny Committee
Legislative Assembly of the Northern Territory
EPSC@nt.gov.au*

*Submission to the Economic Policy Scrutiny Committee
of the Legislative Assembly of the Northern Territory*

Re: Sex Industry Bill 2019

The Sex Workers Outreach Project (SWOP) of NSW would like to thank the Economic Policy Scrutiny Committee of the Legislative Assembly of the Northern Territory for the opportunity to make a submission to Sex Industry Bill 2019.

SWOP is a non-government organisation that exists to provide NSW sex workers with the same access to health, safety, human rights and workplace protections as other Australian workers. SWOP has the highest level of direct contact with sex workers of any agency, government or non-government, in Australia.

While we are primarily funded by NSW Health to sustain the low rates of sexually transmitted infections amongst sex workers; sustain the virtual elimination of HIV transmission within the sex industry; and reduce hepatitis infections in sex workers, as the only Australian jurisdiction with near full decriminalisation, we felt it pertinent to respond to this bill in the interest of securing the same health and safety outcomes for our Northern Territory colleagues.

a) Whether the Assembly should pass the Bill

We support the passing of the Sex Industry Bill 2019.

SWOP supports the general aim of the proposed bill as our evidence here in NSW clearly shows, the decriminalisation of sex work has had an overwhelmingly positive impact on both NSW sex workers, and the wider NSW population.

Decriminalisation, which occurred in 1995 has resulted in very low rates of HIV and STI prevalence and incidence, high rates of access to health promotion and support services by sex workers, and increased capacity of sex workers, including those from Asian and other non-English speaking backgrounds, to look after their health and welfare.

A study comparing the decriminalised framework in NSW with the licensing framework in Victoria and the criminalised framework in Western Australia showed that the NSW decriminalised framework enabled the widest reach of health services targeting sex workers.ⁱ To this end, our own service was able to provide over 6000 occasions of service to people working in the NSW sex industry in the last year, visiting 561 sex service premises, and, by virtue of working in a decriminalised legal environment, successfully gaining entry into 96% of them (even while hampered by de facto criminalisation of sex work by local government).

Passing this Bill is an opportunity for the Northern Territory to be truly world leading. Implementing full decriminalisation as this Bill outlines it, would see the Northern Territory exceed both the NSW and New Zealand models, placing it at the top of the small cohort of jurisdictions currently considered as world's best practice.

This framework for regulation is evidence based and backed by the World Health Organisation, the United Nations AIDS Programme (UNAIDS), Amnesty International and in literature cited in the leading medical journal *The Lancet*. According to the latter, worldwide decriminalisation of sex work would have the greatest impact on the HIV epidemic globally, reducing HIV by up to 46% in the next decade, resulting in cost saving thresholds of tens of millions of dollars,ⁱⁱ so it is also a fiscally sensible choice.

b) Whether the Assembly should amend the Bill

While we are broadly in support of the Bill as it stands, we advise against carrying forward the advertising restrictions drawn from the existing Prostitution Regulations Act 1992. Outdated advertising restrictions are still in place in NSW and allow media outlets to extort sex workers. Until stigma and discrimination means it is tenable for sex workers to use a head shot without fear, it is unreasonable to limit sex workers to head shots in their advertising. Arbitrary and illogical restrictions on how sex workers can advertise are not in line with the aim of the Bill, which should seek to treat sex work like other forms of work, by allowing sex services businesses to advertise transparently for employees as other Territorian businesses do.

Anti-discrimination protections

We would advocate strongly for the Bill to include making amendments to the NT Anti-Discrimination Act. This is an opportunity for the NT Bill to be world-leading and exceed the NSW model, as we are one of the Australian states that does not currently have occupational discrimination legislation.

As the NSW case has shown across more than two decades, decriminalisation alone does not eliminate stigma and discrimination against sex workers. For example, being outed as a sex worker can still expose a sex worker to homelessness if they rent a property where the property owner or real estate agent discriminates against sex workers; or if they own an apartment when the body corporate discriminates against sex workers.

Parents who do sex work have the additional concern that that stigma and discrimination centred upon their occupation will be levelled at their children.ⁱⁱⁱ Family ostracism is common, as evidenced by this case of an ‘outed’ New Zealand-based sex worker “who has not spoken to her daughter in two-and-a-half years since being exposed”^{iv}.

The Australian national peak body representing Australian sex workers and Australian sex worker organisations, Scarlet Alliance, points out:

“Discrimination comes from private, public and government spheres. Anti-discrimination laws for sex workers in Australia remain inconsistent and ineffective.”^v

With NSW being one of the Australian states that does not currently have occupational discrimination legislation, the fear of being outed as a sex worker is magnified for local sex workers and represents a significant barrier to exercising full human rights. For example, SWOP is routinely told of hotels and motels that discriminate against sex workers, but to date there has only been one Australian case - *Dovedeen Pty Ltd & Anor v GK* [2013] QCA 116^{vi} - where a sex worker has been brave enough to bring a case against this discriminatory practice, and even then, the worker asked for (and was granted) a name suppression order.

More than a decade ago, in 2009, the Australian Human Rights Commission (AHRC) recommended a full overhaul of Australia’s anti-discrimination laws to cover some important areas of discrimination that have been left out, including discrimination by occupation^{vii}. While we continue to support the AHRC in this endeavour, as overhauling anti-discrimination laws is vital for sex workers to achieve the same access to justice and other human rights as other Australians, in the interim we see great value for Territorian sex workers to be included in protections in the NT Discrimination Act.

c) Whether the Bill has sufficient regard to the rights and liberties of individuals

It is SWOP’s view that the Sex Industry Bill 2019 is compatible with human rights, namely living a life free from fear, harassment or discrimination. By allowing NT sex workers and sex services businesses to operate within the state’s existing laws and regulations, including employment law, occupational health and safety law, workers compensation and rehabilitation, planning law, taxation and anti-discrimination legislation, you reduce stigma and discrimination against sex workers.

Access to justice

When sex workers have doubt about the legality of their work; or they work at a workplace that they suspect might not have correct development approval; or they move between jurisdictions with different laws pertaining to sex work; they are less likely to approach authorities regardless of the legal environment they find themselves working within. Confusing and convoluted regulation that only applies to sex industry businesses acts as a barrier to sex workers reporting crimes against them.

SWOP is in support of this Bill because it removes the police as regulators of the sex industry in the course of defining the relationship with the Public and Environmental Health Act 2011. The implementation of the decriminalised framework in 1995 in NSW was, in part, driven by the desire to remove police as the regulators of the sex industry. This was to reduce the corruption that came to light during the Wood Royal Commission.

In NSW process of decriminalisation has succeeded in addressing the issue of police corruption and helped to reduce criminality associated with the industry. Decriminalisation also allowed sex workers to go to the police with complaints or allegations without fear of being punished for being a sex worker.

In the course of responding to the 2015 Legislative Council Select Committee on the Regulation of the Brothels^{viii} in NSW which found against implementing licensing, SWOP asked sex workers in NSW to describe what it was like working before decriminalisation:

"I've worked for 25 or more years and when I first started there was lots of harassment from the police and public due to being a street-based Transgender sex worker."

"I was a sex worker for more than 10 years. I could not report to the police if I was in trouble in fear of being arrested."

"I've been a sex worker for over 24 years and back then it was shocking the way the police would treat us transgender sex workers."

"My work history stems back 30 years before decriminalisation came into place and things back then weren't as good as they are today. Police brutality and physical violence from the people passing – by on the streets was unacceptable. As a transgender sex worker we were beaten by the police if we spoke out against them and what they use to do to us."

We asked the same NSW sex workers whether their lives improved after decriminalisation:

"Yes, the violence died too because the police actually started to do what they should have been doing, and that was arresting the perpetrator not the victim. As more and more health services started to emerge it became a lot better to have health checks. Our safety improved as well because of decriminalisation."

"It became safe to a sex worker. There are services provided for workers especially when you can report an incident to police. Also the availability of condoms."

"It was better after decriminalisation. Better access to service providers for tranny sex workers regarding health care, police relations etc."

"Sex work became better because I no longer had to fear being bashed by the police whenever I saw them. My health improved because I was able to access more help from the health clinics in the area. And I would report sexual assault to the police today they seem to be a lot more respectful to transgender sex workers."

For Territorian sex workers, removing the police as regulators of the NT sex industry would mean access to justice that is in line with the access to justice experienced by Territorians who work in other industries.

Workplace health and safety

In terms of workplace health and safety, we also see the Bill as extending the rights and liberties of Territorian sex workers to better look after their health and safety. We advocate most strongly for the development of Workplace Health & Safety Guidelines in consultation with SWOP NT.

For NSW sex industry workplaces, how to adhere to the complex matrix of relevant workplace laws is simplified using industry guidelines produced by the NSW Government in consultation with sex worker organisations including SWOP. After the introduction of *The Disorderly Houses Amendment Act 1995* that made sex service premises (SSPs) lawful workplaces, the NSW Government's *Health and Safety Guidelines for Sex Services Premises in NSW* were developed. From 1997, these guidelines have been used widely by sex industry workers and employers.

To date, information produced for sex industry workplaces has tended to focus upon preventing the transmission of sexually transmitted infections, including the employers' role in the provision of personal protective equipment (PPE), along with the prevention of physical violence and other workplace injuries. Since decriminalisation, and the subsequent provision of these guidelines, we have seen improvements across these areas of workplace health and safety.

This is best captured in *The Sex Industry in New South Wales: A Report to the NSW Ministry of Health*^{ix}, which states: "These reforms that decriminalised adult sex work have improved human rights; removed police corruption; netted savings for the criminal justice system; and enhanced the surveillance, health promotion, and safety of the NSW sex industry. International authorities regard the NSW regulatory framework as best practice."

SWOP thanks the Economic Policy Scrutiny Committee for the opportunity to submit to the Sex Industry Bill 2019. We would be happy to attest further to any of the issues outlined in this submission by phone or email.

Yours Sincerely,



Cameron Cox
Chief Executive Officer
Sex Workers Outreach Project Inc. (SWOP)

ⁱ C Harcourt, J O'Connor, S Egger, *et. al.*, 'The decriminalisation of prostitution is associated with better coverage of health promotion programs for sex workers', *Australian and New Zealand Journal of Public Health*, vol 35 (5), (2010).

ⁱⁱ *The Lancet. HIV and Sex Work*, <http://www.thelancet.com/series/HIV-and-sex-workers>, July 2014

ⁱⁱⁱ Australian Federation of AIDs Organisations and Scarlet Alliance, *Unjust and Counter-Productive: the failure of Governments to protect sex workers from discrimination*, 16 accessed online 28 May, 2019 at <http://www.scarletalliance.org.au/library/unjust-counterproductive>.

^{iv} NZ Herald, *Jilted wife sentenced for exposing sex worker online*, accessed 28 May, 2019 at https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12160462.

^v Stardust, Zahra, *Protecting Sex Worker Human Rights in Australia*, International Bar Association Human Rights Working Group News, Volume 1, Issue 2, September 2014.

^{vi} *Dovedeen Pty Ltd & Anor v GK* [2013] QCA 116 accessed 28 May, 2019 at

<https://www.crownlaw.qld.gov.au/resources/publications/court-of-appeal-rules-sex-worker-not-discriminated-against-by-motel-operator>.

^{vii} Australian Human Rights Commission, National Human Rights Consultation, 2009, 616, accessed 19 February, 2019 at

www.hreoc.gov.au/legal/submissions/2009/200906_NHRC.html.

^{viii} Legislative Assembly Select Committee on the Regulation of Brothels (NSW), referred 25 June, 2015, accessed online 08 October, 2019 at <https://www.parliament.nsw.gov.au/committees/listofcommittees/Pages/committee-details.aspx>

^{ix} Donovan, B., Harcourt, C., Egger, S., Watchirs Smith, L., *et al.* (2012), *The Sex Industry in NSW: a Report to the NSW Ministry of Health*, Sydney: Kirby Institute, University of New South Wales, 7.