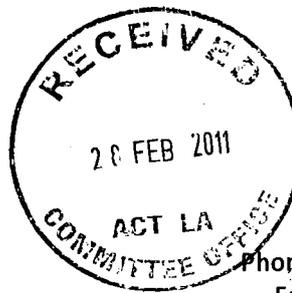




Australian Sex Workers Association



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10th February, 2011

Vicki Dunne
Chair of the Standing Committee on Justice and Community Safety
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	A.C.T. LEGISLATIVE ASSEMBLY COMMITTEE OFFICE
SUBMISSION NUMBER	9
DATE AUTH'D FOR PUBLICATION	1/3/2011

Dear Ms Dunne, Committee Members,

Re: Standing Committee on Justice and Community Safety's inquiry into the ACT Prostitution Act 1992.

Scarlet Alliance, the Australian Sex Worker Association Inc, was formed in 1989. Scarlet Alliance represents sex workers and Australian state and territory based sex worker community organisations and projects at a national level. We work closely with other national peak NGO's, including holding a position on the board of directors of the Australian Federation of AIDS Organisations. We are recognised as a national peak body' by the Commonwealth Government, including being a member of the Commonwealth Attorney Generals' Roundtable on People Trafficking. Our international work involves capacity and partnership building with sex worker organisations within the Asia Pacific region. Scarlet Alliance membership and staffing practices include affirmative action policy with regard to sex workers. This ensures that our staff, as well as representation on boards and committees, is comprised of current and past sex workers with recognised peer education and advocacy skills. Through its objectives, policies and programs, Scarlet Alliance aims to achieve equality, social, legal, political, cultural, health and economic justice for past and present workers in the sex industry.

Scarlet Alliance understands that this review has, in part, been prompted by comments made by Chief Coroner Ron Cahill in regards to the death of a 17 year old woman in a Fyshwick brothel in 2008¹. While Scarlet Alliance, as the peak representative body for Australian sex workers, welcomes this opportunity to provide input to this review of the Prostitution Act 1992, we sincerely wish it were under different circumstances.

¹ ABC News, 'Sex Trade Laws Under Review'. 1st October 2010
<http://www.abc.net.au/news/stories/2010/09/30/3025795.htm>



Australian Sex Workers Association

In addition to the Scarlet Alliance executive committee response to the review, Scarlet Alliance has consulted our membership and the staff of two Scarlet Alliance projects: the Migration Project staff and the Australian Institute of Criminology funded Migration Research Project staff who (along with staff of the Scarlet Alliance membership) have delivered outreach with SWOP ACT in Mitchell and Fyshwick. Outreach peer education support staff of English, Chinese, Korean and Thai backgrounds visit the ACT regularly to do partnership outreach with SWOP ACT and to ensure that sex workers whose first language is not English have their human rights supported in the ACT.

This outreach in the ACT has resulted in Scarlet Alliance and SWOP ACT being the best informed organisations on issues relating to Chinese, Thai and/or Korean speaking background sex workers in the ACT. No other groups have direct contact with sex workers; no other groups do language-targeted outreach with peer educators who speak Chinese, Korean or Thai. This important and unique contribution to this submission process provides expertise not available from other sources.

Scarlet Alliance recognises that a submission process of this type will illicit responses from groups and individuals that on moral or other grounds oppose the existence of the sex industry and will promote its effective regulation as an unacceptable endorsement of the industry, promoting the criminalisation of clients in an effort to end the industry. Scarlet Alliance hopes that the committee will recognise that sex workers in this instance are not simply another stakeholder but are in fact those that will be most directly impacted from any change to regulation and are therefore the key stakeholders in relation to sex industry regulation.

Sex workers are also best placed to identify our needs and the changes necessary to our industry over and above what may be thought to be what we need. This is particularly evident in the frequent calls by those that oppose our work for, above all else, increased exit and retraining resourcing and for the criminalisation of clients (referred to as the Swedish model of Sex Industry regulation) Scarlet Alliance and our membership would ask that the committee take an evidence based approach to policy development and recognise that sex workers ourselves are not supportive of these claims.

Should you have further questions on our submission or in relation to the review please contact our Chief Executive Officer, Janelle Fawkes, on 02 9326 9455 or ceo@scarletalliance.org.au. We would welcome the opportunity to present our evidence and recommendations to a hearing of the committee should you require more detail or have questions that are not addressed here.

Yours faithfully,



Elena Jeffreys
President

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Summary of the Scarlet Alliance recommendations to the Standing Committee on Justice and Community Safety's inquiry into the *ACT Prostitution Act 1992*:

Scarlet Alliance strongly recommends against any structural change to the current sex industry regulatory framework and does not support the move to a different overall model of regulation.

However, as outlined in this submission we advocate important small scale changes to the existing regulations.

- Legislation should formally define and make provision for more than one private worker to be able to work together legally.
- Legislation should be amended to define the unregistered operation of brothels as being a civil, rather than criminal, matter.
- Legislation in the ACT should remove the requirement for individual sex workers to register.
- Legislation should remove Section 24 & 25 of the Prostitution Act.

Section One - Responding to the Terms of Reference

(1) The form and operation of the Act

- The ACT legislation is short, simple and clear in its intention – the sex industry is to be treated like any other industry; subject to industrial relations law, occupational health and safety law, taxation law, and criminal law (State and Federal).
- As part of an industry that is in the jurisdiction of a range of laws, the Act is not intended to regulate every facet of the sex industry. It is rather an outline for the legality of the work – to define how to work legally in the ACT.
- The Act does not make compulsory the taking of ID or names at a brothel – currently sex workers have privacy and confidentiality assured when working in a brothel environment. Business owners can ask for ID at their own discretion.
- The Act requires individual private sex workers to register in the ACT. However, most sex workers do not register because they do not want to compromise their confidentiality and privacy.
- The sex industry is bound by the Occupational Health and Safety Act 1989 (ACT)².
- The Act only allows for individual private sex workers to work alone (if not working for a brothel in Fyshwick or Mitchell). For optimum occupational health and safety, camaraderie and economic reasons, it is beneficial for private sex workers to have the option to work with other sex workers.

² Australian Council of Social Services (ACOSS) “Comment on: Sex workers, rights and regulation in the ACT” June 2007 http://www.scarletalliance.org.au/library/actcoss_07

(2) The Regulation, enforcement and monitoring of commercially operated brothels

- Private sex worker businesses that are unregistered are currently treated as illegal brothels. Prosecution in criminal courts is an unacceptable treatment of marginalised individuals who already encounter high levels of social stigma and police harassment.
- **Legislation should be amended to define the unregistered operation of brothels as being a civil, rather than criminal, matter.**
- As legislation currently stands (Part 2, Division 2.1, Section 5³) sole operators of private brothels or escort agencies are liable for prosecution should service provision occur where two or more workers may be present.
- This oversight impinges upon sex workers physical safety, as they are much more likely to be the targets of violent crime and exploitation if working alone.
- The prosecution of private sex workers for running 'illegal brothels' will have a significant impact on sex industry Occupational Health and Safety levels in the ACT.
- Working in partnership with another sex worker/s is safer and more sustainable, as it allows sole operators to lower overheads by splitting rent, utilities and labour such as laundry. It also improves OH&S levels as sex workers self-regulate their workplaces in partnership.
- **Legislation should formally define and make provision for more than one private worker to be able to work together legally.**
- New Zealand's Prostitution Reform Act 2003⁴ defines sole operators (or 'small owner-operator' businesses) and sex workers working at or for sole operator brothels or escort agencies as being without an operator⁵, and interprets sole operator brothels as being 'not more than 4 sex workers'⁶.
- Tasmania's Sex Industry Offences Act 2005 defines a 'self-employed sex worker' as being 'a sex worker who, together with no more than one other sex worker, neither of whom

³ Australia Capital Territory's Prostitution Act 1992 <http://www.legislation.act.gov.au/a/1992-64/current/pdf/1992-64.pdf>

⁴ New Zealand's Prostitution Reform Act 2003
<http://www.legislation.govt.nz/act/public/2003/0028/latest/whole.html#dml197822>

⁵ *ibid.* Preliminary Provisions - Definitions of Operator (Part 1, 5.2)
<http://www.legislation.govt.nz/act/public/2003/0028/latest/DLM197847.html#DLM197847>

⁶ *ibid.* Preliminary Provisions - Interpretation (Part 1, 4.1)
<http://www.legislation.govt.nz/act/public/2003/0028/latest/DLM197822.html#DLM197822>

employs or manages the other, owns and operates a sexual services business'⁷.

These definitions prevent the unnecessary prosecution of all sex workers on premises for running an 'unlicensed' brothel (on the grounds of each individual being an operator for said 'unlicensed' brothel).

- The ACT Council of Social Services endorses the consideration of allowing sex workers to (at minimum) work in pairs in the ACT:

*"Provided they are registered, the law allows for sex workers to work privately at home as sole operators. However, it remains illegal for two sex workers to operate from the same residential premises. This is an attractive option for some workers, as it enables them to have the flexibility and independence of private work, with the security provided by having another worker in the premises. Under current laws, this arrangement is not a legal option for sex workers, and those who work with another sex worker do so at risk of prosecution. We suggest that the proposal discussed by the Sex Industry Consultative Group to expand the definition of private worker to two operators be revisited."*⁸

- Should another sex worker be found upon the same premises as a sole operator, Scarlet Alliance asks what evidence would be used to prosecute these individuals as 'unlicensed' brothel owners? Methods of entrapment must not at any time be entered into, with recognition that the onus of proof lies with law enforcement and the Registrar of brothels and escort agencies.

- In the likelihood that such a case occurs, legal provision should be made that safe sex products (i.e. condoms and lubricant) cannot be used as evidence in the prosecution of 'unlicensed' brothel owners or sole operators, or indeed any act of solicitation and/or commercial sex. This guarantees public health outcomes, as sex workers can then feel safe in the knowledge that possession of such items cannot be used as evidence against them, increasing an already high usage rate of prophylactics.

⁷ Tasmania's Sex Industry Offences Act 2005 – Interpretation (Part 1, 3.1)
http://www.austlii.edu.au/au/legis/tas/consol_act/sioa2005253/s3.html

⁸ Australian Council of Social Services (ACOSS) "Comment on: Sex workers, rights and regulation in the ACT" June 2007 http://www.scarletalliance.org.au/library/actcoss_07

(3) Identifying regulatory options, including the desirability of requiring commercially operated brothels to maintain records of workers and relevant proof of age, to ensure that all sex workers are over the age of 18 years

- Scarlet Alliance strongly opposes any move towards expanding the registration of individual sex workers, whether they are sole operators or working for commercially operated sex industry businesses. Compulsory registration of sex workers in commercial brothels would immediately create a major increase in non-compliance and impact on the health and safety of sex workers in the ACT.
- Licensing and registration - placing one's involvement in the sex industry on the public record - is one of the primary causes of sex workers avoiding legalised frameworks and choosing to 'go underground'. This is not due to an unwillingness to comply, but is the result of an informed process of risk assessment where sex workers must choose between their legal status and their personal safety. Registration records are retained indefinitely, even after the worker has left the industry or is deceased with long term consequence.
- The registration of all individual sex workers, would likely create a significant increase of unregistered, private sex workers and new workplaces where checking for ID was avoided (i.e. non-compliant premises). This is a result of demand; sex workers prefer to work without having to risk their privacy and confidentiality.
- Sex workers have endured centuries of stigma and discrimination. Even in environments where sex work is legal, this stigma permeates all aspects of a sex worker's professional and personal life and impacts heavily on their health, safety and general wellbeing. Sex industry licensing regimes (including the ACT's Register) have directly led to:
 - Visa applications being denied by countries where sex work is illegal
 - Discrimination in housing, financial institutions, health insurance, Family Court disputes
 - Registered sex workers having trouble exiting the industry, as their registration can stifle any future employment opportunities
 - 'Leaking' or criminal misuse of their personal information, which can result in stalking, blackmail, extortion and worse
 - Harassment by police and other authorities
- Entrenched stigma within the police and judiciary can also limit sex workers' access to legal recourse, increasing the potential for violence and exploitation. Should the Prostitution Act 1992 be amended to include the compulsory registration of all individual sex workers, those forced to avoid the legal framework and 'go underground' are at even greater risk of violence, theft and sexual assault, as the harsh penalties associated with working illegally (up to a \$11,000 fine and/or 1 years imprisonment) will completely

- remove their ability to report crimes committed against them.
- Scarlet Alliance strongly opposes the licensing and registration of individual sex workers, as it seeks to create a criminal register of law-abiding citizens and will increase the level of violence and discrimination experienced by Australian Capital Territory sex workers.
 - **Legislation in the ACT should remove the requirement for individual sex workers to register.**
 - In regards to 'requiring commercially operated brothels to maintain records of workers and relevant proof of age, to ensure that all sex workers are over the age of 18 years'⁹, Scarlet Alliance's believes that this measure would not prevent minors from providing fake identification with which to enter the sex industry. Should such an incident occur, knowledge would only be obtained *after* the fact, if at all.
 - Prior even to the legalisation of brothels in the ACT, existing laws covered the employment of sex workers under the age of 16, as explained by former City District Crime Branch Detective Superintendent Brian Brinkler:

*"Under the provisions of the Crimes Act 1900 in its application to the ACT, it is an offence to employ or permit to be employed for the purposes of prostitution, any person who is under the age of 16 years."*¹⁰
 - Annually Scarlet Alliance's membership provides over 20,000 occasions of peer education services to sex workers across Australia. In the experience of our membership, most- if not all - brothels would ask to see ID if there was any suspicion that an individual was underage. Making collection and recording of ID compulsory puts all sex workers at greater risk of being outed in regards to their occupation, or discriminated against in any of the numerous, aforementioned ways.

⁹ Legislative Assembly for the ACT. 2010. Week 12 Hansard (28 October) 11.04
<http://www.hansard.act.gov.au/hansard/2010/week12/5252.htm>

¹⁰ "POLICING OF THE SEX INDUSTRY IN THE AUSTRALIAN CAPITAL TERRITORY" Australian Institute of Criminology, 1992 <http://www.scarletalliance.org.au/library/brinkler>

(4) The Adequacy of, and compliance with, Occupational Health and Safety requirements for sex workers

- It is in Scarlet Alliance's opinion that ACT sex industry businesses have shown a strong desire to operate within OH&S frameworks, and to a high standard. During service provision by SWOP ACT and Scarlet Alliance, all evidence has displayed an optimum level of OH&S, or aspiration to do so. It should be noted that sex workers were highly conscious of OH&S and self regulated their places of work to ensure compliance.
- Mandatory testing is against the Occupational Health and Safety interests of sex workers (see APPENDIX 1)
- The criminalisation of sex workers living with HIV in the ACT has not prevented a single case of HIV transmission, and has instead jailed at least one sex worker who had not put anyone at risk (see APPENDIX 2)
- Scarlet Alliance has consistently raised our concern with Section 24 & 25 of the Prostitution Act and the need for the two sections to be repealed. This is based on:
 - The experience in Australia that education and sex workers prevents STIs and HIV and not criminalisation.
 - The discriminatory nature of the law which excludes sex workers and clients with HIV (and other STIs) from participation in the legal sector of the sex industry. This approach ignores the evidence that condoms and safe sex prevent transmission and is simplistic considering the range of services offered by sex workers which do not include a risk of transmission.
 - Australia has in place national guidelines that outline the process for Government and health areas to manage anyone who puts another person at risk of HIV.
 - The potential for the misuse of this legislation as was demonstrated in the ACT in 2008. It is our experience that logic is replaced by hysteria in relation to these issues. Vilification by media and the public of one individual has resulted from this law. Public exposure of a person HIV status and details by government officials also resulted from this law. The real impact was an (at the time) immediate reduction in the number of sex workers attending sexual health services (it must be noted that quick response by SWOP ACT has resulted in current high levels of testing) increased excessive levels of stigma and discrimination against sex workers. (please see Appendix two)

Legislation should remove Section 24 & 25 of the Prostitution Act.

We would also raise the inconsistency with section 21(1) of the Public Health Regulations 2000.

(5) Any links with Criminal Activity

- Scarlet Alliance has seen no evidence of the existence of organised crime in the ACT's sex industry. There is no pattern or evidence to suggest exploitation by syndicates. In ongoing and regular interactions of Scarlet Alliance and SWOP ACT with both the relevant police and Government ministers, they too have concurred that organised crime is not prevalent in the ACT sex industry.
- If organised crime was a problem in the ACT, Scarlet Alliance, our local members, the Police and the Government would know about it, be concerned, and be offering solutions.
- Scarlet Alliance has a unique perspective of brothels owned by and/or employing people predominantly from Asian backgrounds in the ACT. Scarlet Alliance regularly attends outreach with SWOP ACT, providing peer education outreach workers who speak Thai and Korean. Our South Australian member, SIN (SA) has provided peer education outreach workers who speak Mandarin to attend outreach with SWOP ACT. This partnership work allows our organisations to have a very productive relationship with the Asian sex worker community in the ACT. There has been no indication of trafficking or sexual slavery in any of the brothels or in private workers situations in the ACT, including at premises where management were resistant to Scarlet Alliance's initial inquiries and presence, and/or premises targeted by police and DIAC for trafficking.
- The assertion by Janice Raymond and the Coalition Against Trafficking in Women (CATW) representatives in Australia that legalisation and decriminalisation contributes to exploitation, crime, trafficking and child abuse is unfounded. The Courts in Canada recently heard such arguments from Janice Raymond and Melissa Farley and eventually dismissed their thousands of pages of 'evidence' on the basis that they could not substantiate their claims, and concluded instead that harms related to sex work are caused by criminalisation. Scarlet Alliance argues that their allegations are based on myth, not evidence (See APPENDIX 3)

(6) The extent to which unlicensed operators exist within the ACT

- In our outreach and information sharing in the ACT we can confidently say there is not a prevalence of unlicensed brothel-style operations within the ACT.
- Private sex workers are required to work alone and are required to register – something that sex workers avoid. As a result those individuals fall into the category of unlicensed operators – because they are private workers working with friends.
- **Scarlet Alliance recommends the expansion of the definition of Private Sex Workers to allow workers to work in teams of more than one; for example two workers together (as in Tasmania) or four workers together (as in New Zealand). This would mean that private workers would not be policed as if they are illegal brothel operations.**

(7) Any other relevant matters

- Peer education and peer service provision have proven highly successful. SWOP ACT, the sex worker peer education project, needs further resources and funding if it is to effectively provide health promotion to ACT sex workers.
- Sex workers and SWOP ACT would greatly benefit from having an independent community based sex worker organisation, in line with the National HIV and STI Strategies, delivering health promotion, community development to sex workers and advocacy on behalf of sex workers. The community based sex worker organisation would be appropriately housed in a stand-alone office, so as to maintain sex workers privacy and increase accessibility.
- SWOP ACT, with support from CAHMA, should be resourced to provide information, education and resources for overdose identification and prevention. Training developed and delivered by SWOP ACT should be offered to ACT sex industry workplaces to prevent death from overdose.

*"There is no designated funding in the ACT for broad sex worker advocacy. SWOP ACT is funded to provide health support and outreach to sex workers, but not to engage in law and policy advocacy."*¹¹

- SWOP ACT should be specifically funded for advocacy and leadership on laws, trends and issues regarding policing, through a relationship with the ACT Attorney General's Department.

"At present there is no designated CALD sex worker outreach program in the ACT. However, SWOP ACT provides health information and advice to CALD workers through its website and the translated pamphlets mentioned above. The lack of a specific CALD outreach service is partly due to the challenges involved in recruiting peer based CALD outreach workers in the ACT, where many sex workers are unwilling to publicly identify as such. It also reflects some of the more general workforce and recruitment challenges facing the community sector. As a consequence of this service gap, CALD sex workers may be less informed of their rights and have lower rates of accessing sex worker health and welfare services.

*A CALD sex worker outreach program has been established in South Australia within the Sex Industry Network (SIN) with great success. We recommend that attempts be made to address identified barriers to the establishment of an ACT peer-based CALD sex worker program"*¹²

¹¹ Australian Council of Social Services (ACOSS) "Comment on: Sex workers, rights and regulation in the ACT" June 2007 http://www.scarletalliance.org.au/library/actcoss_07

¹² *ibid.*

- SWOP ACT should be funded for a CALD specific peer-based outreach program. Current partnering with interstate and national peer educators is a good model, however it would be more efficient if staff were employed at a local level.

Section Two – Evidence drawn from Scarlet Alliance Migration Project

This section provides input from consultation with the staff of two Scarlet Alliance projects: the Migration Project staff and the Australian Institute of Criminology funded Migration Research Project staff who (along with staff of the Scarlet Alliance membership) have delivered outreach with SWOP ACT in Mitchell and Fyshwick. Outreach peer education support staff of English, Chinese, Korean and Thai backgrounds visit the ACT regularly to do partnership outreach with SWOP ACT and to ensure that sex workers whose first language is not English have their human rights supported in the ACT.

This outreach in the ACT has resulted in Scarlet Alliance and SWOP ACT being the best-informed organisations on issues relating to Chinese, Thai and/or Korean speaking background sex workers in the ACT. No other groups have direct contact with sex workers; no other groups do language-targeted outreach with peer educators who speak Chinese, Korean or Thai. This important and unique contribution to this submission process provides expertise not available from other sources.

Sex work is work

Throughout our outreach of a variety of sex industry businesses in ACT, Scarlet Alliance has consistently found that sex workers view sex work as work. Like people in any other professions, sex workers wish to exercise their basic rights to work and earn a living without concern of harassment. The lack of access to relevant translated materials was identified as the number one reason for sex workers being concerned about inadvertent non-compliance with regulations. The industry does not need more regulations and legislation. Resources would be best spent in translating and making available clear, easy to understand information on the rights and responsibilities of sex workers in the ACT.

Trafficking and Sexual Servitude is not a characteristic of the ACT sex industry

SWOP ACT and Scarlet Alliance visit sex industry businesses that have been

- targeted by the AFP for trafficking
- have been raided by DIAC
- that have anecdotally been regarded by workers as having poor working conditions
- who advertised as having sex workers of Thai, Chinese or Korean speaking background.

These premises when approached by peer educators who speak their languages are welcoming.

None of these premises have tried to hide any information from us.

There has been no evidence of trafficking within ACT sex industry premises from the Scarlet Alliance and SWOP ACT outreaches.

In contrast to reports by other uninformed groups, our organisations has not encountered systemic exploitation, crimes or trafficking in any workplace in the ACT.

We assert that the trafficking crimes that have been prosecuted in the ACT have been isolated examples of exploitation that has been uncovered through routine anti-trafficking

activity by the AFP.

Sex workers in the ACT are not characteristically under the age of 18

On outreach we come into contact with people who are a range of ages; however minors are not a characteristic of the industry.

We understand that people under 18 will usually have fake ID and hide their age from their co-workers and their boss. In the experience of Scarlet Alliance, increased attempts to police the age of individuals has not been successful in other states and territories; any requirement for premises to keep a record of the identity of individual sex workers will result in alienating sex workers from the current system.

Culturally and Linguistically Diverse Private sex workers are uninformed of their rights

CALD sex workers who work privately often face isolation and a lack of access to translated information about legislation and regulations in relation to the sex industry in ACT. Scarlet Alliance is aware of this being the direct cause of a Thai sex worker being charged with operating a brothel, not within a prescribed location, last year. The worker had allowed her friend to work out of her house and they had put an advertisement in the paper together, unaware that these actions breached ACT laws.

The Migration Pilot Project supported the worker through her court case and in translating documents and information as these were not available in a language other than English. In this instance and — from what the Migration Project has heard — many other cases where this has occurred, CALD sex workers who inadvertently break the law, have done so because of a lack of information available in appropriate languages.

APPENDIX LIST

APPENDIX One

Scarlet Alliance briefing paper for HASTI Committee of MACASHH, "Mandatory or compulsory testing of sex workers for HIV and/or sexually transmissible infections in the Australian context" 1st August 2007

http://www.scarletalliance.org.au/library/briefingpaper_mandtest/

APPENDIX Two

Elena Jeffreys, Kane Matthews, Alina Thomas "HIV criminalisation and sex work in Australia" Reproductive Health Matters Journal, January 2010 18(35) pp 129-136

<http://www.aidsportal.org/repos/RHM35%20Jeffreys.pdf>

APPENDIX Three

Janelle Fawkes "The Australian response to '10 Reasons for Not Legalising Prostitution'" Scarlet Alliance 2007

http://www.scarletalliance.org.au/issues/swedish_model/10reasons_07