AIDS ACTION COUNCIL

A.C.T. LEGISLATIVE ASSEMBLY
COMMITTEE OFFICE

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The Chair,
Standing Committee on Justice and Community Safety
Legislative Assembly for the Australian Capital Territory
GPO Box 1020
Canberra
ACT 2601

Dear Chair,

Re: Review of the Prostitution Act 1992

We welcome and are grateful for this opportunity to provide a submission to this review of the Prostitution Act 1992. We continue to support this legislation as an effective regulatory framework for a legalised industry and note that in the two decades since its commencement, it has operated with almost no recourse to criminal proceedings.

Nonetheless, it is clearly time to examine how it can be made to more accurately reflect the needs of this important industry and the community it serves.

Our submission has been informed by a review of legislation operating in other Australian jurisdictions, and more significantly, by a survey of sex workers, to whom the Act has considerable and direct bearing. There are two appendices to our submission that provide this detail.

In addition to this, our written submission, we would welcome an opportunity to appear before the Standing Committee to provide further evidence and to answer question that members may have.

Yours sincerely,

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AIDS ACTION COUNCIL

Submission

Inquiry into the operation of the *Prostitution Act 1992*

AIDS Action Council of the ACT

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Introduction

We welcome this review and the opportunity it presents to improve the legislative framework under which this legalised industry operates.

We are constituted as a community based HIV organisation with a mission to eliminate HIV transmission and to minimise the personal and social impacts of HIV.

We have a long history of actively engaging with the ACT sex worker community, beginning with a community engagement project in 1987 with both sex workers and management. We actively provided education and information services to the industry in 1988 and we went on to support and auspice the newly formed Workers in Sex Employment (WISE) when it received independent funding.

There are clearly established implications on public health in the regulation of sex work and there is a further set of implications of sex work regulation on HIV prevention. These connections have been reiterated and further emphasised in Australia's 6th National HIV Strategy which names sex workers as one of seven priority populations.

> ...because of their significantly higher number of sexual encounters than other community members leading to an increased potential for transmission of HIV if safe practices are not adopted.[ii]

In 2000 we created the Sex Worker Outreach Project ACT (SWOP ACT) to provide accurate and comprehensive information, education, advocacy and support services to sex workers and their clients with a primary focus on HIV, hepatitis C and other sexually transmitted infections, safe sex practices and the maintenance of optimal sexual health.

We continue to have strong links with the ACT sex worker community and have expertise and experience in the delivery of peer-based services to communities affected by HIV. In recent years, we have added to peer outreach services by focussing greater attention on those environmental factors that contribute to the health and wellbeing of sex workers as a community. This includes working with health care providers, the Australian Federal Police and other service groups to increase their sensitivity to and awareness of the special needs of sex workers and to diminish the stigma and discrimination sex workers all too often experience.

Our submission addresses issues raised in the Terms of Reference for this inquiry on which we feel we have a mandate and the expertise to comment as a service working with sex workers and as an HIV organisation. Our submission has been informed by consultation with sex workers and incorporates their actual experience.

A note about language

In 1992 the Prostitution Act legalised the commercial sexual services industry, and subjected it to, as with many other industries, a framework of rules and regulations designed to ensure the safety of both those providing and those receiving commercial sexual services. At the same time, the act imposed a

number of obligations on all sides of a commercial sexual services transaction; that is, brothel owners, sex workers and clients.

It is important to recognise the difference between legalisation and decriminalisation. A legalised industry, as in the ACT, means that it is sanctioned by Government and that sex workers are legitimate workers and entitled to be treated with respect and dignity at all times.

We therefore encourage the review committee to use the terms sex work and sex workers, rather than what are often considered pejorative terms; "prostitution" and "prostitutes".

Overview of the Commercial Sexual Services Industry in Australia

Many people work in the Australian sex industry. Exact numbers are hard to identify but more than one Australian government has relied on estimates suggesting many thousands of people work in the sex industry in any given year. In 2004, the NSW Department of Planning referred to an estimate of some 20,000 persons engaged in (legal and illegal) sex work in Australia in any one year, with New South Wales having the largest population at approximately 10,000 persons[iii]. In 2007, the Western Australian Government's Prostitution Law Reform Working Group cited an estimate of 1,200 to 1,700 sex workers currently operating in Western Australia, with the majority working within the metropolitan area[iv].

Despite there being no available data specific to the ACT, it would be reasonable to estimate that in any one year, between 600 and 1,000 sex workers may be active.

A number of detailed Australian studies have produced data 'profiling' Australian sex workers. Their findings confirm anecdotal evidence of sex worker organisations and health-care agencies (based on their interactions with thousands of sex workers each year), and undermine the persistent mythology of sex work as simply a last resort for those who are young and vulnerable, dysfunctional and desperate.

Sex workers do not constitute a discrete section of the population but are members of the community as residents, colleagues, peers, patients and citizens [and many other categories of person], rather than some "other" category of people.'[v] Research shows that people engaged in sex work come from a wide range of ages, ethnicity, educational and socio/economic backgrounds. They may be single or in relationships, and may or may not be parents.

Although most Australian sex workers are female, many are not. For example, in 2000, NSW Sex Work Outreach Project data showed 87% of sex workers were female, 10% were male and 3% were transgender[vi]; and Woodward *et al* report that men comprised 7.5% of sex workers visiting Brisbane Sexual Health Clinic[vii].

Sex workers' heterogeneity is recognised in terms of the international response to HIV, with the UNAIDS 2008 Report on the Global AIDS Epidemic noting that although 'the term "sex workers" constitutes a meaningful single population for epidemiological purposes', it encompasses broadly diverse people in many different circumstances.

Sex workers also work in many different settings. Research conducted in 2005 identified at least 25 types of sex work demarcated by worksite, mode of soliciting clients, and sexual practices[viii]. Many of these demarcations exist in Australia including brothel, escort, private (often a single worker) and street based work. Each sex work setting (combined with numerous variables including legality, location, practices, etc) attracts different benefits and risks: a matter with clear implications for the development of effective public health responses. In 2000, NSW Sex Work Outreach Project (SWOP) data showed that the majority of sex workers worked indoors, within premises or were engaged as escorts. Approximately 5,500 female sex workers were working in large, commercial premises. Fewer than 200 people worked in street based sex work[ix]. Street based sex work, although comprising only a small part of the Australian sex industry, requires greater resourcing to address street based sex workers' specific needs[x].

The limited research available suggests the reasons people enter the sex industry may be highly gendered. Unfortunately, there is little Australian research available on men working in the Australian sex industry, and even less on transgendered sex workers.

Female sex workers: While women are usually motivated to enter the sex industry for financial reward, Australian and New Zealand research has demonstrated that women may also choose to work in the sex industry for a range of reasons based on variables including relatively high pay for short hours, flexible working times, considerable autonomy, varied and interesting work, camaraderie, and being tired of or bored in a previous job[xi]. Some women choose sex work because it fits around their childcare responsibilities in terms of school hours/paid childcare. It can provide 'quick' income at times of increased expenses such as Christmas or the beginning of the school year, or 'emergency' income at times of relationship breakdown and becoming a sole parent.[xii] A significant percentage of women undertake sex work with a particular financial goal in mind (reported at 58% by brothel based workers in Woodward et al's research).

Accounts by many female sex workers reveal a high degree of personal satisfaction with their choice of work, with key benefits including greater confidence and assertiveness, financial security, independence, and a better understanding of men and women.[xiii] Research by Woodward et al recorded approximately half of the private and brothel based sex workers agreeing that 'work is a major source of satisfaction in life', with few strongly disagreeing. Approximately two-thirds of private and brothel based workers agreed or strongly agreed that they would definitely choose sex work if they had to 'do it over again'.

Male sex workers: Less research has been conducted on the reasons men work in the sex industry but that which exists suggests reasons may differ. Perkins found that while men engaged in sex work may recognise the economic benefits, they were far more likely than women to list sexual gratification as a motivating factor[xiv]. Research by Chapple and Kippax[xv] suggests that for some Aboriginal men, sex work has provided social benefits. Men are more likely than women to engage in sex work 'casually' or very short term, and derive only a small portion of their income from sex work. Few see it as their job.

Rissel's research found that men were significantly more likely than women to report that they had ever been paid for sex (although the report notes the likelihood that sex work by women was underreported). Two thirds of men who had been paid for sex, had been paid by a man.

Services provided to sex workers in the ACT

The AIDS Action Council (AAC) provides a range of services to the ACT sex worker community. Brothel outreach is central to the AAC's sex industry work. A peer outreach team are accesses all operating brothels, delivering health promotion training and resources. Peer support is also provided to sex workers outside of brothels electronically and through a drop-in service at Westlund House.

Our services include training for sex workers that are new to the industry, advice on performing a visual sexual health check on clients and advice on dealing with difficult or aggressive clients. Our staff provide support and referral for workers who have been assaulted by clients.

We produce resources targeted at sex workers, brothel operators and clients or sex workers. Our resources are developed to be culturally sensitive, and where possible are translated into four of the most common community languages other than English: Chinese, Thai, Korean and Vietnamese. Condoms, dams and lubricant are sold at low cost to sex workers and brothels.

We run a sexual health testing program ('SWOP SHOP') in conjunction with the Canberra Sexual Health Centre and Sexual Health and Family Planning ACT. The service offers confidential sexual health testing at brothels which clearly respects the personal and occupational rights of sex workers and promotes the maintenance of sexual health.

A training program for services working with sex workers and the sex industry is offered to increase sensitivity and awareness of health and wellbeing issues facing sex workers.

Consultation with sex workers in the ACT

As an organisation with close links to the sex worker community we felt that it was important that our submission to this inquiry was informed by the views and experiences of sex workers. In January 2010 we distributed surveys in paper form to parlours around the ACT and created an online version of the survey promoted through social media. We received 46 completed surveys, 21 on paper and 25 online.

This survey reveals a community of sex workers in the ACT which is well informed about the laws and regulations in the industry and has strong positions on different issues affecting them.

Many workers find provisions of the Prostitution Act and services in the ACT to be positive compared to other jurisdictions, and it is a minority of provisions that are points of contention in the industry. In reviewing the Act it is important that the provisions that have made the ACT a generally a safe and legal place to be a sex worker continue.

Recommendations

1. That the Prostitution Act be renamed as the Commercial Sexual Services Act
2. The free provision of condoms and other protective equipment be a requirement of brothel licensing with the cost to be carried by the brothel
3. That there be no defence for causing, permitting, offering or procuring a child to provide commercial sexual services and that Section 22 be removed
4. That legislation and regulations do not determine mandatory sexual health screening intervals
5. That two sole operators, each not employed by the other, be permitted to work from the same premises
6. That registration requirements for sole operators be abolished
7. That Section 24 (Infected persons) and Section 25 (Providing or receiving commercial sexual services) be removed
8. That consideration be given to removing Section 26 (Medical tests and examinations)

Issues

Form and operation of the Act

We consider that the Prostitution Act has been effective as a legislative framework which has, on balance, provided a safe environment for sex workers whilst being sensitive to community attitudes in relation to the sex industry.

Implicit in the legalisation of the sex industry is the sanctioning of sex work by government, acknowledging sex work as legitimate employment and sex workers as legitimate clients of government, health and community services.

We consider that the goal of this act is to provide for the safety and wellbeing off all those involved, whilst ensuring that regulatory requirements do not unduly impinge on the rights of operators of commercial sex venues to run a profitable business within the spirit and meaning of relevant laws.

The language in the current act is stigmatising and potentially discriminatory and does not reflect current standards. In particular, we refer to the use of the terms 'prostitution' and 'prostitute' and suggest that these be changed to sex work and sex worker.

The Act includes a number of sections that criminalise behaviour that is already criminalised elsewhere. For example, commercial exploitation of children for sexual purposes is already a crime, so to include specific references in the Prostitution Act suggests that it is a particular concern in this industry, when there is no evidence that it is.

A similar comment could be made in regard to engaging in sexual activity while knowing or reasonably being expected to know that the person has a notifiable transmissible condition.

Recommendation One: That the Prostitution Act be renamed as the Commercial Sexual Services Act

The regulation enforcement and monitoring of commercially operated brothels

The operation of brothels is, in addition to the Prostitution Act 1992, also governed by a number of other instruments, including:

- Public Health Regulations 2000
- Work Safety Regulations 2009
- Work Safety (ACT Code of Practice for the Sexual Services Industry) Code of Practice 2010

The review of the Prostitution Act 1992 must be undertaken in conjunction with a review of all these instruments.

We note that in a number of instances, regulations are either inconsistent, or insufficiently clear as to their meaning. For example,

- The Act (section 27) mandates the use of prophylactics with the onus on both those providing and those receiving commercial sexual services. However, it is unclear as to where the responsibility lies in ensuring, as the code requires, that they be provided free of charge. Our view is that as a legitimate workplace, occupational health and safety requires that workers are provided with all necessary safety equipment. This suggests that the obligation lies squarely on brothel owners to provide all workers with prophylactics free of charge.

A brothel is a work place and should meet the same occupational health and safety standards generally applicable to work places. Consideration may be given as to how relevant regulations may be better applied, although we do not consider this needs an amendment to the Act itself.

Recommendation Two: The free provision of condoms and other protective equipment be a requirement of brothel licensing with the cost to be carried by the brothel

Regulatory options, including the desirability of requiring commercially operated brothels to maintain records of workers and relevant proof of age, to ensure that all workers are over the age of 18 years

We believe that all reasonable steps should be undertaken to ensure that no minors are employed in the commercial sexual services industry. Child protection and welfare laws are one way to protect the interests of minors generally. The employment of minors for commercial sexual services would amount to abuse and punishable as such.

In regard to regulation within the context of the Prostitution Act itself, there is an existing and clear obligation of brothel owners to ensure that workers they employ have reached the age of 18 years. We do not agree that it can be a defence (section 22) to a failure to meet this obligation if it is *established that the defendant took reasonable steps to ascertain the age of the child concerned, or believed on reasonable grounds that the child had attained 18 years of age*. We argue that this section should be removed (see below), however if retained, the act should be very clear on what constitutes reasonable steps and reasonable grounds.

Notwithstanding the above, we are concerned for a continuing ability for sex workers to retain privacy over the nature of their chosen occupation, and are further concerned that any mandatory collection of proof of age data by brothel owners will inhibit some workers from operating in a legalised and licensed setting. If relevant proof of age records were required to be maintained, there would also need to be a further offence of disclosing that information to any other party except under clearly specified and defined circumstances.

It is clearly a crime to exploit minors for, inter alia, commercial sexual services and it is incumbent on those employing sex workers to work within all relevant laws. We do not believe there should be any defence for employing workers who have not yet attained 18 years of age.

Recommendation Three: That there be no defence for causing, permitting, offering or procuring a child to provide commercial sexual services and that Section 22 be removed

The adequacy of, and compliance with, occupation health and safety requirements for sex workers

As in many other industries, workers in the commercial sex industry are exposed to a range of risks in the course of work that can be reduced through protective equipment and work practices.

The use of condoms and other barrier protection is widespread in the industry and has been successful in reducing transmission of HIV and sexually transmitted infections. Studies in similar jurisdictions in Australia find near universal reports of consistent condom use[xvi,xvii] consistent with reports from our outreach services. Data from 'SWOP SHOP' sexual health clinics shows lower rates of sexually transmitted infections amongst sex workers compared to the general population. Pressure from clients to provide sexual services without condoms is common (40 to 50% of sex workers report receiving these requests in one study[xviii]), and in practice clients have little to fear from requesting the service despite

the illegality. Some brothel-based sex workers report having to provide their own condoms or purchase them from the brothel operator. It is our view that condoms should be provided free of charge as part of the brothel operators' responsibility to prevent unprotected sex occurring on premises.

Sexual health screenings are another important occupational health and safety requirement. The AIDS Action Council works with sex workers and sexual health service providers to increase the rates of sexual health screening. Experience in Victoria however, indicates that screening intervals for sex workers should not be mandated by legislation but instead be based on local STI epidemiology[xix].

The most commonly reported health and safety concerns from sex workers include overwork and security. These issues are experienced particularly by sole operators, unable to share the rent of the premises with another worker or work together to provide support in the event of an emergency or aggressive client. It is our view that allowing two sex workers to operate from the same premises where neither worker is employed by the other would provide occupational health and safety benefits while also satisfying community concerns in relation to brothels operating in residential areas.

Recommendation Four: That legislation and regulations do not determine mandatory sexual health screening intervals

Recommendation Five: That two sole operators, each not employed by the other, be permitted to work from the same premises

Any links with criminal activity

It is our view that the Prostitution Act 1992 has been successful in preventing links between the sex industry and organised criminal activity in the ACT. In contrast, criminalisation of the sex industry in other jurisdictions has been linked to criminality and corruption[xx].

We are concerned with the extent to which sex workers risk criminality through provisions of the Prostitution Act which are unreasonable or ignored. Some provisions of the legislation such as the registration of sole operators are widely ignored in the industry and by authorities (see next section). In our consultation with community, workers expressed concern that these provisions 'if policed could make life hard [to work in the ACT].' Sex workers in this position may be reluctant to access police or health services due to a fear of persecution, and may be more likely to become linked to criminal activity.

Unreasonable provisions of the Prostitution Act should be removed to avoid unnecessary criminalisation of sex workers through normal practice.

The extent to which unlicensed operators exist within the ACT

It is the understanding of the AIDS Action Council that all brothels in the ACT are registered, however we also understand that as of February 2011, there are currently only eight registered sole operators in the ACT which would suggest to any service connected with the sex industry that there is a substantial

majority of unregistered sole operators in the industry. Effective registration regimes require significant police, administration and health resources, and for this reason are usually limited to brothel operators in other jurisdictions.

It is our view that the current situation is the result of a requirement that is unreasonable and has not had benefit for registered sex workers or for organisations serving the sex industry. In our consultation, sex workers told us clearly that they would like to see this provision abolished. Reported barriers to registration as a sole operator include:

- Fear of disclosure of personal information
- Cost of registration
- Difficulty in obtaining and submitting registration forms
- Inability to remove record from register
- For seasonal or transient workers, the perceived inconvenience in registering for a short period
- Not being aware of a requirement to register

The current environment creates an environment where the majority of sole operator sex workers work illegally but tolerated by regulators and law enforcement. This situation is undesirable for health promotion and HIV prevention as noted in the Fifth National HIV Strategy:

> In jurisdictions with sex industry licensing regimes, a substantial part of the industry is unlicensed and effectively illegal with the result that it is very difficult to access those sex workers with HIV and STI prevention services, and workplace conditions are not subject to occupational health and safety standards.[xxi]

The requirement to register as a sole operator is a provision that has not worked and a revision of the Prostitution Act should provide for sole operators to work unregistered.

Recommendation Six: That registration requirements for sole operators be abolished

Other relevant matters

When governments legislate or regulate industries, it is usually for a number of common reasons. Firstly, public health and safety will be of primary concern, meaning that the operation of the industry under the regulations is not deleterious to the health of society as a whole. Secondly, the safety and health of those working in the industry must be protected. Occupational health and safety is broadly protected by a whole range of legislation, and it is therefore only necessary for specific regulations that are directly relevant to that industry to be included. In the case of commercial sexual services, for example, this will include mandatory use of prophylactics and be equally the responsibility of both those providing and those receiving such services.

Finally, and sometimes overlooked, is the need for regulations to avoid protectionism and allow for ease of entry and exit of the industry. This means that legislation and associated regulations should make it

straightforward to be involved in the industry, whether as a consumer or a supplier. Similarly, there should be no implicit or explicit discrimination in the exercise of the act.

It is in this final area that we have a significant concern about the current act, and one we will urge the review committee to give great attention to. There is an obligation to minimise transmission of transmissible infections when a person knows or could reasonably expect to know that they have one. However, within the act, sexually transmitted infections include HIV. Whilst HIV is indeed a sexually transmissible infection, we have for more than two decades accepted that the use of prophylactics is an effective barrier to transmission. We therefore believe that HIV should be excluded from the list for the purposes of this legislation. Not to do so is to unfairly discriminate against those people living with HIV, who therefore have a lifetime ban from accessing the industry as either client or worker, and for no good public health reason. In support of this, it should be noted that no such requirement exists in non-commercial sexual situations, and that the Public Health Regulations 2000 provide that any person who knows or suspects they have a transmissible notifiable condition, or knows or suspects that they are a contact of such a person, must take reasonable and appropriate precautions against transmitting the condition.

Section 27 mandates the use of prophylactics on those who supply and those who receive commercial sexual services. We therefore argue that there is no purpose served by the inclusion of sections 24 and 25 except to discriminate against those people living with HIV from accessing the industry and that there is no public health interest served.

We are concerned with Section 26 – Medical tests and examinations. It seems as if the intention of this part of the current Act is to avoid a situation where an owner or a worker uses evidence of a medical test to convince another person that the worker is not infected with a sexually transmissible infection. This does not apply to a person seeking to procure commercial sexual services and on those grounds is discriminatory.

More broadly, however, this section seems aimed at avoiding a possibility that a person would use evidence of a medical test to negate the need for the use of prophylactics. This is covered by Section 27 which makes it always an offence to provide or receive commercial sexual services involving oral, anal or vaginal penetration unless a prophylactic is used. We would argue then that Section 26 serves no useful purpose, but might, if retained, potentially compromise the privacy of sex workers' medical records. We suggest that consideration be given to removing this section.

Recommendation Seven: That Section 24 (Infected persons) and Section 25 (Providing or receiving commercial sexual services) be removed

Recommendation Eight: That consideration be given to removing Section 26 (Medical tests and examinations)

[ii] Australian Government (2010) Sixth National HIV Strategy 2010-2013 Australian Government Department of Health and Ageing, Canberra.

[iii] Estimate by Sex Workers Outreach Project (SWOP), cited in Sex Services Premises Planning Advisory Panel. Sex services premises: Planning guidelines. Sydney: NSW Department of Planning, 2004.

[iv] Prostitution Law Reform Working Group 2007, Prostitution Law Reform for Western Australia: Report of the Prostitution Law Reform Working Group, Office of the Attorney-General.

[v] Quadara, A. (2008). *Sex workers and sexual assault in Australia: Prevalence, risk and safety*, Australian Institute of Family Studies, Canberra.

[vi] SWOP outreach data cited in Harcourt C, van Beek I, McMahon M, Heslop J, Donovan B. (2001). The health and welfare needs of female and transgender street sex workers in New South Wales. *Australian and New Zealand Journal of Public Health* 2001; 25: and Pitts et al. (2004).

[vii] Woodward, C, Fischer, J, Najam, J, & Dunne, M. (2004) *Selling sex in Queensland.* Brisbane: Prostitution Licensing Authority.

[viii] Harcourt, C., & Donovan, B. (2005). Op cit.

[ix] SWOP outreach data cited in Harcourt, C., et al. (2001). Op. cit.

[x] The LASH research found that approximately 25% of government-funded health promotion programs in Sydney (SWOP), Melbourne (RhED) and Perth (Magenta), were being expended on street based sex workers who comprised less than 5% of sex workers in each city.

[xi] Perkins, R. (1991). *Working girls: Prostitutes, their life and social control.* Canberra: Australian Institute of Criminology.; Woodward, C., et al., Op cit..; Pyett, P. (1995). *Profile of workers in the sex industry, Melbourne* La Trobe University.; Jordon, J. (2001). *Working girls: women in the New Zealand sex industry talk to Jan Jordan. Auckland.*

[xii] Sanders, T., & Campbell, R. (2007). 'Designing out vulnerability, building in respect: Violence, safety and sex work policy'. *The British Journal of Sociology*, 58(1), 1-19. Jordan, (1991). Op Cit.; Pyett, P., Haste, B. & Snow, J. (1996). 'Who works in the sex industry? A profile of female prostitutes in Victoria'. *Australian and New Zealand Journal of Public Health* 20(4): Jordon, J., *The Sex Industry in New Zealand – A Literature Review, Ministry of Justice,* March 2005.

[xiii] Perkins, R. (1994). *Sex Work and Sex Workers in Australia*, and Bailey, J. (2003). *Conversations in a Brothel.*

[xiv] Perkins, R., op cit.

[xv] Chapple, M. & Kippax, S. (1996). *Gay and homosexually active Aboriginal men in Sydney.* National Centre in HIV Epidemiology and Clinical Research available at: http://www.queers4reconciliation.wild.net.au/chapple.htm

[xvi] Donovan B., et al (2009) 'Law and Sexual Health (LASH) Project poster from the International Society for STD Research in London, June/July 2009', National Centre in HIV Epidemiology and Clinical Research, University of New South Wales, University of Melbourne, Fremantle Sexual Health Centre, Melbourne Sexual Health Centre, Sydney Sexual Health Centre, Urban Realists Planning and Health Consultants, Australia, 2009.

[xvii] Lee, D.M., Binger, A., Hocking, J., Fairley, C.K. (2005). The incidence of sexually transmitted infections among frequently screened sex workers in a decriminalised and regulated system in Melbourne. *Sexually Transmitted Infections* 81(5):434-6.

[xviii] Ibid.

[xix] Wilson DP et al (2009) Sex workers can be screened too often: a cost-effectiveness analysis in Victoria, Australia *Sexually Transmitted Infections* (86) 117-125.

[xx] Report of the Select Committee of the Legislative Assembly upon Prostitution (1986) Parliament of NSW

[xxi] Australian Government (2005) National HIV Strategy 2005-2008: revitalising Australia's HIV response, Australian Government Department of Health and Ageing, Canberra.

Appendix 1: Listening to sex workers

Few occupations have such a long and delicate history with the law as the 'oldest profession' and in the normal course of business sex workers face a formidable range of laws and regulations that are different in every jurisdiction. Given the impact on sex workers lives and the necessary expertise in the laws that sex workers need to develop, isn't it strange that in debates around sex industry laws that sex workers are rarely seen as key stakeholders?

The Sex Worker Outreach Project (SWOP ACT) as a peer-run project has strong relationships and an intimate knowledge of the industry. We are arguably better placed than any other organisation to ask workers themselves about their own experiences and opinions of the laws.

In January 2010 we distributed surveys in paper form to parlours around the ACT and created an online version of the survey promoted through social media. We received 39 completed surveys, 21 on paper and 18 online.

Understanding the obligations of being a sex worker

Familiarity with the Prostitution Act is fairly high in this sample. About 40% of respondents (16 respondents) have read the Prostitution Act and are confident in their understanding. The remainder use other sources to inform themselves of their rights and responsibilities, including on other workers in the industry (17 respondents) or SWOP ACT (17 respondents).

Working as a 'sole operator'

Sex workers in the ACT have two options for working legally: A worker can either work in a registered parlour (brothel), or alternatively on a private premises on the condition that he or she works alone and is registered as a 'sole operator'. Many workers work in a combination of parlour and private work.

Registration as a sole operator is seen as an unreasonable hurdle by the respondents of our survey. Of the 15 workers in our survey who have worked privately only four workers have registered as a sole operator, and of those only one has a current registration. One worker expresses a concern that 'the legislation if policed could make life hard.'

One of the respondents who had previously registered no longer registers when working for 'a short period of time':

> *I registered initially every year ... when I worked on a full time basis and let it lapse in the last five years since I only advertise for a couple of weeks a year ... it is too much of a hassle given I only work for a short period of time.*

Another worker stopped registering because of a concern that 'my man [will find out], I have to hide it.'

The currently registered worker has strong feelings against the registration requirement, and after registering once is forced to continue to renew his or her registration:

I am angry that I registered in the beginning because now my details are on the system I feel I have to keep registering. I would never have done it if I knew the scope of the information collected and the way it is handled.

I do not feel safe in the registering process and think it is a breach of privacy that does nothing to help any person in the community.

Many other respondents share this worker's view that registration does not benefit the worker and call for the requirement to be abolished:

I would like to see the whole process of registration of sole operators completely struck out as I do not believe it serves any purpose. The government must make a case for continuing with this ... what has it been used for & what has been achieved through this?

Other forms of registration are for purposes of professional affiliation where you get something in return ... representation in respect to award wages etc. Registration of sex workers, mostly female, is a punitive measure to control women's lives and bodies. Get rid of this humiliating and discriminatory control.

A common opposition to registration in this sample appears to be an apprehension for what the registration data might be used for and who the data might be provided to:

I don't feel safe when my personal information is collected by police and bureaucrats. I feel that corrupt individuals could threaten me with disclosure to loved ones and employers.

Several respondents call for an amendment to the laws to allow sole operators to work on the same premises as another sole operator:

I would like to see amendments that enable 'up to 2 sex workers' to work in a private situation. Doubles are a common service & currently it means that if 2 workers get together to provide this service they are breaking the law ... It would also enable workers to either work together or take turns at shifts (1 may work during the day & the other in the evening & share the rental costs & with 2 workers on the premises it provides extra security).

I would ... make it legal for two workers to work privately together.

Working in parlours

The most common issue raised in relation to working in parlours are the limited locations parlours can operate. Currently regulations limit registered brothels to Fyshwick and Mitchell. Some workers propose allowing parlours in commercial areas:

Prescribed locations for commercial brothels should include shopping centres or other locations where other personal services are provided (e.g. hairdressers, masseurs, etc). Brothels should not be restricted to the industrial areas - sex work is NOT an industrial activity.

One respondent raises the Fyshwick and Mitchell restriction as a safety concern:

Brothels in industrial areas are extremely difficult to travel to, unless you own a private vehicle or can afford an expensive taxi ride. I have been in a situation where I haven't made enough money working a shift in a brothel to afford a taxi ride home at the completion of the shift, and as public transport to Fyshwick/Mitchell is extremely limited, I have had to walk home during the dark, cold winter morning.

Working in the ACT compared to elsewhere

Respondents were not asked in this survey about their experiences working in other jurisdictions; however the experience of SWOP ACT is that the majority of workers regularly work in other states and territories while travelling.

Workers reported that the following aspects were relatively positive in the ACT:

- '[It is] easy to come to brothels to get work'
- '[It is] safe for us to do the job'
- 'Being a sex worker is permitted and a little accepted within society'
- '[There is] no mandatory testing, not [required] to register if working in a brothel.'
- 'I especially like s26 and s27 of the Act.' (Section 26 prohibits the use of a sexual health check-up to make a client believe that the sex worker does not have an STI. Section 27 requires condoms and dams for vaginal, oral and anal sex. Both put obligations on parlour and escort agency operators.)
- 'It is legal to do private and parlour sex work'
- 'Advertising in the paper is easy'
- 'Freedom of choice and condom safety laws'
- 'Freedom to work confidentially'
- 'OH&S standards'

The sex industry in the ACT is 'legalised' in the sense that the Prostitution Act exists, explicitly permitting sex work under conditions prescribed in the Act. This differs from some other jurisdictions where sex work has been 'decriminalised' by abolishing anti-sex work legislation.

The issue of legalisation vs. decriminalisation is clearly contentious, with several respondents preferring decriminalised environments in other jurisdictions:

Remove registration and replace with decriminalised model similar to that in NSW or NZ.

I would like to see a full decriminalisation of sex work in the ACT.

Four respondents call for people living with HIV to be sex workers or clients:

Remove the prohibition for sex workers with HIV and clients with HIV.

One respondent states that 'underage workers are too common.'

Working towards better laws

This survey reveals a community of sex workers in the ACT which is well informed about the laws and regulations in the industry and strong positions of different issues affecting them.

The current framework provides an environment where most sex workers are able to work safely, with the exception of registration for sole operators. The low rate of registration appears to be currently overlooked by the authorities, but some workers fear a possible crack-down.

The survey finds some evidence of underage workers in the industry. This is a serious issue that needs to be investigated further to find appropriate ways to help underage workers out of the industry and prevent underage workers entering the industry in the future.

This survey raises current implications of the current Prostitution Act that would not have been intended when the Act was first drafted, including workers walking home alone late at night from light-industrial areas and over-worked and unprotected private sex workers unable to share a property and costs. These situations must be considered in any reviews of the current framework.

Many workers find provisions of the Prostitution Act and services in the ACT to be positive compared to other jurisdictions, and it is a minority of provisions that are points of contention in the industry. In reviewing the Act it is important that the provisions that have made the ACT a generally a safe and legal place to be a sex worker continue.

Appendix 2: Australian public health management laws

While all sex industry related laws impact the environment in which sexual services are provided, a range of specific laws target safe sex practice. Some of these are specific to the sex industry while others are general.

Australian Capital Territory

- **Use of prophylactic** - Sex workers and clients must use a prophylactic when engaging in sexual services involving oral, vaginal or anal penetration. It is an offence to misuse, damage or interfere with a prophylactic, or to continue to use a prophylactic if aware it is damaged. Owners and operators of brothels and escort agencies must also 'take reasonable steps to ensure that no one provides or receives commercial sexual services involving oral, vaginal or anal penetration by any means, unless a prophylactic is used' (Prostitution Act 1992, s.27).

- **Working with an STI** - It is an offence to provide or receive commercial sexual services if a person knows, or could reasonably be expected to know, they are infected with a sexually transmitted disease (s.25). Brothel and escort agency owners and operators are also required take reasonable steps to ensure a sex worker does not provide commercial sexual services if infected with a sexually transmitted disease (s.24).

  Public Health Regulations 2000 provide that any person who knows or suspects they have a transmissible notifiable condition, or knows or suspects that they are a contact of such a person, must take reasonable and appropriate precautions against transmitting the condition.

- **Testing for STIs** - The provision on working while infected with a sexually transmitted infection (s.24 listed above) is interpreted by many to mean they must ensure workers have regular STI tests, so it may be argued that section 24 acts as a 'de facto' mandatory testing law for sex workers wishing to work in brothels or as escorts.

  Sex workers, and brothel and escort agency owners and operators, are precluded from using evidence of a sex worker having had a medical test/examinations, or the results of that test/examination, to imply to a client that a sex worker does not have an STI (s.26).

New South Wales

- **Use of prophylactic** - No specific laws.

- **Working with an STI** - It is an offence for any person who knows they have a sexually transmissible medical condition (including HIV) to have sexual intercourse with another person unless, before the intercourse takes place, the other person:

  - has been informed of the risk of contracting a sexually transmissible medical condition from the person with whom intercourse is proposed, and
  - has voluntarily agreed to accept the risk (*Public Health Act 1991*, s.13)

- **Testing for STIs** – The 'WorkCover NSW Health and Safety Guidelines for Brothels' recommend that brothels make provision for regular staff health monitoring, with employees consulted on choice of doctors. The employer should pay for the medical check and for the employee's time while undergoing medical examination. Sex workers should attend a sexual health service or private doctor for sexual health assessment, counselling and education appropriate to individual needs. Frequency of assessment is a matter for determination by the individual sex worker in consultation with his/her clinician. Evidence of attendance for sexual health tests should not be used as an alternative to safe sex practices. Sexual health certificates do not imply freedom from STIs nor should sexual health certificates be shown to clients.

Northern Territory

- **Use of prophylactic** – Operator's Licences issued to escort agencies under the Prostitution Regulation Act state an operator must take all reasonable steps to ensure that persons providing sexual services do so in a manner that is safe and without risk to health and that no person provides or receives sexual services involving vaginal, oral or anal penetration by any means or device unless a condom or dental dam is used. Operators must not expressly or impliedly discourage the use of prophylactics, and must distribute safe sex material circulated by the Director of Licensing.

- **Working with an STI** - Working while infected with an STI is not prohibited, however, under the terms of an escort agency Operator's License, if an escort agency operator is aware a worker has a blood borne virus (HIV, Hepatitis B or Hepatitis C) they must tell any clients who are getting service from that worker (Escort Agency Operator's License).

- **Testing for STIs** - A sex worker must not use a sex worker's attendance at, or result of, a medical examination to induce a person to believe the sex worker is not infected with a sexually transmitted disease. Similarly, an escort agency licensee must take all reasonable steps to ensure a sex worker's attendance at, or result of, a medical examination is not used to induce a person to believe the sex worker is not infected with a sexually transmitted disease. (Prostitution Regulations, s.20).

Queensland

- **Use of prophylactic** - A sex worker must not offer or provide sexual intercourse or oral sex unless a prophylactic is used. Similarly, a client must not ask for or accept an offer of sexual intercourse or oral sex without a prophylactic being used. It is an offence for a client to misuse or damage a prophylactic, or continue to use a prophylactic they could reasonably be expected to know is damaged. Licensees and approved managers of licensed brothels must also take reasonable steps to ensure prophylactics are used (Prostitution Act 1999, s.77A).

  Condoms and other safe sex materials are not admissible as evidence that a place has been used for sex work (Criminal Code 1899, s.229N).

- **Working with an STI** - It is an offence to work as a sex worker if infected with a sexually transmissible disease (s.90). A licensee or approved manager of a licensed brothel must not permit a sex worker to work if infected with a sexually transmitted disease (including HIV). It is a defence if the licensee/approved manager believed on reasonable grounds that the person had regular medical examinations and was not infected (s.89). 'Regular medical examinations' is defined as occurring every three months (previously 6 weeks – amended 2007) (Prostitution Regulations 2000, s.9).

- **Testing for STIs** - A sex worker must not use their medical test/examination, or the results of that test/examination, to induce a client to believe they are not infected with a sexually transmissible disease. Similarly, a licensee or approved manager of a licensed brothel must take reasonable steps to prevent a sex worker's medical test/examination, or the results of the test/examination, being used to induce a client to believe the sex worker is not infected with a sexually transmissible disease.

South Australia

- **Use of prophylactic** - No specific laws.

- **Working with an STI** – The Public and Environmental Health Act 1987 includes the general provision that a person with a controlled notifiable disease, which includes HIV, shall take all reasonable measures to prevent transmission of the disease to others (s.37).

  The Public Health Bill states that a person who has a controlled notifiable condition capable of being transmitted, has a responsibility to take reasonable steps or precautions to avoid placing others at risk on account of the controlled notifiable condition. It also states that a person must not, insofar as is reasonably practicable, act in a manner that will place himself or herself at risk of contracting a controlled notifiable condition capable of being transmitted (s.14).

- **Testing for STIs** - No specific laws.

Tasmania

The *Sex Industry Offences Act 2005* includes the umbrella statement that 'A person who provides or receives sexual services in a sexual services business must take all reasonable steps to minimise the risk of acquiring or transmitting a sexually transmissible infection' (s12).

- **Use of prophylactic** – Sex workers and clients must not engage in sexual intercourse or any other activity with similar or greater risk of transmitting a sexually transmissible infection, unless a prophylactic is used. Sex workers and clients must not discourage the use of, misuse, damage or interfere with the use of prophylactics, or continue to use a prophylactic they could reasonably be expected to know is damaged (s.12)

- **Working with an STI** – The HIV/AIDS Preventive Measures Act 1993 requires a person who is aware of being infected with HIV to:

- take all reasonable measures and precautions to prevent the transmission of HIV to others;
- inform in advance any sexual contact or person with whom needles are shared of that fact; and
- ensure they do not knowingly or recklessly place another person at risk of becoming infected with HIV, unless that other person knew that fact and voluntarily accepted the risk of being infected (s.20)

A similar provision is found in the *Public Health Act 1997* (s.51) which states a person aware of having a notifiable disease must take all reasonable measures and precautions to prevent transmission of the disease, and must not knowingly or recklessly place another person at risk of transmitting the disease. It is a defence if the other person knew of, and voluntarily accepted the risk of, contracting HIV.

The *HIV/AIDS Preventive Measures Act* creates a further offence of publicly promoting participation in sexual activity of a kind which is likely to cause damage to health through the sexual transmission of HIV (s.22).

- **Testing for STIs** - No specific laws.

Victoria

- **Use of prophylactic** – The Health (Infectious Diseases) Regulations 2001 state that sex workers must be provided with a free supply of condoms and lubricants at no charge in a legal brothel. (The Regulations also mandate that all brothel rooms have sufficient lighting to enable sex workers to check for signs of sexually transmitted diseases, and that safe sex signage be prominently displayed.)

- **Working with an STI** – It is an offence to allow a sex worker infected with a sexually transmitted disease (including HIV) to work in a brothel, escort agency or 'other business'. It is a defence if the person reasonably believed that the sex worker was undergoing regular health checks (including quarterly blood tests and monthly swab tests) and reasonably believed the person was not infected with a sexually transmissible disease (Section 19, Prostitution Control Act 1994).

  Private sex workers cannot work while infected with a sexually transmissible infection, including HIV (*Prostitution Control Act* section 20), so must also adhere to monthly testing (as a defence should transmission of an STI occur). A 'sexually transmitted disease' is defined as chlamydia, chancroid, donovanosis, genital and anal herpes (when lesions are visible), genital and anal warts (when lesions are visible), gonorrhoea, infectious syphilis and HIV.

  The Public Health and Wellbeing Act 2008 includes the principles that:

  A person who has, or suspects that they may have, an infectious disease should

(i) Ascertain whether he or she has an infectious disease and what precautions he or she should take to prevent any other person from contracting the infectious disease; and

(ii) Take all reasonable steps to eliminate or reduce the risk of any other person contracting the infectious disease.

A person at risk of contracting an infectious disease should take all reasonable precautions to avoid contracting the infectious disease (s.111).

- **Testing for STIs** – As noted above, Victoria has a system of de facto mandatory testing by including sexual health screening as a defence to a charge of working, or allowing a sex worker to work, while infected with an STI. It is a defence if the sex worker or a brothel/escort agency owner or manager reasonably believed the sex worker was undergoing regular health checks (quarterly blood tests and monthly swab tests) and reasonably believed the person was not infected with a sexually transmissible disease (Section 19, Prostitution Control Act 1994).

  Section 161 of the *Public Health and Wellbeing Act 2008* requires brothel and escort agency proprietors to take reasonable steps to ensure that evidence of a sex worker's attendance at a medical examination or the results of the examination are not used to induce a client to believe a sex worker is free from HIV infection.

Western Australia

- **Use of prophylactic** – It is an offence for a person to engage in an act of prostitution without using a prophylactic appropriate for preventing the transmission of bodily fluid from one person to another (Prostitution Act 2000, s.8).

- **Working with an STI** - No specific laws.

- **Testing for STIs** - No specific laws.