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**RE: Statutes Amendment (Decriminalisation of Sex Work) Bill 2015**

Please accept this submission supporting the Statutes Amendment (decriminalisation of sex work) Bill 2015. In addition to this written submission we request the opportunity to meet with the committee to give evidence in person.

The Sex Industry Network (SIN) is by sex workers for sex workers with our mission being to promote the health rights and wellbeing of sex workers in South Australia (SA). For 25 years SIN has provided a range of health and support services for sex workers and has been continuously funded to deliver specialised HIV, Sexually Transmitted Infection (STI) and Blood Borne Virus (BBV) prevention programmes to sex workers in SA. We offer targeted outreach, education and community development services for Cultural and Linguistically Diverse (CALD) and migrant sex workers, trans and gender diverse sex workers, male sex workers, female sex workers and street based sex workers. We are the only organisation in this state that works specifically with sex workers and our contact with and connection to our community along with our sex worker only leadership structure means that we are able to confidently and authentically represent and advocate on behalf of sex workers in SA.

SIN and sex workers in SA support the Bill in its entirety. The bill as it stands was drafted in consultation with sex workers and other stakeholders and is the result of a long and ongoing campaign for sex work law reform in SA. It is essential that the harmful, archaic and unworkable laws that currently exist in relation to sex work are finally addressed and we believe the goal of any new

legislation regulating sex work should be to maximise the health and safety of sex workers while at the same time ensuring that negative outcomes for the general public are minimised. Our submission demonstrates the success of decriminalisation in comparison to other models of sex work regulation in achieving this goal. This bill which includes the removal of sex work related offences from the criminal code and the addition of spent conviction clauses for previous sex work related offences and coverage in the anti-discrimination act is in line with recommendations made by every credible health and welfare expert, as well as the wishes of sex workers, and if passed it would place SA as a leader in social policy. This submission covers the problems with the current laws that criminalise sex work in SA, failure of other models such as the licensing model, often referred to as 'legalisation', which is used in Victoria (VIC) and Queensland (QLD), and models that criminalise the clients of sex workers such as the 'Swedish' model, and provides the evidence demonstrating the success of decriminalisation in jurisdictions such as New Zealand (NZ) and New South Wales (NSW).

### **A snapshot of the sex industry in South Australia**

The SA sex industry 'culture' is characterised as a small scale, cottage industry. While it is impossible to give accurate figures due to criminalisation pushing the industry underground these figures have been extrapolated from SIN data collection and are supported by the South Australian Police force (SAPOL). We believe there are up to approximately 2,000 sex workers working regularly in SA of which approximately 10% are male and 5% are trans and gender diverse. There is a large Asian sector comprising approximately 1/3 of the industry consisting mainly of Thai, Chinese and to a lesser extent Korean sex workers.

The established sex industry is made up of brothels (sometimes called parlours or working 'in-house'), escort agencies, massage studios, small collectives, independent (or private) workers, and a small number of street based sex workers. A sex worker may work in any, or more than one of these parts of the industry at one time or during their career as a sex worker. Like any other type of employment some sex workers may stay in the sex industry for only a short period of time, or work intermittently as need arises. Other sex workers may choose work in the sex industry as a long term career choice.

The majority of sex workers work in-house, where the client comes to them. Brothels in SA are small compared to those in other states and may employ a total of anywhere from 2 - 15 sex workers, although 2-3 is a more common number of staff on shift at any one time. The majority of brothels in SA are private or independent workers or small collectives of workers working together. Under our current laws even a single independent worker working from home is considered as working from a brothel and is therefore working illegally. Some brothels are masked as massage services as a response to heavy policing of the sex industry in the 1990s. Support and health promotion activities aimed at sex workers are severely hampered in these contexts.

Escort services are offered in the client's home or a hotel/motel room and therefore the most frequently used prostitution charges are not applicable in this context.

Street based sex work is a traditional form of sex work but comprises only a tiny sector of the SA sex industry. Street based sex workers tend to be the most marginalised sex workers and their visibility and mode of working makes them the most vulnerable to arrest, assault and harassment.

Research consistently illustrates that sex workers are highly aware of sexual health and safer sex practices and are skilled at identifying and assessing risks. Sex workers have lower rates of STIs and HIV than the general population, and act as safer sex educators of our clients and communities. Both the Sixth National HIV Strategy 2010-2013 and the Second National STI Strategy 2010-2013 note that 'the incidence of HIV/STIs in sex workers in Australia is among the lowest in the world.'<sup>1</sup>

The laws are enforced differently at different times for different people and businesses which has led to a general confusion and lack of clarity for sex workers when it comes to knowledge of their rights. The discretionary power to use or not use the laws against sex workers and others involved in the sex industry rests with the police and can create the situation where misinformation is rife and the potential for corruption is high.

### **The need for change**

As a result of existing laws (contained in the Summary Offences Act 1953 and the Criminal Law Consolidation Act 1935) sex work in SA is criminalised and sex workers work in underground and unregulated workplaces without industrial or Occupational Health and Safety (OH&S) protections. Rather than support health and safety the current laws impede on sex workers ability to stay safe at work. Sex workers fear the police, have little recourse and are unlikely to report when crimes are committed against them. Condoms and safe sex equipment, even health promotion material distributed by SIN can be seized and used as evidence against suspected sex workers.

Amnesty International believes that sex workers are one of the most marginalized groups in the world due to the lack of legal protection and exclusion from services that occurs when sex work is criminalised.<sup>2</sup> SA's current approach to regulating sex work has been consistently demonstrated to pose a danger to sex workers human rights and safety and has been heavily criticised by World Health Organisation (WHO), United Nations Programme on HIV/AIDS (UNAIDS), United Nations Population Fund (UNFPA), the International HIV/AIDS Alliance and United Nations Secretary General-Ban Ki Moon.<sup>3</sup>

Not only are the current laws harmful to sex workers, they are outdated and have been criticized as 'unworkable and archaic' by the previous SA police commissioner.<sup>4</sup> As a result sex workers are left unprotected and any legitimate concerns in regards to the sex industry are unable to be addressed, because the focus of current legislation is set in a different era and is not in-line with current community standards.

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<sup>1</sup> Australian Government Department of Health and Ageing, *Sixth National HIV Strategy 2010-2013*, Commonwealth of Australia, Canberra, 2010, 16; Australian Government Department of Health and Ageing, *Second National STI Strategy 2010-2013*, Commonwealth of Australia, Canberra, 2010, 16.

<sup>2</sup> <https://www.amnesty.org/en/qa-policy-to-protect-the-human-rights-of-sex-workers/>

<sup>3</sup> UNAIDS, Joint United Nations Program on HIV/AIDS, UNAIDS Guidance Note on HIV and Sex Work, Geneva, 2009, 2; UNAIDS, Report on the Global AIDS Epidemic, 2010, 137; Commonwealth HIV/AIDS Action Group and the International HIV/AIDS Alliance, *Enabling Legal Environments for Effective HIV Responses: A Leadership Challenge for the Commonwealth*, 2010, 23; UNAIDS and UNFPA, *Building Partnerships on HIV and Sex Work: Report and Recommendations from the first Asia and the Pacific Regional Consultation on HIV and Sex Work*, 2011, 13-15.

<sup>4</sup> <http://www.abc.net.au/news/2011-06-02/police-chief-agrees-sex-worker-laws-need-change/2742544>

In addition to sex workers and health and welfare groups calling for an end to the harmful laws, there have been broad public support with news reader surveys regularly finding around 65% of respondents supported decriminalising sex work.<sup>5</sup> It is important to acknowledge that reforming the sex work laws, and this bill in particular would bring positive outcomes to many South Australians. Some sources suggest that 1 in 65 South Australian women will do sex work at one point in their life.<sup>6</sup>

The arguments against law reform have been based on stigma and misconceptions as well as individual's personal moral and religious objections. It is not acceptable for the government to place moral objections above the health and safety of its citizens. It is time for the government to stop burying its head in the sand and accept the existence of sex workers so it can regulate the industry in a way that maximises health and safety and minimises any negative impacts. Moral objections with sex work should be irrelevant, by passing this bill the government is not endorsing the sex industry, in the same way that the regulation of other industries is not seen as an endorsement of that particular industry.

The campaign for law reform in SA has spanned a number of decades and during this time Parliament has considered and debated a number of different bills and models of regulation, it has conducted many reviews and study tours with no outcomes. In the last 20 years, there have been 12 separate Bills to reform the sex work laws introduced to SA Parliament, five of which were never even voted on, they were simply allowed to lapse due to a lack of commitment or a lack of interest from the members of parliament. In 1995 the governments Social Development Committee conducted a lengthy inquiry into prostitution which resulted in it calling for an end to criminalisation. Soon after that Liberal MP Mark Brindal introduced a Bill to decriminalise sex work and in his speech to parliament he said "It is important that we establish that the select committee of this Parliament, the National Crime Authority, the Police commissioner and every authoritative report in the past 15 years in this country has recommended the need for reform". In 2001 the Prostitution (Regulation) Bill 1999 was debated by the legislative council for two years with no outcome.<sup>7</sup> For the past two years in a row the Honourable Stephanie Key has introduced this exact Bill to the House of Representatives which resulted in many opportunities to consider the Bill and the surrounding issues at symposiums, panel presentations, public events, community meetings, parliamentary dinners, movie screenings, rallies, petitions and media. Even though there was considerable support for the Bill neither Bill was voted on because on both occasions parliament was prorogued at the end of the year. The urgency of passing this bill should not be seen by members of parliament as rushing into it, but as finally addressing their responsibility to its citizens by removing laws that are harmful and out-dated.

### **Decriminalisation is the best model for regulating sex work in South Australia**

Decriminalisation simply involves removing the laws that criminalise sex work and allowing existing laws that currently apply to other industries, workplaces and citizens, to apply equally to sex

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<sup>5</sup> <http://www.adelaidenow.com.au/news/south-australia/medical-marijuana-euthanasia-prostitution-same-sex-marriage-survey-finds-strong-support-for-social-change/story-fni6uo1m-1227131891860>

<sup>6</sup> <http://becauseimawhore.com/2011/10/08/how-to-spot-a-hooker/>

<sup>7</sup> SA Memory, Sex Industry, State Library of South Australia, <http://www.samemory.sa.gov.au/site/page.cfm?u=671>

workers. Decriminalisation does not involve the addition of special laws with attached criminal penalties applicable only to sex workers but that doesn't mean there is a lack of regulation. Decriminalisation is actually a whole of government approach to regulation; there are many sophisticated laws and regulations already in place that could apply to sex workers and the sex industry if the criminal laws against sex workers were removed.

The decriminalisation of sex work means that sex workers would no longer be breaking the law by carrying out sex work. We would not be forced to live outside the law. If sex workers were no longer seen and treated as 'criminals' or 'accomplices' the ability to build better relationships with and protection from police increases which would result sex workers having greater access to rights.

Decriminalisation has been successfully in place in NSW since 1995 and New Zealand since 2003 and has brought improved work safety, high rates of safer sex practice, low rates of sexually transmissible infections<sup>8</sup>, improved OH&S, little to no amenity impacts and no evidence of organised crime.

In NSW a recent inquiry into the NSW sex work laws has seen public submissions from a diverse range of legal, health, council, police and sex worker organisations & individuals 76% (116) supported decriminalisation and only 7.8% (12) supported licensing.

In its review of The Prostitution Reform Act 2003 (PRA), the New Zealand select committee stated that decriminalisation had "been in force for five years. During that time, the sex industry has not increased in size, and many of the social evils predicted by some who opposed the decriminalisation of the sex industry have not been experienced. On the whole, the PRA has been effective in achieving its purpose, and the committee is confident that the vast majority of people involved in the sex industry are better off under the PRA than they were previously"<sup>9</sup>

Decriminalisation is also the model with the greatest rates of compliance as we can see by comparing the different models used in Australia. Fifty per cent of Victorian sex workers still operate illegally in 2012, and Ninety per cent of the Queensland industry operates illegally.<sup>10</sup> In addition to special laws for the sex industry being unnecessary, there is also the potential for them to become outdated quickly, be expensive to implement and police, reduce sex workers choice and ability to control the way they work and above all increase the negative impacts of criminalisation on a large percentage of sex workers.

### **Models used in other jurisdictions**

#### **VIC & QLD legalised or licensing**

As noted in the Scarlet Alliance submission this Committee:

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<sup>8</sup> National Centre in HIV Epidemiology and Clinical Research, HIV/AIDS, Viral Hepatitis and Sexually Transmissible Infections in Australia Annual Surveillance Report 2010, National Centre in HIV Epidemiology and Clinical Research, The University of New South Wales, Sydney, NSW; Australian Institute of Health and Welfare, Canberra, ACT. 2007.

<sup>9</sup> Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003

<sup>10</sup> Donovan B, Harcourt C, Egger S, Watchirs Smith L, Schneider K, Kaldor JM, Chen MY, Fairley CK, Tabrizi S (2012) *The Sex Industry in New South Wales: a Report to the NSW Ministry of Health*, Kirby Institute, UNSW.

‘In comparison to a decriminalised model of regulation, that promotes compliance, the licensing model promotes the development of a two-tiered industry whereby the larger percentage of the sex industry is excluded from operating legally – often because meeting the requirements of licensing is excessive or unreasonable. In this way non-compliance is an inherent flaw of the licensing model – creating an ongoing and costly problem for government as it requires a high level of administration to ensure compliance, exacerbated by the complexity of the system which itself acts as a barrier to compliance.’<sup>11</sup>

While definite levels of compliance are difficult to measure in QLD and VIC, numerous studies have agreed that a greater percentage of the sex industry in both jurisdictions operate outside of the legal framework. In QLD, 14 years of licensing has resulted in only 24 brothels being registered, while the majority of workplaces operate outside the licensing system.<sup>12</sup> Under the Victorian licensing model, there were 95 licensed brothels and up to 70 unlicensed brothels and an immeasurable number of individual sex workers working outside of the legal model in 2006.<sup>13</sup> Fifty per cent of Victorian sex workers still operated illegally in 2012, and ninety percent of the QLD industry operates illegally.<sup>14</sup> This model also requires a high level of police involvement to address non-compliance, which is counter-productive to much of the aims of decriminalisation. It is well documented that “better relationships with the police were apparent...where the police had no role in regulating the sex industry”<sup>15</sup>

### Swedish Model

Recently there has been an increased push for the ‘Swedish Model’ or the criminalisation of clients, despite evidence that this model of sex industry regulation has had a negative impact on the human rights of sex workers. Even though sex workers are not directly criminalised under the Swedish model, in reality, laws against buying sex mean that sex workers have to take more risks to protect buyers from detection by the police.

This model has been shown to have a negative impact on sex workers rights to freedom of association and the right to access justice. Operational aspects – like purchasing sex and renting premises to sell sex in – are still criminalised. Sex Workers are still pursued by police whose aim is often to eradicate sex work through enforcing the criminal law. This compromises sex workers safety and leaves us vulnerable to abuse.

In Sweden it is illegal to rent a room to a sex worker, meaning that sex workers autonomy is impacted. Sex workers are unlikely to report crime for fear of attracting police attention to their

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<sup>11</sup> Scarlet Alliance, *Submission to Select Committee on the Statutes Amendment (Decriminalisation of Sex Work) Bill 2015*.

<sup>12</sup> Prostitution Licensing Authority Queensland, *Licensed Brothels*, <http://www.pla.qld.gov.au/brothels/licensedBrothels.htm>

<sup>13</sup> Chen MY, Donovan B, Harcourt C, Morton A, Moss L, Wallis S, Cook K, Batras D, Groves J, Tabrizi SN, Garland S, Fairley CK, ‘Estimating the number of unlicensed brothels operating in Melbourne’(2010) *Australia and New Zealand Journal of Public Health* 34(1), 67.

<sup>14</sup> Donovan B, Harcourt C, Egger S, Watchirs Smith L, Schneider K, Kaldor JM, Chen MY, Fairley CK, Tabrizi S (2012) *The Sex Industry in New South Wales: a Report to the NSW Ministry of Health*, Kirby Institute, UNSW.

<sup>15</sup> Scarlet Alliance and the Australian Federation of AIDS Organisations, *Unjust and Counter Productive: The Failure of Governments to Protect Sex Workers From Discrimination* Sydney, 1999, pg 14.

location. Adult children living at home supported by their parents' earnings have been charged with 'pimping'. Sex workers cannot work together for greater safety, or hire security – all measures that improve sex worker safety. Police stake out sex workers workplaces and, as a result, clients will only meet in public locations of their choosing to avoid detection. In Sweden, laws criminalising clients are actively and maliciously used against sex workers. Petra Ostergren and Susanne Dodillet report that in Sweden they have found “serious adverse effects” of the legislation despite the fact that the lawmakers stressed that it would not have a detrimental effect on sex workers.<sup>16</sup> In a paper studying the Swedish system of sex work regulation, The Prostitution Licensing Authority QLD reported that the prohibition on the purchase of sexual services in Sweden has “driven the sex industry underground”, leaving sex workers “at greater risk of violence”.<sup>17</sup>

### **Addressing the concerns and considerations related to sex work and sex industry regulation**

#### **Health and Safety**

Criminalisation does not support the health and safety of sex workers. The WHO guidelines call for countries to “encourage ‘safe workplaces’ and availability of condoms in all sex work venues” and “end the practice of law enforcement officials using condoms as evidence of sex work”<sup>18</sup>. Under the current laws in SA condoms and safe sex information can be used as evidence against sex workers, employers have no obligation to provide a safe workplace and criminalisation makes it difficult for sex workers to negotiate safe sex and other safety strategies up front with potential clients in case they are undercover police officers. SIN is aware of many situations where sex workers are forced to prioritise police evasion practices before safety strategies. For example street based sex workers will often jump into a car before engaging in an initial risk assessment to lessen the likelihood of being detected by the police. However, even with these barriers to health and safety, SA sex workers still manage to maintain high standards of sexual health with lower rates of STIs than the general public.

Sex workers are the safe sex experts and under a decriminalised model sex workers will feel more able to report concerns or complaints in regards to OH&S and industrial practices than they can while working in a criminalised industry. The Lancet, which recently published a special series on HIV and sex work, also recommends the decriminalisation of sex work and reported “Decriminalisation of sex work would have the greatest effect on the course of HIV epidemics across all settings, averting 33–46 % of HIV infections in the next decade”.<sup>19</sup> In addition, decriminalisation has achieved significant public health outcomes for the NSW community due to creating an ‘enabling environment’ whereby sex workers are effectively implementing safe sex practices with clients. Significant research into BBV & STI prevention demonstrates that decriminalisation is the model of

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<sup>16</sup> Susanne Dodillet and Petra Ostergren, ‘The Swedish Sex Purchase Act: Claimed Success and Documented Effects’ Conference paper presented at the International Workshop *Decriminalizing Prostitution and Beyond: Practical Experiences and Challenges* The Hague, March 3 and 4, 2011, 3.

<sup>17</sup> Bob Wallace (Principal Policy Officer), *The Ban on Purchasing Sex in Sweden*, Office of the Prostitution Licensing Authority Queensland, 19.

<sup>18</sup> <http://www.nswp.org/resource/who-implementing-comprehensive-hivsti-programmes-sex-workers-practical-approaches-collabora>

<sup>19</sup> .Global epidemiology of HIV among female sex workers: influence of structural determinants 2014

regulation that provides the legal and working environment to support this outcome and that licensing does not.<sup>20</sup>

Enshrining best practice OH&S standards such as condom use or regular testing routines in criminal laws is counter-productive to sex workers health and safety. There are already sophisticated laws relating to OH&S, public health and knowingly transmitting or infecting which could be applied to those involved in the sex industry under a decriminalised model. Creating laws like this position police as the OH&S inspectors and often target the most marginalised workers such as those with limited English or street based sex workers. The criminal justice system is not an effective tool for health promotion, and sex workers deserve access to the comprehensive network of regulations, protections and supports that protect workers in other industries, and are regularly reviewed and updated by industry and health experts.

#### Protecting sex workers from exploitation

Criminalisation of sex workers workplaces and employers makes exploitation difficult to detect and complex to prosecute. In SA employment practices vary and combined with the clandestine nature of the industry, finding a suitable workplace and negotiating our conditions up front is often a difficult process. In the event of serious exploitation or coercion by an employer, sex workers have very little recourse. Whether it is an industrial matter or a criminal matter, the criminality and lack of regulation of the industry make it very difficult to address through the formal systems available to workers in other industries. If sex work was decriminalised, exploiting or abusing sex workers would still be a criminal act and prosecuting those involved would be a much easier process if it occurred as part of a lawful business. This is evident in New Zealand when in January last year their Human Rights Review Tribunal made a landmark ruling on the violation of a woman's human rights in a Wellington brothel where she was employed. The woman filed a complaint against both the manager of the brothel and the brothel owner after the manager sexually harassed and bullied her. The complaint was upheld and the woman was awarded damages.

Removing the criminal laws that apply to brothels and employers would mean the full range of industrial rights and responsibilities would apply to sex workers and our employers.

Decriminalisation empowers sex workers to access their rights as workers and removing criminal restrictions to sex work related activities allows for sex workers to work independently or collectively if they chose without the necessity of relying on a 3<sup>rd</sup> party.

Creating special laws meant for protecting sex workers from exploitation like those against 'brothel keeping' or 'promotion' often criminalises actions we take to stay safe and can be used against sex workers. For example, in many legalised jurisdictions two sex workers working together for safety is considered a 'brothel' and both may be charged with keeping brothel or pimping related offences.

The licensing system in Victoria has been criticised for being too restrictive, the application process too onerous, and the compliance costs too high, limiting the choice of employers for workers and making it extremely difficult for sex workers to work independently in the legal sector. In its report on the Prostitution Reform Bill, the New Zealand Justice and Electoral Committee noted that

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<sup>20</sup> The "Laws and Sexual Health (LASH)" study which compared 3 models of sex work regulation in Australia and found Decriminalisation in NSW has the best outcomes for sex workers sexual health.



workers employed in licensed brothels in Victoria can be exploited by licensees and may have no control over their working conditions or what services they provide and that sex workers ability to negotiate their work conditions are greatly decreased when there are restrictive brothel laws.

Another consequence of restrictive brothel laws is non-compliance and a two-tiered industry of legal (licensed) and illegal (unlicensed) brothels has developed in those places <sup>21</sup>

In addition to decriminalisation creating an enabling environment for sex workers to have full access to their right and address any abuses of our human rights, ensuring that there is a adequately funded peer education services like SIN which allows sex workers to receive proper training, information, resources and support where needed.

### Regulating Brothels

Currently all brothels and sex industry businesses are illegal in SA, yet we estimate there are approximately 100 brothels operating. Criminalisation has not stopped brothels and other sex industry businesses from operating, it has however meant that they are underground and unregulated, leaving workers with little protection and local government with little options in regards to enforcing the many laws and council planning regulations currently in place that govern the location of other businesses, based on amenities and zoning suitability. Under a decriminalised model these laws would also govern sex industry businesses, and members of the public will be able to make complaints if any of their neighbours' activities cause disturbance, just as they can in any other situation. Decriminalisation will mean any legitimate issues can be considered rather than just pushing the industry underground.

In NSW sex work is decriminalised and brothels are regulated in the following ways:

- Local councils utilising planning powers under the Environmental Planning and Assessment Act 1979 to decide the number and location of sex services premises in their area. Sex services premises must comply with a local councils planning policies and may need to make a development application to council for permission to operate the business.
- Requirements for owners and operators of sex services premises to provide safe and healthy work environments. The Health and Safety Guidelines for Brothels issued by WorkCover NSW and NSW Health outline the required acceptable standards.<sup>22</sup>

Creating special licences for sex workers or for brothels has proven expensive and ineffective in the jurisdictions it has been implemented. It also creates a barrier for individual sex workers to work for themselves or in small collectives, which is very much part of the culture in SA. Under a decriminalised model, home based businesses and small collectives of workers are able to work independently and without expensive or restrictive licences or regulations, the same way that other home based businesses do.

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<sup>21</sup> Jordan, 2005 Jordan, J. (2005), *The Sex Industry in New Zealand: A Literature Review*, Wellington, Ministry of Justice.)

<sup>22</sup> Independent Pricing and Regulatory Tribunal of New South Wales, *Reforming Licensing in NSW: Review of licence rationale and design*, Regulation Review Final Report, September 2014.

The Sex Services Premises Planning Guidelines NSW state that “there is no evidence that a home-based sex worker has any more impact than other home occupations, e.g. an architect working from home, and accountant, tax agent, photographer, etc.”<sup>23</sup>

Research from 2008 demonstrates that after 13 years of decriminalisation in NSW, only one brothel owner had been ordered to cease operation due to amenity impacts, and there had been no complaints relating to amenity impacts for private sex work.<sup>24</sup> Penny Crofts states “Most people are unaware that they have been living next to a home occupation (sex services). [Private sex workers] need to be discreet – to keep clients and also for personal safety”<sup>25</sup>. Her research with Prior suggests that brothels have a neutral or positive effect on neighbourhoods.<sup>26</sup> Prior and Crofts 2010 study illustrates that of 400 residents living in close proximity to commercial sex services in City of Sydney and Parramatta, 43.1% were unaware they lived within 400m, and of those who did know, 48.2% believed the business had no overall impact in the local area, and 24.1% rated it positively.<sup>27</sup>

People have a right to be able to work from home or for a business that is suitably located with suitable amenities. Sex workers and sex industry businesses and our clients are by nature very discreet and protective of our privacy and security. Any law that threatened that anonymity and privacy will have very low rates of compliance.

#### Managing criminal activity in the sex industry

There is no evidence that organised crime is associated with the sex industry, or that crime is relatively more prevalent in the sex industry compared to other businesses. Penny Crofts states that “there is nothing inherently criminogenic about premises used for sex services”.<sup>28</sup> The New Zealand select committee could not find any evidence of a link between crime and prostitution or drug use either<sup>29</sup>. The report quotes from the Christchurch School of Medicine (CSOM) study which shows that contrary to popular perception, only 16.7% reported working to support alcohol or drug usage, whereas 82.3% reported they needed the money to pay for household expenses.<sup>30</sup>

Under the current laws most sex industry businesses are underground, and police are seen as the enemy. Decriminalisation promotes better relationships between sex workers and police and

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<sup>23</sup> Sex Services Premises Planning Advisory Panel, *Sex Services Premises Planning Guidelines*, NSW Department of Planning, 2004, 54, cited in Touching Base Inc and Urban Realists, ‘Submission in Response to the Draft Sydney Local Environmental Plan 2011’, April 2011, 5.

<sup>24</sup> Scarlet Alliance and Nothing About Us Without Us, Submission to Shadow Attorney General Chris Hatcher on Sex Industry Regulation in NSW, September 2010, 10.

<sup>25</sup> City of Sydney (2005) Home Occupation Sex Services Premises Research Project Final Report, cited in Penny Crofts, ‘Brothels: Outlaws or Citizens?’ (2010), *International Journal of Law in context*, 6:2, 164.

<sup>26</sup> Prior and Crofts, ‘Effects of sex premises on neighbourhoods: Residents, local planning and the geographies of a controversial land use’ (2012) *New Zealand Geographer* 68, 130.

<sup>27</sup> Prior J and Crofts P (2012), *Effects of Sex Services Premises on Neighbourhoods: Residents, local planning and the geographies of a controversial land use*, *New Zealand Geographer*, 68, page 134.

<sup>28</sup> Crofts, P, *The Proposed Licensing of Brothels in NSW*, 17 LGLI 3, page 5, cited in NSW Government, Better Regulation Office, Issues Paper: Regulation of Brothels in NSW, September 2012, 39.

<sup>29</sup> <http://www.justice.govt.nz/policy/commercial-property-and-regulatory/prostitution/prostitution-law-review-committee/publications/plrc-report/11-common-misconceptions-about-prostitution>

<sup>30</sup> CSOM (Christchurch School of Medicine), (2007), Abel, G., Brunton, C. and Fitzgerald, L., *The Impact of the Prostitution Reform Act on the Health and Safety Practices of Sex Workers: Report to the Prostitution Law Review Committee*, Christchurch, Christchurch School of Medicine.

allows police to better identify and take action when actual criminal behaviour does exist. Our current laws are too old and don't work, and any genuine issues cannot be addressed. Decriminalisation also reduces the opportunity for corruption.

### Street Work

Street based sex work in Adelaide is only a very small sector of the industry, but these workers are the most negatively affected by criminalisation. Current police harassment and harsh bail conditions mean street based sex workers are isolated and vulnerable. Criminalisation results in street based sex workers fearing police and encourages discrimination against street based sex workers which creates barriers to sex workers reporting crimes or seeking assistance when needed.

Even though 'police blitzes' occur regularly in street work areas, the small street scene continues. Criminalising street based sex workers does not address the concerns of the general public and makes street based sex workers more vulnerable. In its report the New Zealand select committee noted that "prohibition and a criminalised regime prior to the PRA did not prevent street soliciting occurring, nor was street-based prostitution controlled in any constructive way by its illegal status. The argument that prohibiting street-based sex work, while allowing indoor prostitution, would 'solve' street prostitution is not supported either by history or by the research undertaken by CSOM"<sup>31</sup>

There is no evidence to suggest that decriminalisation would mean an increase in the street work scene. In New Zealand the numbers of street-based sex workers have remained stable since the enactment of the PRA, with comparable numbers on the streets to estimates done prior to decriminalisation.<sup>32</sup>

Under a decriminalised model, public and community concerns as well as the health and safety of sex workers can be considered and strategies can be implemented. NZ Christchurch police consider the PRA has made co-operation and the good relations between street-based workers and frontline officers possible. Street-based workers offer police useful information about activity on the streets, while police provide information about potential offenders who may pose a risk to street workers. In NSW where street based sex work is decriminalised, safe houses are in operation. Safe houses provide a venue for street-based sex workers to take clients. This reduces the danger to sex workers and provides for any amenities impacts related to street based sex workers.

### Trafficking

Anti-trafficking interventions focusing on the sex industry in Australia have been disproportionate to the extent and nature of actual trafficking in the sex industry. Despite the significant financial

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<sup>31</sup> <http://www.justice.govt.nz/policy/commercial-property-and-regulatory/prostitution/prostitution-law-review-committee/publications/plrc-report/8-street-based-sex-workers>

<sup>32</sup> CSOM (Christchurch School of Medicine), (2007), Abel, G., Brunton, C. and Fitzgerald, L., The Impact of the Prostitution Reform Act on the Health and Safety Practices of Sex Workers: Report to the Prostitution Law Review Committee, Christchurch, Christchurch School of Medicine.

resources invested into identifying trafficking in Australia, consistently low government statistics show that the media estimated incidence of trafficking in Australia is inflated. In 2003, Chris Ellison, then Minister of Justice, said, “no significant” sex slavery problem existed in Australia. Despite enormous surveillance, heavy police investigation and substantial investment in a criminal justice approach, there have been only 14 cases successfully convicted under Australia’s anti-trafficking legislation. These relate to charges obtained in 9 schemes, 7 relating to the sex industry. In all the finalised trafficking cases that have involved migrant sex workers, no one had been deceived as to the fact they would be engaging in sex work and they had all consented to working as a sex worker in Australia. Some had sex worked previously. None of the cases involved deception or trickery of the fact they would be working as a sex worker.

Many anti-trafficking measures are deliberately used to disrupt sex work businesses and regularly blatantly follow an anti-migrant narrative. Anti-trafficking initiatives must be evidence-based, grounded in human rights principles, and must not negatively impact on the rights of sex workers.

Existing research with migrant sex workers demonstrates that their rights and well-being are best protected by multilingual peer education and policies focusing on prevention of exploitative conditions rather than increased surveillance or criminalisation. SIN has a very successful and well utilised outreach based project that targets sex workers from CALD backgrounds. What we know from our extensive contact with sex workers is that trafficking is not a widespread phenomenon in Australia.

Trafficking offences would remain illegal under a criminalised model and there is no evidence to suggest that decriminalisation results in more trafficking. To the contrary decriminalisation would help tackle trafficking. When sex work is decriminalised, sex workers are better able work together and demand rights, leading to better working conditions and standards and greater oversight of the sex industry. When not threatened with criminalisation, sex workers are also able to collaborate with law enforcement to identify traffickers and victims of trafficking. The UNAIDS Guidance Note on HIV and Sex Work stated that “sex workers themselves are often best placed to know who is being trafficked into commercial sex and by whom, and are particularly motivated to work to stop such odious practices”.<sup>33</sup>

Criminalisation of sex work impedes the anti-trafficking efforts of sex worker organisations. Organisations such as the Global Alliance Against Trafficking in Women, Anti -Slavery International and the International Labour Organisation agree that decriminalisation of sex work has a positive role to play in combating trafficking.<sup>34</sup> It fosters increased recognition of the rights of people who sell sex and can help end human rights violations, including trafficking.

### **Other aspects of the Bill**

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[http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CBwQFjAAahUKEwjv4JiwmrjIAhWCKKYKHRL1Cmk&url=http%3A%2F%2Fwww.unaids.org%2Fsites%2Fdefault%2Ffiles%2Fsub\\_landing%2Ffiles%2FJC2306\\_UNAIDS-guidance-note-HIV-sex-work\\_en.pdf&usg=AFQjCNG3kKhN58rUfO\\_pF3xg2V5q\\_UaipQ&sig2=3CScJnprd2XZljoJODPOPA&bvm=bv.104819420,d.dGo](http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CBwQFjAAahUKEwjv4JiwmrjIAhWCKKYKHRL1Cmk&url=http%3A%2F%2Fwww.unaids.org%2Fsites%2Fdefault%2Ffiles%2Fsub_landing%2Ffiles%2FJC2306_UNAIDS-guidance-note-HIV-sex-work_en.pdf&usg=AFQjCNG3kKhN58rUfO_pF3xg2V5q_UaipQ&sig2=3CScJnprd2XZljoJODPOPA&bvm=bv.104819420,d.dGo)

<sup>34</sup> <https://www.amnesty.org/en/qa-policy-to-protect-the-human-rights-of-sex-workers/>

### Spent convictions

SIN is aware of many former sex workers in SA who have old sex work related convictions. The policing which effects mainly women in the Adelaide sex industry has been very rigorous at different times and it is common for a woman who worked in Adelaide brothels in the 1990's to have upwards of fifty convictions for being on premises of a brothel after only 12 months of working there. Sex work related convictions have a disastrous effect on these women's ability to gain employment and has hugely negative impacts on areas such as mental health, finances and study as available options are diminished and people lose confidence. Many people with sex work related convictions retreat from participating in any activity where a criminal history record could be checked for fear being 'outed' due to the intense stigma and discrimination that sex workers face.

The inclusion of spent conviction clause for sex work related charges has the potential to create positive outcomes for a large number of former sex workers in South Australia by reducing the barriers to fully participating in society.

### Inclusion in anti discrimination legislation

We applaud the inclusion of anti-discrimination protections for sex worker in the Bill. Sex workers already have limited anti-discrimination protection across four states in Australia. The Australian Capital Territory provides protection on the basis of "profession, trade, occupation or calling". Queensland, Victoria and Tasmania all provide anti-discrimination for sex workers on the basis of "lawful sexual activity".

The Australian Government and United Nations bodies recognise sex workers as a group in need of human rights and anti-discrimination protection. Sex workers are recognised by the Australian Governments National Strategies and globally as a community that experience unacceptable levels of discrimination and denial of human rights.

Sex workers daily and ongoing experiences of discrimination, harassment and stigma signal the crucial need for legislative reform. In 1999 a National Survey was conducted by Scarlet Alliance and the Australian Federation of AIDS Organisations to identify discrimination in the employment conditions and personal lives of sex workers in Australia.<sup>35</sup> The subsequent report, *"Unjust and Counter-Productive: The Failure of Governments to Protect Sex Workers From Discrimination"*, found that sex workers experienced discrimination on the basis of their occupation in a number of areas:

- Access to goods and services, including credit cards, loans, insurance, superannuation;
- Discriminatory advertising policies, higher fees, special conditions, unapproved changes to pre-paid advertisements;
- Discrimination in housing and accommodation, difficulties in obtaining rent agreements, eviction, rude treatment, non-consensual disclosure of occupation to landlord;
- Discrimination in seeking other employment, stigma affecting employers decisions to recruit or dismiss staff, particularly in occupations such as teaching or policing;
- Criminal record discrimination because the place or nature of sex work has been deemed illegal;
- Intersectional discrimination on the basis of HIV status and sex work, including criminalisation, poor treatment and harassment from health providers, prosecution and jail;

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<sup>35</sup> Scarlet Alliance and the Australian Federation of AIDS Organisations, *Unjust and Counter-Productive: The Failure of Governments to Protect Sex Workers From Discrimination*, Sydney, 1999, 19, accessed at <http://www.scarletalliance.org.au/library/unjust-counterproductive> on 19 May 2011.

- Harassment, vilification and social exclusion on the basis of sex work status;

Concern for sex worker human rights has been raised in many human rights forums within Australia and internationally over many years. United Nations Secretary General Ban Ki-Moon states that “In most countries, discrimination remains legal against women, men who have sex with men, sex workers, drug users, and ethnic minorities. This must change”.<sup>36</sup> Former Australian High Court judge the Hon. Michael Kirby AC CMG states that “We will insist on human rights for all, including for sex workers. Nothing else is acceptable as a matter of true public morality”.<sup>37</sup> UNAIDS and UNFPA state that it is essential for governments to create an enabling legal and policy environment which insists upon universal rights for sex workers and ensures our access to justice.<sup>38</sup> A new report by UNFPA, UN Development Fund (UNDP) and UNAIDS on “*Sex Work and the Law in Asia and the Pacific*” recommends governments protect sex workers from discrimination.<sup>39</sup> These examples are just the tip of the iceberg of a worldwide, organised, mobilised movement advocating for the recognition and protection of sex worker human rights.

## RECOMMENDATIONS

1. SIN supports the Statutes Amendment (Decriminalisation of Sex Work) Bill 2015 and recommends the Bill is presented to parliament in its current form with supporting documentation to enable an increased understanding of the issues surrounding sex work for South Australian parliamentarians.
2. SIN recommends the full decriminalisation of sex work, sex workers’ workplaces and clients in South Australia supported by anti-discrimination coverage for all sex workers. The outcomes of decriminalisation are significant and cannot be assured under any alternative model. They include:
  - a. Exceptionally good public health outcomes and low rates of STIs and HIV (recognised by Australia’s National Strategies and the Kirby Institute Annual Surveillance Report);<sup>40</sup>
  - b. Better access to health promotion (finding of the Law and Sex Worker Health Study, which compared the health impacts of legal frameworks across Victoria, NSW and WA);<sup>41</sup>
  - c. Little to no amenity impacts (recognised by Crofts and Prior);<sup>42</sup>
  - d. No evidence of organised crime (recognised by the Land and Environment Court);<sup>43</sup>

<sup>36</sup> UNAIDS, Joint United Nations Program on HIV/AIDS, *UNAIDS Guidance Note on HIV and Sex Work*, Geneva, 2009, 2.

<sup>37</sup> UNAIDS and UNFPA, *Building Partnerships on HIV and Sex Work: Report and Recommendations from the first Asia and the Pacific Regional Consultation on HIV and Sex Work*, 2011 at 14.

<sup>38</sup> Ibid at 13-15.

<sup>39</sup> UNAIDS, UNFPA, UNDP, *Sex Work and the Law in Asia and the Pacific*, 2012, UNDP Thailand, accessed at <http://www.snap-undp.org/elibrary/Publications/HIV-2012-SexWorkAndLaw.pdf> on 23 October 2012.

<sup>40</sup> Australian Government Department of Health and Ageing, *Sixth National HIV Strategy 2010-2013*, Commonwealth of Australia, Canberra, 2010, 16; Australian Government Department of Health and Ageing, *Second National STI Strategy 2010-2013*, Commonwealth of Australia, Canberra, 2010, 16. Kirby Institute, HIV, Viral Hepatitis and Sexually Transmissible Infections in Australia Annual Surveillance Report, University of New South Wales, 2011, p8, Figure 46, Figure 34.

<sup>41</sup> Christine Harcourt, J O'Connor, S Egger, C Fairly, H Wand, M Chen, L Marshall, J Kaldor, B Donovan, (2010), ‘The Decriminalisation of Prostitution is Associated with Better Coverage of Health Promotion Programs for Sex Workers’, *Australian and New Zealand Journal of Public Health* 34:5, 482.

<sup>42</sup> Prior and Crofts, ‘Effects of sex premises on neighbourhoods: Residents, local planning and the geographies of a controversial land use’ (2012) *New Zealand Geographer* 68, 130.

<sup>43</sup> *Martyn v Hornsby Council*, cited in Nothing About Us Without Us, ‘North Sydney Council Prohibits Home Occupation (Sex Services) in All Zones under the New Draft LEP’.

- e. Better access to Occupational Health and Safety (WorkCover and NSW Health worked with sex workers to create the Health and Safety Guidelines for Brothels, which has been translated to Thai, Chinese and Korean);<sup>44</sup> and
  - f. No increase in the size of the sex industry (Kirby Institute report to Ministry of Health)<sup>45</sup>
3. SIN recommends that decriminalisation is the best-practice approach to achieving positive public health outcomes. This is supported by current evidence from The Lancet states that the decriminalisation of sex work would have the greatest impact on the HIV epidemic, reducing HIV by up to 46% in the next decade and result in cost saving thresholds of tens of millions of dollars globally.<sup>46</sup>

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<sup>44</sup> NSW Government and Workcover, 'Health and Safety Guidelines for Brothels'.

<sup>45</sup> B. Donovan, et al. *The Sex Industry in New South Wales: A Report to the NSW Ministry of Health*, Kirby Institute, University of New South Wales, Sydney, 2012.

<sup>46</sup> The Lancet. HIV and Sex Work, <http://www.thelancet.com/series/HIV-and-sex-workers> July 2014.