



LEGISLATIVE COUNCIL

SELECT COMMITTEE ON STATUTES AMENDMENT (REPEAL OF SEX WORK OFFENCES) BILL

Plaza Room, Parliament House, Adelaide

Monday, 8 November 2021 at 1:10pm

BY AUTHORITY OF THE LEGISLATIVE COUNCIL

WITNESSES

FAIRLEY, ALAN, Member, Sex Industry Decriminalisation Action Committee	157
O'CONNOR S.C., CLAIRE, Barrister	167
THAIN, GEORGIA, Coordinator, Sex Industry Decriminalisation Action Committee	157

MEMBERS:

Hon. T.A. Franks MLC (Chairperson)
Hon. N.J. Centofanti MLC (via videoconferencing)
Hon. H.M. Girolamo MLC
Hon. I. Pnevmatikos MLC
Hon. C.M. Scriven

WITNESSES:

THAIN, GEORGIA, Coordinator, Sex Industry Decriminalisation Action Committee

FAIRLEY, ALAN, Member, Sex Industry Decriminalisation Action Committee

716 The CHAIRPERSON: Welcome to the meeting. The Legislative Council has given the authority for this committee to hold public meetings. A transcript of your evidence today will be forwarded to you for your examination for any clerical corrections. I advise that your evidence today is being broadcast via the Parliament of South Australia website. Should you wish at any time to present confidential evidence to the committee, please indicate and the committee will consider your request.

Parliamentary privilege is accorded to all evidence presented to a select committee. However, witnesses should be aware that privilege does not extend to statements made outside of this meeting. All persons, including members of the media, are reminded that the same rules apply as in the reporting of parliament.

We would like to acknowledge that the land that we meet on today is the traditional lands for the Kaurna people and that we respect their spiritual relationship with their country. We also acknowledge the Kaurna people as the traditional custodians of the Adelaide region and that their cultural and heritage beliefs are still as important to the living Kaurna people today.

Good afternoon. My name is Tammy Franks. I am the Chair of this select committee, which is looking into the Statutes Amendment (Repeal of Sex Work Offences) Bill which I introduced to the Legislative Council. The members of the committee joining us here today are the Hon. Nicola Centofanti, who is joining us remotely. To my left is the Hon. Irene Pnevmatikos. To my right are the Hon. Heidi Girolamo and the Hon. John Darley. We may be joined at some stage by the Hon. Clare Scriven, who is just running a little late today. If you would like to introduce yourselves and outline both your organisation and your roles, and then make any opening statements. We will, after that, proceed into questions.

Ms THAIN: My name is Georgia Thain. I am the Coordinator of SIDAC. SIDAC is the Sex Industry Decriminalisation Action Committee. It's a very long name; that's why we go with SIDAC. 'Coordinator' is just a fancier title than 'organiser'. I do a lot of the admin, organising meetings and stuff, because we are a pretty broad volunteer committee, consisting of a lot of representatives and members from different sections, which we will get into later.

Mr FAIRLEY: My name is Alan Fairley and I am just a member of the committee.

Ms THAIN: The Sex Industry Decriminalisation Action Committee is quite a diverse volunteer-based committee with individual members and representatives of support organisations from areas like health, law, women's rights advocacy, business, unions. The committee exists to campaign for consensual adult sex work to be removed from the criminal code, which would decriminalise a woman-dominated workforce and reduce harms by focusing on their human rights.

Decriminalisation is the pretty mainstream approach for a lot of rights-based advocacy, law, health organisations. The level of support it has from national and international organisations and the growing body of research that supports it is reflected in the large number of local organisations that are supporters of SIDAC and decriminalisation of sex work.

Our support organisations include: Embolden, which is South Australia's peak domestic, family and sexual violence services organisation; Soroptimist International Adelaide, which is a volunteer movement of women transforming the lives of women and girls; the Working Women's Centre of South Australia, leaders in the campaign for fair pay and equal conditions for women workers; and Shine SA, which is the key peak provider of care services and education for sexual and relationship wellbeing.

Women Lawyers Association: that's the South Australian branch of Australian women lawyers who aim to achieve justice and equality for all women; YWCA, which is a proudly feminist organisation that advocates for systematic change; and the Commissioner for Equal Opportunity, an independent statutory body leading the drive for the elimination of discrimination.

We're supported by clubs of Zonta International District 23 Area 2. That's an organisation of professional women empowering women through service and advocacy. We also have SA Unions, the peak trade union council of South Australia; SAMESH, a community-based organisation providing people with education and services to enhance sexual health and wellbeing; the South Australian Rainbow Advocacy Alliance, a peer-based community organisation that advocates for the rights of LGBTIQ+ people; and the Australian Services Union SA & NT Branch. That's a pretty big union here in South Australia.

There is also the Health Services Union of SA/NT, which is a specialist union for health and community services; Positive Life SA, which is an organisation providing an independent voice for people who live with HIV; Scarlet Alliance, the national peak sex worker organisation over in New South Wales; BPW Adelaide, a community of women acting for women's equality; the Women's Community Centre (SA) Inc., which is one of our oldest community centres; the Aboriginal Health Council of South Australia, which is the peak body representing Aboriginal community controlled health services; and SIDAC also benefits greatly from the participation of the Sex Industry Network, which is South Australia's SA Health-funded peer education, support, outreach, advocacy organisation.

Also we have our individual members, and we are grateful to have past and present sex workers who contribute quite a lot to the committee. As a committee, we know our laws for regulating sex work are dated. They don't allow for sex workers to access human workers', women's, gender diverse and sexuality diverse rights, and that was acknowledged quite a few times in the previous debate about the 2018-19 decriminalisation bill.

Lots of MPs acknowledge that there is a need for reform, and I believe that we have a responsibility to make sure that that reform is enacted on evidenced harm-minimising human rights-centred policy. The model that prioritises human rights and that prioritises minimising harm is also supported by a plethora of national and international evidence, and that model is full decriminalisation of sex work that would allow sex work to be treated as work, like other work in any other industry.

The priority in this particular human rights-centred approach to reform is removing the criminal provisions that we currently have for sex work, because they are what stand in the way. They are the primary thing standing in the way of sex workers being able to fully realise a very extensive—I could talk about it all day—list of all different rights that they can't currently access. I'm just going to throw to Alan to discuss some of that.

Mr FAIRLEY: In terms of SIDAC's approach to decriminalisation, the basic objective is to embed the right of competent adults to engage in consensual sexual relations with other adults, including that it be done on an agreed commercial basis.

Maintenance of criminalisation that has come from South Australia affronts this core human right even in its in-demand or Nordic model guise, as argued by some, because it creates harm. It creates harm for individuals, it creates harm for families, it creates harm for communities. When we say decriminalisation, of course, the current bill leaves in place the whole array of legal protections that we would expect for the community and we will go into that shortly.

As somebody personally who has been involved in this decriminalisation process for quite a while, I continue to be amazed at how urban myths and extreme claims of prohibitionists get currency and very seldom are challenged, because this is an area that is the realm of moral panic and hopefully parliament this time will see its way through these issues.

I think what SIDAC stands for is that we want a society that is mature enough to accept that the exchange of sex and intimacy occurs in many ways, with various personal investments and expectations, and that this does and will include monetary consideration. It's worth noting that the current bill is just the latest in a long line of former attempts: the two Millhouse bills in 1980, there was the Pickles bill in 1986, the two 1991 Gilfillan bills, the two 1995 Brindal bills. There were three attempts by the fabulous Steph Key in 2012, 2013 and 2014 and there was also a Gago bill in 2012, then the Lensink bill in 2015 and the Franks bill in 2018 and here we are again.

If nothing else is taken from that history, I think people should just realise that a basic human rights abuse issue is just not going to go away. What we think is that this discussion ultimately is about diversity, it's about safety, tolerance and the capacity of adults to choose how to live their lives and for this to occur free from the demands of moral arbiters who expect the right to be able to tell the rest of us how to live.

The criminalisation really does address the reality that on the books we have legislation that harms people from a victimless crime. I think the reality is—and obviously this committee has had the opportunity to hear directly from sex worker representatives—sex workers, in some ways, are easy game for people who want to cast judgements and spout nonsense about their lives and their role in the community.

Sex workers cannot easily present their case. They must tolerate ongoing harassment, demonisation and stigmatisation and they must always be mindful that the shabby treatment to which they are subject has potentially appalling implications for themselves, for their families and for their friends. It's an environment in which the community that we are referring to—it's not just that it can be difficult for people to be face out, but it can be dangerous for people to be face out.

You've obviously had the opportunity to have discussions with people from the sex industry network and other individuals. For those people to come out and be face out as a sex worker in our society is both an admirable and a brave step to take and I personally admire them a lot. That reality will change somewhat, but it will still be there, if an alternative criminal path is pursued which is what we have proposed by some in terms of the Nordic in-demand model.

Basically, in our submission, SIDAC asserted that criminalisation undermines dignity, agency and the rights of a highly feminised workforce. We asserted that it is wasteful, including of police, court and government resources. Sex workers continue to be entrapped for a victimless crime, despite little evidence of widespread organised criminal activity in the South Australian industry. Really, I think it's valid for the community to ask: why can so much time and effort and police and justice system resources be put into this, as opposed to addressing real crimes that have real victims?

An aspect that has, I understand, been presented to this committee through the research of Roxana Diamond last week and also work that was done by our own Georgia Thain about the health and safety conditions of sex workers is that it's established on the basis of research that sex workers feel unsafe about reporting crimes committed against them and that they see the police as oppressive. They don't believe that they can realistically challenge or report police misconduct, should it occur. This should concern all of us.

Our basic argument is that, as Georgia has already stated, sex work should be regulated as is any other industry. Sex workers already pay tax. Decriminalisation simply means that the whole legal, administrative and civic architecture applicable to other industries will apply to this part of the adult industry, just as it already applies to strip clubs for the performance, production or dissemination of pornographic or erotic arts or even the functioning of an adult bookshop.

One of the things that we do take the opportunity to address is another urban myth that young people will be forced into sex work if it is lawful. This won't happen. The laws protect a person from having to accept unsuitable work for moral, cultural and religious as well as other reasons. A community standards test applies, which currently means and will continue to mean that a person cannot be obliged to apply for a job as a stripper or to work topless or in a decriminalised environment to work as a sex worker. Social security protections also apply where a job may be considered unsuitable.

A jobseeker has protection if being required to go for a job that they consider to be unsuitable on moral, cultural or religious grounds and that obviously applies currently in those jurisdictions where they have a decriminalised industry. A social security determination has made it clear that requirements for employment pathways cannot include any compulsion to seek work as a sex worker or to participate or otherwise be involved in the sex or adult entertainment industry.

It's worth mentioning those specific things, partly because they do demonstrate how a secular, tolerant and diverse society can deal with moral or ethical issues. A good society does what is reasonable. Just as no-one should be required or compelled to provide sexual services, the obverse also should apply: people should not be stopped or criminalised should that be their choice.

Decriminalisation will enable reasonable non-coercive initiatives, such as the development of codes of practice and ongoing collaboration based on mature relationships. Sex workers would no longer be able to be characterised often by the same people as either victims or predators. This is how effective and sustainable civil society happens in a democracy that's worth its name. I will pass back to Georgia here and I will return to some other more legal aspects subsequently.

Ms THAIN: To try to summarise, what we have now sitting in our quite old laws is complete criminalisation. There is no mode or method by which someone who is a sex worker can work without the possibility of facing criminal penalties.

The history of these criminal penalties, I think, is quite important, because criminalisation exists to abolish the sex industry. That's where this idea comes from—that we will criminalise this, we will criminalise these people, they will go away. It has always failed in that goal. It has never gone anywhere. It has never reduced. There's no evidence that those things happen, even under the Nordic criminal model.

So as a policy, criminalisation, including the Nordic criminal model, just doesn't work. It doesn't achieve any of its goals. It certainly doesn't protect anybody, so it is only creating psychosocial harm and risks for health and safety by displacing sex workers and pushing the sex industry underground, which is an unregulated environment.

I think it's also important to note—which we will probably say quite a few times today, and I think Alan has already touched on it—that this view that criminal activity is implicit in the sex industry of South Australia has been created by its criminalisation and not the other way around. Our laws are morally based. They have their history rooted in the 1880s and the Social Purity Society movement and the ladies rescue society movement and the white slavery moral panic.

All of these groups, which have built up and facilitated the criminalisation of sex work, were doing it for social control. They weren't doing it because there was crime in sex work: they were doing it because they didn't like sex workers. This was quite a long time ago.

There still is no evidence that there is criminal activity—outside of sex work, obviously—within the sex industry of South Australia. There's been a select committee in 2015; we didn't hear any evidence. We went through the entire process—not, obviously, the entire process but up to the second reading for the last bill, the 2018-19 bill—and still never saw any evidence of criminal activity.

So, if South Australia's current criminalising laws are failing their 1880 goal of abolishing the sex industry, clearly, and if they are not protecting anybody and if they are not really necessary, because there is still no evidence of criminal activity, and they're not necessary for regulating industry, because we regulate many other adult industries without criminalisation, then all the laws are doing is creating harm.

They are doing that by violating the rights of sex workers. Multiple human rights organisations, like Human Rights Watch and Amnesty International—there's quite a few—advocate against criminalisation because it's incompatible with the rights of personal agency and bodily autonomy, and they are two pretty key human rights to consider. Also, Australia helped—I might be wrong; don't quote me on this but I think it was during the eighties—to draft and voted to adopt the Universal Declaration of Human Rights. It has just been around since—

717 The CHAIRPERSON: It was much earlier, but, yes.

Ms THAIN: Much earlier? It's been around since before I was born—

718 The CHAIRPERSON: But we did, yes. As a nation, we were a leader at the time.

Ms THAIN: —my entire life. And in those rights is a right that we are generally pretty good at practising, which is the right for someone to be able to participate in democracy, participate in the government, to be represented, but that is not a right that is open for sex workers in South Australia at the moment, not only because, as Alan said, it is difficult to be a face-out sex worker and admit to that because you could potentially face police charges or stigma and discrimination and all that kind of stuff, but also because of an example that what we saw in the 2019 process: that of the members of the other house that voted against the bill at the second reading, at least a dozen of them flat out refused to speak to SIDAC, SIN, sex workers, constituents who were sex workers or allies.

MPs ignored petitions of hundreds of signatures designed to try to get them to agree to have a discussion about human rights. If you are a sex worker and your local representative refuses to speak to you and locks the doors if you try to come to their office, then how exactly are you supposed to participate in government and democracy? That's another pretty fundamental human right, especially in a country like Australia, that is denied to workers.

Within those human rights is the right to work, the right to freedom of choice of employment and the right to just and favourable conditions of work, all of which are denied to sex workers. It's certainly not just and favourable conditions to have to operate under laws that drastically increase your risk of experiencing violence. The criminal provisions relating to sex work mean that it can't be considered work. You have no protection in the workplace, no union. No work health and safety legislation applies to you, no fair work—nothing.

If you are unfairly dismissed, if you have experienced wage theft, if you have a problem with your manager, if you feel like you are being bullied or harassed, you have no avenue whatsoever. If you were having these issues and you didn't have an avenue you could find somewhere else to work. For sex workers, if that is an issue, it's just pushing them further and further and further away from society and isolating them more and more, which is obviously quite a big risk, isolation, when it comes to work as well.

Also, it's inevitable that the focus will be on women sex workers. It always is, even though, from the estimates that we have, approximately 20 per cent of sex workers in Australia, as a whole, don't identify as women. But it just seems to happen, that people do tend to focus quite heavily on women sex workers. It makes it feel very clear to me that that makes it a women's rights issue as well. The Nordic criminal model only ever references women sex workers, which is another dead giveaway. It's really impacting on predominantly women's ability for bodily autonomy, which is something that this parliament has faced before with other bills.

We are not particularly good at it for some reason, when it comes to women and bodily autonomy and consent. People in powerful positions just seem to not recognise self-determination and agency and all those kinds of things. I am pretty confident that, if it were reversed and the majority of sex workers were men, or if we were focusing on men as sex workers, then we wouldn't be sitting here for the 14th attempt. It would have been sorted out a long time ago. Whenever women come into something—and it's about women's choices, because that's what this is about—the focus is always on women choose sex work, and some people just refuse to accept that.

Criminalisation also creates risks for safety. There was a systematic review done in 2014 of 42 international studies all around the world. It found that criminalisation makes sex workers severely vulnerable to violence, and that makes sense because criminalisation pushes sex workers into isolation and cuts off their access to health care, justice and all that kind of stuff. That's intensified quite a lot for the most marginalised of sex workers, so street-based sex workers, culturally and linguistically diverse migrant workers, gender-diverse workers. As soon as you get to any of those intersections of oppression you are increasing that risk, that vulnerability, to violence quite a lot.

I think the risk associated with working in isolation is something that this parliament has recognised before, because they have enacted things like Gayle's Law. We know that working in isolation and working without those connections is dangerous, no matter what industry you are in.

We have taken approaches to lessen those risks previously, but it's a majority of women-based workforce in sex work, and it seems that that is a hurdle we can struggle to get over.

There is so much evidence now, showing that criminalisation is facilitating the stigma that allows violence against sex workers. In broader terms, violence against women—and a huge majority of sex worker clients are nice normal people, very respectful. But criminalisation gives an advantage to anybody who would choose not to be a nice, normal respectful person, because it's known that sex workers are probably not going to report a crime committed against them because they are afraid they will be arrested.

Sex workers also know that they are probably not going to get the assistance they want from police, so a lot of them just don't bother. The situation is supporting this long-running very entrenched, patriarchal structure that allows society to separate good women and bad women into different categories. These 'bad' women, who don't conform to norms, are less valuable and less worthy of justice and access to health care and what happens to them is not as important.

That really plays into it when we get into the fact that we have quite a lot of lived experience and evidence on one side, and then another side that has very shaky evidence and not a lot of lived experience at all, and how they are given equal weight because sex workers' voices are almost considered just less valuable.

Multiple papers have also argued that states are contributing to this violence against sex workers and women by allowing criminalising laws to stand. We have had 14 opportunities in South Australia to do something about it and they have all just passed us by, and the criminalisation laws that are causing this increased risk of violence are still standing.

Also, it's important to recognise that violence isn't just physical violence. We also have a really high level of oppression going on here. Sex workers in criminalised environments are facing systematic oppression, arbitrary arrest, detention, unlawful profiling, deportation in some cases; they can be denied housing and face huge barriers for essential support services and justice. These are an unjust exercise of power that is mainly used against these 'bad' women who are not conforming to norms, and that is exactly what criminalisation was designed to do, to try to force women to not enter the sex industry.

Although we are discussing repeal and decriminalisation, and the current laws we have are criminalisation, I want to touch briefly on the Nordic criminal model, originally the Swedish model, because it is criminalisation. It doesn't address criminalisation, it doesn't remove it, it just shifts it on to a different part of sex work, a part of sex work that technically under the laws we have now could be policed, but police choose not to.

A lot of the evidence against the Swedish model or the Nordic criminal model—I hear it sometimes called now the equality model—comes from Sweden's government. Their own reports demonstrate that it has not reduced the level of sex work, which was its aim, and that sex work has continued to face really high levels of stigma, violence, discrimination and oppression. That's because it was never designed not to do that: it was designed to do that, much like criminalisation.

We know that when the Swedish government put these laws forward, from the very start, their basis was that sex workers don't have personal agency and they are all victims. They didn't talk to them, they didn't ask them what they thought; they excluded them from the entire conversation and said, 'No. Essentially, any woman who is currently in sex work right now, we're going to sacrifice, we are going put at these higher risks that we know are going to happen, because eventually the sex industry will disappear, and that's worth it for them.' Of course, it doesn't actually work like that because the Nordic criminal model doesn't reduce demand; it continues all the same harms. Violence has increased for workers under it. It was so—

719 The CHAIRPERSON: I am just conscious of the time because we have gone over the allocated time. You received an Augusta Zadow scholarship and looked at work health and safety within the criminalised sex industry in South Australia currently. In your report you talked about a few things: (1) the impact of police on workers' health and safety; and (2) strategies such as co-ops that workers used to protect their health safety practice. Could you elaborate on both of those and then we will move to questions. I will give you a quick sum-up at the end, but I am very conscious of the time. I am sorry we have run a little over.

Ms THAIN: No, that's all good. I got some funding from SafeWork through Augusta Zadow at the end of 2019 to do a consulting research project about how work health and safety works in the sex industry. My intentions were to look past criminalisation. I come from a union background and I wanted to know the run-of-the-mill, everyday work health and safety stuff.

Interestingly, I found out that despite having no access to the kind of formal mechanisms that other industries have, the sex industry still has produced and developed and disseminated work health and safety risk assessment, risk minimisation strategies, policies and procedures. They are still a thing and they are still practised; it's just a little bit harder to find information because you can't go to a SafeWork website or something like that.

I found that quite interesting. However, although I wanted to, and it was my initial intention, I could not move past and ignore how a very key harm and risk minimisation strategy that sex workers use was being exploited by SAPOL to entrap workers. It's a very integral part of the process to be able to sit down with someone and very openly discuss services and consent and rules and what you can and can't do—all that kind of stuff—obviously very important for a lot of different services, sex work included. It's that process that sex workers use to screen clients and have conversations to work out if they're compatible and all this kind of stuff; that is being exploited by SAPOL in what potentially could be covert operations—or whatever the technical term is—to entrap workers.

We have heard a lot—I assume there was a lot of evidence in 2015 and it continues today. SIN properly provided a great deal of evidence that this is the continuing way that SAPOL operate. They pose as a client, they go in and get the worker to incriminate themselves by discussing a service and they bring lots of other officers in and they raid. That situation has impacted the way sex workers discuss services, which impacts their safety, but it has also meant that police are a major work health and safety concern, probably the primary work health and safety concern, for sex workers.

I think there was some recent research supported by Scarlet Alliance and the title is quite striking. It is a quote from one of the workers, 'I wouldn't call the police if I was being bashed to death'. That's the sentiment that came through the Zadow project—as much as I wanted to focus on other things—that police are the main work health and safety threat and are the main thing underpinning vulnerability to violence and oppression.

Also, the co-op is a model basically where workers pull together and work from the same location but there is no managerial hierarchy. Someone doesn't own the building and is getting a cut of anything, there is no manager. All the workers individually organise their own work, their own clients and contribute to covering costs—rent and that kind of thing.

It has been a pretty standard model of operation, I think, for culturally and linguistically diverse workers in South Australia, a lot of whom come from Thailand and China. It's been their way of operating for quite a while and now we're seeing it extend out to take over from the traditional brothel sense. It's safer to work with someone, it's cheaper to work with someone, because they are all splitting rent—all that kind of stuff—so co-ops are definitely increasing in popularity among how workers choose to work.

720 The Hon. N.J. CENTOFANTI: You spoke in your submission about the protection of workers under a decriminalised model. There was a report of a select committee inquiry into the regulation of brothels under the decriminalised model in New South Wales and that had a number of findings and recommendations. There were a few findings in that report that I was quite concerned about and I just wanted to quote a few of those.

They said that some sex workers are subject to fines or other financial punishment and other undesirable industrial practices, like being forced to work in their places of work for up to 17 hours or more a day against the threat of deportation. That would not be acceptable in normal workplaces, and the usual protection of the rights of workers provides particular challenges, given the nature of the sex services industry.

Another finding was that there were pressures from clients to compromise the occupational health and safety of sex workers and that the nature of the operation of the industry made it difficult for SafeWork New South Wales to protect workers in the sex services industry. If

South Australia were to decriminalise sex work, how do you think that we would be different from what they have seen in New South Wales?

Mr FAIRLEY: I think there are probably two elements to your question. I will address the second part first, in terms of demands, effectively, by clients to work unsafely.

Research in Ireland, which adopted the Nordic criminal model, demonstrates that all of those sorts of factors, like demands to provide sexual services without basic use of condoms or whatever, increased under the Nordic criminal model because once you force a workforce into marginal conditions then they effectively are more subject to those sorts of demands. It has certainly been found also in the Nordic countries, where what occurs with the imposition of those sorts of models is that the power of the client to demand things increases.

I think it's the 2016 inquiry you're talking about. The basic issues, especially involving migrant workers, go back to the question of what does the local law do and what do local law enforcement bodies actually do to intervene and protect workers in this situation. As we all know, the basic premise in terms of responding to trafficking and the impact of trafficking, we go back to the Palermo Protocol and that basically requires three things in terms of what we need to be careful about. The first is that there needs to be some function that occurs to get the person into the violent situation in the first place. The second part is that there's force or coercion used when they're in that situation. The third is that the exploitation occurs.

The fact that in New South Wales, if I have understood your question correctly, this was drawn out as being a feature of their study simply says to me that the system has failed those workers. Why haven't the resources been put into protecting them as they should be protected?

I think one of the other features about evidence provided to the inquiry, including by police representatives, is that it was highly contentious in terms of some of the assertions that were made. But I think the spirit of your question, the fact that, even in a decriminalised environment, exploitation can occur, is just a feature of marginalised work.

I think there are whole areas in our labour market, an increasingly globalised labour market, where more time and attention needs to be put into actually working with and protecting people. The thing about it is that all those issues that exist that you are concerned about in New South Wales are compounded in a criminalised environment and basically, we think, just go to help the case that decriminalisation should occur.

721 The Hon. I. PNEVMATIKOS: Just to pursue an issue carrying on from what you talked about, I appreciate that one of the goals is to ensure that sex workers have protections in a decriminalised model. How do you envisage some of those protections would operate if on the one hand you have a cooperative approach to managing sex work with industrial practices and norms? I appreciate there is a need for some change, but how do we fit that in our current industrial framework in terms of protections for sex workers?

Ms THAIN: Essentially, within a co-op model, each individual worker is working as if they are a private provider, a sole trader, and just contributing a certain amount to cover the everyday running costs. When I was doing my Zadow project, certainly there is a difference between how you approach work health and safety from a private worker perspective, from a sole trader and from a brothel kind of perspective. I would say that co-ops fall much more under the sole trader assessments and policies and procedures quite well because it's how they operate and because there isn't that level of managerial hierarchy that you get with traditional brothels.

I appreciate there are co-ops in other industries. They are not very common in Australia. But I am quite confident the systems we have set up, in consultation with sex workers, can broaden. It's not a very big ask, it's not a big stretch, just broadening it a little bit to understand how co-operators in general work, firstly, and then how it works within sex work.

No-one is suggesting that if we pass the repeal bill and we decriminalise sex work immediately overnight, every undesirable industrial practice will be fixed. There needs to be a concerted effort by regulatory bodies and sex workers to build back relationships of trust because if you have been stigmatised and discriminated against and criminalised forever, pretty much—almost—there is not a lot of trust going on.

Sex workers don't necessarily trust processes. Even with this one, there are workers who didn't particularly want to be named in select committee things because we heard and we know that after 2015 particular workers who were quite open faced consequences from SAPOL, so we need to—

722 The CHAIRPERSON: When you say 'faced consequences', what do you mean?

Ms THAIN: I can't obviously give a lot of detail away because I don't want to out anybody.

723 The CHAIRPERSON: You mean that workers who gave evidence to a select committee were then raided by SAPOL?

Ms THAIN: Yes. We know that workers who sat in front of the 2015 select committee, and were brave and decided that they were going to talk about the reality of the sex industry faced—maybe not the next day, maybe not the next week, but down the path—being raided.

724 The CHAIRPERSON: It wasn't too much. It was actually within—

Ms THAIN: There were a few cases and it's not uncommon. We know that workers who go and report crimes don't necessarily turn around and get arrested that day, but police do make a note of who they are and where they work from and will turn up within a couple weeks, a couple of months, to have a look around. It can consist of one worker at their house being confronted by up to, I think the most I have heard is nine officers to go through her house that she works from. I don't know how the police budget works, but that seems like a lot of money and time spent on searching someone's house because they are a sex worker and they put a report in that something was stolen from them or they faced violence.

Mr FAIRLEY: One other example, I think, in terms of the question is that in New Zealand a worker successfully ran a sexual harassment case against their employer and got quite a large payout. So a sex worker won a sexual harassment case and it went through the normal legal system. That's what you can do in a decriminalised environment. You couldn't do that in South Australia.

725 The CHAIRPERSON: Could we put that on notice, for you to get that information for us?

Mr FAIRLEY: Yes, it's just a citation of the case.

726 The Hon. I. PNEVMATIKOS: It's also in the submission. There is reference to it in your submission.

Mr FAIRLEY: Yes.

727 The Hon. I. PNEVMATIKOS: I appreciate what you are raising. My issue is, from an employment law perspective, how do you organise the industry? I don't have a problem with decriminalisation, but how do you organise the industry and what sorts of protections will be afforded sex workers by our industrial relations system? They are not afforded any protections today; I get it.

Mr FAIRLEY: Probably the way to answer that is to look for an analogous sector. So I'm trying to think who would be a useful analogous sector. People who provide personal care services maybe, or people who—

728 The Hon. I. PNEVMATIKOS: Hairdressers maybe?

Mr FAIRLEY: Hairdressers, yes. So, basically, some of them would work in a normal employer-employee relationship. Some would work as sole traders. It's a diverse sector where there are questions of how you actually construct the contracts of employment, or whatever. Sex work is just another one of those sectors where it can happen in lots of different ways, and the thing is that it is a diverse sector.

Ms THAIN: I think the New Zealand Prostitutes Collective went through their reform in 2003 and then the collective didn't pack up and go home after decrim. They were pretty instrumental—there's a couple of papers I have seen in the last couple of years that are about how well they did acting as policy agents and acting as—you know, you've got to have that lived experience when you are looking to develop these new things. We are quite fortunate in

South Australia because we have already funded peer services available that are set up and are able to collect this information and able to work out how we would process things, but none of that can happen, obviously, while it's not work and it's a crime. No-one is going to want to do it.

729 The CHAIRPERSON: Thank you for your evidence today. As I noted at the start, the transcript will be forwarded to you for any clerical corrections. We look forward to that information taken on notice.

Ms THAIN: Thank you.

THE WITNESSES WITHDREW

WITNESS:

O'CONNOR S.C., CLAIRE, Barrister

730 The CHAIRPERSON: Welcome to the meeting. The Legislative Council has given the authority for this committee to hold public meetings. A transcript of your evidence today will be forwarded to you for your examination for any clerical corrections. I advise that your evidence today is being broadcast via the Parliament of South Australia website. Should you wish at any time to present confidential evidence to the committee, please indicate and the committee will consider your request.

Parliamentary privilege is accorded to all evidence presented to a select committee; however, witnesses should be aware that privilege does not extend to statements made outside of this meeting. All persons, including members of the media, are reminded that the same rules apply as in the reporting of parliament.

We would like to acknowledge that the land we meet on today is the traditional lands for the Kurna people and that we respect their spiritual relationship with their country. We also acknowledge the Kurna people as the traditional custodians of the Adelaide region and that their cultural and heritage beliefs are still as important to the living Kurna people today.

Good afternoon, my name is Tammy Franks. I'm the Chair of this Select Committee on Statutes Amendment (Repeal of Sex Work Offences) Bill 2020. To my right I have the Hon. Heidi Girolamo and the Hon. John Darley. Up on the screen, joining us remotely, is the Hon. Nicola Centofanti, and shortly, to my left, I will have in the room the Hon. Irene Pnevmatikos. We may at some stage be joined by the Hon. Claire Scriven, who is going to be a little late today.

If you would like to introduce yourself and make an opening statement. We have located your submission, which was attached to our very first submission from a sex worker which gives your advice that she sought from you. If you would like to speak to that, introduce yourself and how you came to be presenting to this committee today.

Ms O'CONNOR S.C.: I got an invitation to present. Thank you. My name is Claire O'Connor. I'm a barrister. I have been involved in women's issues for all of my career really and I worked a long time at the Aboriginal Legal Rights Movement, the Legal Services Commission and now I'm working at the Bar, the independent Bar. I also helped set up the Women's Legal Service, so this issue has been of interest to me for some years.

I was asked by the sex workers' instructing solicitor to provide an advice in relation to a growing pattern of entrapment that was occurring within the sex industry by police, and my opinion was that it was illegally obtained evidence. I am assuming it's because of that that I was invited to come here. I haven't published on this issue for many, many years and I certainly haven't expressed any views publicly of late, but I do have some information. I won't take up a lot of time because you've already got the opinion.

There's been a Supreme Court authority in South Australia that's looked at that issue that I addressed in the penultimate part of my opinion; namely, what would a court do with illegally obtained evidence. In the matter that was decided in the Supreme Court here, they refused to exclude it, but I will come to that in a minute.

Regarding the issue that was asked from the earlier witness in relation to the protections that would exist for sex workers, the consumer affairs website in Victoria has an excellent resource. It goes through every possible problem that a sex worker could have, from illegal immigration, sex slavery, occupational health and safety, obligations to inspect premises, all the work safe requirements, and it's covered by both the legislation which protects sex workers under their Sex Work Act and also the legislation which protects basic human rights. Of course, they have a human rights instrument as well, which sits alongside all their legislative instruments protecting people.

It also explains that you can have—because it's legal—inspections of sex environments to make sure that they are safe. Some of the safety features include the fact that there

have to be emergency buttons in the room so that people get out quickly, there have to be available condoms, there has to be available information about what health looks like in that space. So it's like any other working space. If you are working in a high-risk area, like an HIV clinic, you would have the same kinds of issues.

In my work, in relation to the issue of working with prostitutes, I have had many clients who have been prostitutes and many clients who have been forced into prostitution really because of poverty. This employment doesn't sit outside our society; it sits within our society, which doesn't protect the rights of women. It's not only women, of course, who are prostitutes but they are particularly. It doesn't protect the rights of the poor and the drug addicted and the marginalised, and if you are in that category then it's more likely that you are going to be involved in the sex industry if you have the ability to do that.

I had a client who was charged with murdering a member of an outlaw motorcycle gang. He was in charge of her group of women. She ran a brothel in the western suburbs. She gave evidence that she was tied to the Finks, so all the women who were working in that brothel were contracted really to the Finks. She had to pay them a set amount each month. One of the workers wasn't happy with her and doxed on her to the Finks and said that she was ripping them off and there was a contract put on her. She went to the police. The police weren't doing anything about it. He found her and she shot him and he died and she was only found guilty of manslaughter in the end.

Her evidence was shocking. It was evidence about the life of sex workers that you don't normally hear about. She said that at one stage there was a national conference of the bikies. They brought down two Atco huts and stuck them in the backyard of their rooms and every room had a prostitute in it. She was paid enough speed that she needed for a week to be there from 6 o'clock until midnight. She said there would have been dozens of men that she had had to service—in the hut and out again, in the hut and out again.

She also said that every single time she had a client her first instinct was: is this person going to kill me? Sometimes she visited homes. Sometimes she provided the service at her own Housing Trust home. She said that every single day she went to work fearing that she might be killed. That's not necessarily only because of the unlawful nature of it, although your previous speaker spoke about the dynamic of not being able to get protection from those in authority, coupled with the fact that those in authority are actually trying to fit them up.

It's not only that. It's also the fact that you are involved with people who are requiring your services who might also be people with very difficult backgrounds themselves or might have threatening behaviours. She had a gun pulled on her at one stage. She said that she never went into a house without working out immediately the doors and the windows. Imagine going to work every day and providing a not very expensive service—because the amount that these women were getting was so low—and the threat to your own safety and wellbeing. So that's one client I have had.

I have also had other clients who work in brothels who are treated appallingly. There is one matter at the moment that I'm aware of where the employer has docked her wages—she's on a wage, she doesn't get paid by the customer—for things like not smiling, not drinking enough, and that's actually written on the piece of paper that she has been given. Where can she go?

As it was explained to my instructing solicitor, who is working on this file with me, it's like the man in Victoria who rang the police because some dope plants were stolen. You don't go and report this to the police because you are providing a service that's unlawful. So the disadvantage to the worker is high and the advantage to the owners of those workers does amount to slavery in a sense, and it's unchecked and it's dangerous and it will happen whether it's lawful or not.

But I suppose the narrow focus that you wanted me to talk about was really the issue in relation to entrapment. I'm a bit surprised that the police would bother entrapping people in this space because, as I pointed out in that opinion, it's a minor offence. It's not an offence that's major. The legislation is only designed to allow authorities—and it's not just police but primarily the police.

731 The CHAIRPERSON: Do you want to give us the concise version of what the opinion says?

Ms O'CONNOR S.C.: I beg your pardon?

732 The CHAIRPERSON: The two-minute version of what your opinion says.

Ms O'CONNOR S.C.: It says that the police are acting unlawfully. The trouble is that the women know they are breaking the law and they are not going to go and challenge this. They will just cop the fine and it's really sordid. It's sordid that police would do that. Why aren't they pretending to be prostitutes and grabbing the customers? There are just as many female police officers as male. If they want to do stings, why aren't they doing that? It really does smack of the devaluing of the women who work in the space; that's what it smacks of—and understanding they don't have rights and understanding that they do have rights and are not going to exercise them.

The last thing I want to talk about is just the authority that looks at this issue, and that is whether, even if it's unlawfully obtained, if you're allowed to use it. So—

733 The CHAIRPERSON: So in essence, though, your opinion says that the police are acting unlawfully, because, in fact, to undertake these covert operations they would have to be doing so for serious criminal behaviour—

Ms O'CONNOR S.C.: Correct.

734 The CHAIRPERSON: —yet most of the offences are in the Summary Offences Act—

Ms O'CONNOR S.C.: Correct.

735 The CHAIRPERSON: —and they are not—

Ms O'CONNOR S.C.: It doesn't fall within the definition within the act of serious criminal behaviour.

736 The CHAIRPERSON: Indeed. In fact, what the police are doing carries a higher offence, if they are really breaching the covert operations act, than the activities that they are policing.

Ms O'CONNOR S.C.: You see, police act unlawfully all the time. That's not the issue. The police often act unlawfully: there might be unlawful arrests; they just do. We know they do. The courts then deal with it in a particular way. So if the police act unlawfully—like, they don't have a reasonable cause to suspect, and they strip-search you, then they find something—it doesn't necessarily make what they do a criminal act, although this act might. I'm not here to give advice about that; that would be a Director of Public Prosecutions question.

But police, when they act unlawfully, whether it's a search, a seizure, anything they do, the unlawful act doesn't therefore mean that the evidence is not admissible. It then goes through a process of the court deciding whether to include or exclude it in the exercise of the court's discretion because it's unlawfully obtained.

I've touched on that in the issue of Bunning and Cross, and there was a decision—an ICAC investigation—in relation to police officers at Sturt. The police officers had behaved in a particular way. There was a particular group of them. There was then a sting organised through ICAC, and then there was an issue in relation to whether it was unlawfully obtained. The court found that the evidence was unlawfully obtained; however, it exercised its discretion and allowed it to go in.

So I'm not being controversial when I say the police act unlawfully. It's technical. You can only search someone if you have a reasonable cause to suspect they have committed a crime. Sometimes they don't have that reasonable cause, but they might find evidence; the court lets it in, the court lets it out. You used to be able to win trials on the basis that you got evidence excluded or the prosecution would win on the basis that the exercise of discretion was in their favour. So it's not fatal. So that's the problem in relation to this.

But that's not my only concern. My concern is that it's an abuse of power. It's an intentional abuse of power. There's no way that the prosecution authorities aren't aware or the police aren't aware that it has to be a serious crime. It's defined in the act. It hasn't been amended. And because it's not a serious crime, they know what they're doing is an unlawful searching, an unlawful arrest, unlawfully on premises; I mean, I've listed some of the crimes I think they might be committing. But police just do that with impunity.

737 The CHAIRPERSON: Some of those crimes that you've listed carry penalties of up to three years' imprisonment, do they not?

Ms O'CONNOR S.C.: They carry penalties up to that amount, yes. Well, see—

738 The CHAIRPERSON: And that is for the police as opposed to—

Ms O'CONNOR S.C.: —it depends how far they went, too; they might actually be engaging in a sexual crime. It wasn't part of my brief to find out at what stage of the sting the police had stopped the contact. I would be surprised if there wasn't a sexual crime committed as well.

I think your last witness talked about environments where the police just went in, waited for the conversation about money and then conducted—but my understanding is that wasn't what was happening in the matters I was advising on. There was disrobing and a whole range of things, so that's a non-consensual sexual act, because the prostitute—the worker—is doing this on the basis that, 'I'm engaging with a particular person I'm entering into the contract with for this thing,' but that's not what has happened. It's a sting; therefore, you could argue it's a sexual offence which carries life. So it could be that major crimes are being committed.

739 The CHAIRPERSON: Would you call this an abrogation of the duty of the commissioner in terms of his protection of his officers from potentially breaking the law? This could be putting them, should somebody challenge it—and that will take a lot of bravery and a court process. These officers could indeed be breaking the law but doing so because it's the culture of the force and something they've been led to believe is appropriate and acceptable.

Ms O'CONNOR S.C.: That kind of language, in relation to culture and illegal activity, was the very language that was used in the Supreme Court in the case that involved the ICAC investigation, that a culture existed, that people are at risk and—

740 The CHAIRPERSON: Bandicoot.

Ms O'CONNOR S.C.: Yes, Bandicoot, that's correct. I don't want to use that kind of language. I think, sometimes, if something is unlawful the police are allowed to go and investigate and arrest people doing it. The problem is it's unlawful. That's your issue. You can't turn around and say, 'This is the kind of crime that shouldn't be unlawful; therefore, what are the police doing?' You could say the same about cannabis.

I think the real root problem lies with parliament in continuing to have this as an unlawful conduct rather than lying with the police, who we charge as a community to investigate laws that are broken, and if they've gone too far in relation to this, that might require re-education. I don't think you should be shouting from the rooftops with indignation that police are doing this, when you say as a parliament this conduct is unlawful. I wouldn't be so reactionary to be able to state it in that way.

But I was very surprised to learn that police are still doing that. That was the tenor I got from the last witness, that that entrapping contact hasn't stopped, so it might require maybe the Law Society of South Australia's Criminal Law Committee to maybe contact the police commissioner and see if some dialogue can happen on that level. My concern is really that it's a society problem; it's not criminal. Really, it's good that this committee are investigating, and I'm certainly hoping the recommendations that come out of it do not only decriminalise but protect.

741 The CHAIRPERSON: You mentioned the Supreme Court authority at the beginning of your statement. Do you want to add to that?

Ms O'CONNOR S.C.: Yes, it's called *The Queen against M, I and others*—we are using initials because we are protecting those police officers—and it's a ruling of Justice Lovell from 6 March 2018. The citation is [2018] SASC 24. You will find that on AustLII.

742 The Hon. C.M. SCRIVEN: I do apologise, I wasn't able to be here for all of your evidence. I'm just interested in the last comment that you made, that you would like to see rules that don't just decriminalise but protect. Is that protection of the people in prostitution from police, from clients, from pimps or from others?

Ms O'CONNOR S.C.: We did discuss this a little at the beginning because the witness before was asked a question about what legislative protections were in place. The New

South Wales situation was raised, and I referred this committee to the Victorian Consumer Affairs website. The protections are: the safety at work, freedom from slavery, discrimination, sex slavery immigration problems, protection in relation to occupational health and safety, being able to sue under their legislative instruments in relation to work.

Of course, they have the separate right to be able to take action because they have a human rights instrument, which I think your next committee should look at. We have three states in Australia with one and we don't have one. They are the protections, the same protections any worker in any worksite might get from being in a dangerous environment.

743 The Hon. C.M. SCRIVEN: In the New Zealand experience of decriminalisation, one of the reports talks about the fact that it hasn't done anything to improve the violence, in particular from clients, and that violence is an endemic part of prostitution. Do you have any view on what kind of protections could be put in place to protect the people in prostitution from those violent clients?

Ms O'CONNOR S.C.: It's difficult to say. We discussed the fact that I have been involved in criminal activities, in fact one where my client ended up shooting a member of the Finks Motorcycle Club, and I discussed some of that; you will be able to see it in the transcript. It's a dangerous job because it attracts the kind of clients who have those kinds of issues in relation to women, where they might use prostitutes, so you're going to be exposing yourself to those kind of offenders in a way. It's very tied up with the outlaw motorcycle groups and other criminal activities at the moment because of the way that they are operating and the way they are providing a service, so you're in a more dangerous environment.

You can no more protect someone in a brothel than you can protect someone in their home. Twenty per cent of women in South Australia have been the victim of assaults in their marriages or relationships, so having it criminal or non-criminal is not going to change that. Do I have any ideas? We could be here all day in relation to ideas I have about preventing violence in our community. The fact is that you are at the pointy end of the kind of clients and the kind of women who are involving themselves, so it is going to follow because of the society we live in.

744 The Hon. C.M. SCRIVEN: Yes. I guess what we are hoping to find is what is going to improve that situation rather than make it worse.

Ms O'CONNOR S.C.: I think it is security, having check in, check outs. It is having the police educated and reactive and not dismissive of people who complain, but you don't have that in the normal environment in our community. It is much better than it was when I first started practising law, when things were called 'just a domestic', but you have to re-educate the whole of society in relation to what is acceptable and what isn't, and then have those sorts of environments.

I certainly think consultation with the worker group is also very important, finding out from them what makes their places safe. One of the things that comes up with the Victorian example is to always have alarms in rooms and bathrooms so there is a safety avenue available. There are ideas. You don't need to reinvent it here. Those environments that have decriminalised have already visited, experimented and improved some of those safety areas.

745 The Hon. C.M. SCRIVEN: Certainly a number of the women who have been involved in those decriminalised environments have said that that hasn't actually improved it, there's no use having it, you can never get to the safety button and, when you do, no-one comes anyway. So I think there are a lot of issues around that—

Ms O'CONNOR S.C.: The response, yes.

746 The Hon. C.M. SCRIVEN: —giving the impression of safety when it is not actually the reality. The things you mentioned were important. Do you consider they have been achieved in jurisdictions such as New Zealand and New South Wales?

Ms O'CONNOR S.C.: I don't think we have achieved safety for women in any worksite, anywhere. It is not even safe in this building.

747 The CHAIRPERSON: Exactly.

Ms O'CONNOR S.C.: So, no, of course it hasn't. Of course those things, but all we can do is move forward. We can consult, we can work it out, we can improve, we can improve

reporting, we can improve responding, we can improve things at the court end as well. Of course it hasn't. There is nowhere women are safe, no place in the world, in any workplace. In my workplace, I'm a silk. I'm still subject to not feeling safe, so no.

748 The Hon. C.M. SCRIVEN: You won't get any disagreement from anyone on this committee.

Ms O'CONNOR S.C.: No, exactly.

749 The Hon. I. PNEVMATIKOS: No issue.

750 The Hon. H.M. GIROLAMO: Thank you for presenting to us today; it's good to get your insight on everything. The previous witness indicated that her opinion was that there was no evidence of other criminal activity within sex work. I was wondering what your experience is within your client base, whether they are often charged with other offences as well as prostitution.

Ms O'CONNOR S.C.: Obviously people are charged, because I hardly ever act for anyone who is just charged with a sex crime. Drug and sex are intertwined. Drugs, sex, guns and criminal activity are intertwined—not always, but they are intertwined. Drugs are expensive, so it flows that if you can't afford a drug habit people sell their bodies or steal or sell drugs. They are the three things that happen. So, yes, they are intertwined. I have had lots of drug-addicted clients who took part in sexual activity for money.

751 The Hon. H.M. GIROLAMO: Also, you talked about sex workers being in the industry not under their own free will. Have you had many clients, because they are migrants, because of poverty and things like that, so there is a fair portion—

Ms O'CONNOR S.C.: A fair portion. There are two in particular I can think of who were completely beholden, once they got into that environment, to the employer. They couldn't leave because of the debt, they were controlled in relation to who they provided a service to—they didn't have a choice—and they were punished when they were seen as either not providing a service that was required or they were apparently not providing all the money that they were meant to hand over. It really is modern day slavery at its worse.

752 The Hon. C.M. SCRIVEN: A supplementary on that, if I may. We have heard that that has continued under decriminalised environments. Do you have a view on that?

Ms O'CONNOR S.C.: It is more likely to be reported if it isn't criminalised, because a woman who is here illegally or who is being held against her will, but is conducting illegal activity, is less likely to report what is going on, so it is a safety issue. It is the same as the questions you asked before. You can't say: will this continue if we take away one aspect of the law in relation to this activity? Will that be a bandaid for everything?

The only thing it's a bandaid for, the only thing it cures is stopping these women being seen as criminals and therefore providing them with occupational health and safety and other protections.

Will it cure all the other ills surrounding it? No. Will it cure the drug addiction? No. Will it cure the fact that many of the women—if you went to the Women's Prison, 95 per cent of women in prison have been the victim of serious sexual assault before the age of 15. That's what the stats tell us. Will it cure the reasons why people get into prostitution and drugs in the first place? No. You are not going to be able to say, 'Well, I'm not going to bother changing this law because all these things will still happen. We have looked across the world and they still happen.' That's not the point. This is an improvement. We've got to make a number of societal improvements to make the working life better for these women and to provide them with protection and stop them being so much at risk. This is a step but it is not every step.

753 The Hon. C.M. SCRIVEN: Certainly, and the reason I ask is that there are alternative models. You may have heard of the equality model or the Nordic model where those who are exploiting are criminalised but the usually women who are providing prostitution are not criminalised. That's why I was asking. We don't seem to see much evidence of decriminalisation actually assisting. I appreciate you saying that it is one step, but I haven't seen a lot of evidence of increased reporting of the crimes that are involved in prostitution in those decriminalised jurisdictions. There are one or two cases that come up but it doesn't seem to have actually achieved the benefits that it was originally intended to achieve.

Ms O'CONNOR S.C.: The thing is the women tell you they want it. All the women who understand this, who provide the work day in and day out, who agitate and who advocate in this space all say they want it. They are in communication with women in changed environments. They know what they will get. They know they can go to their employer and say, 'That person, don't let them back in. This is what happened when I asked them to wear a condom.' They know that they have greater protections.

If you were having this inquiry and you were saying, 'No women have asked for it.' It's not only women, and I appreciate that and I don't mean to indicate that it is only women but it is them primarily. None of the women—all of the women tell us that it won't make a difference but that's not what you are being told. You are being told that the women in the workforce say that it makes a difference. Even if statistically it looks like women are still being injured or still being assaulted, even if statistically you think that women are still in a position where they're not receiving good incomes or fair outcomes or they're being abused in a particular way, the reality is that it does provide an avenue for protection.

Then the hard work starts. What are you going to do? Are you going to do inspections? Are you going to prosecute the owners? Are you going to prosecute the clients? That's where the work starts, but the first step has to be decriminalisation. The rest will follow if you do your homework, and society does its homework.

754 The Hon. C.M. SCRIVEN: If I may, I would just like to point out that we are hearing, including later today, from women who have been in decriminalised environments, who are saying that, no, decriminalisation did not provide any of the benefits and in fact increased the exploitation. That's something that I think we need to listen to as well.

Ms O'CONNOR S.C.: Yes, I agree, but I do think it is a step and I think you have to carry on. You see, in all the time that I have been a criminal lawyer, I have never once had the track of men come in and say, 'I've been prosecuted for using a prostitute.' Never once. Why is that not happening? This is just a tiny tweak of our law in relation to women. We have to change a whole range of society things. If these women are telling you, 'Even decriminalised, we are not safe,' then you don't say, 'We should have kept it criminalised.' You say, 'What else can we do then? What else can we do to make you safer in this work space?'

755 The CHAIRPERSON: Just a supplementary on that: in terms of procurement for prostitution, have you ever encountered a client who has come to you because they have been pursued for offering money for sex to somebody in the street?

Ms O'CONNOR S.C.: I haven't, but I once saw in court a man who was charged. Once, and that was 35 years ago. I don't know. I am sure that you can get the Office of Crime Statistics to tell you.

756 The CHAIRPERSON: I have to say, as a woman, I have been offered money for sex in the street. I have never seen anyone prosecuted for it, and I have never seen anyone think, 'I will call the police about that.' I know I called my mother at the time and she was a little concerned, and then we laughed and I realised I was standing outside Stormy's at the time, when I thought I was outside a punk club. But, anyway, I have never seen clients of sex workers going through our courts and prosecuted—

Ms O'CONNOR S.C.: I have seen one, only one.

757 The CHAIRPERSON: —to the numbers that we see the workers themselves prosecuted.

Ms O'CONNOR S.C.: No, they don't; or the owners of the brothels either. Germaine Greer said—I'm going to misquote it because I don't remember it word for word—but she said, 'There's no-one less affected in our society than the drug-addicted prostitute. That's the lowest you can get.'

The reality is that they are dealing with the criminal behaviour on two fronts, and so it's a good way to try to get something done, I think, for what is really a very disaffected cohort. These women have all got terrible stories. If you sat and talked to them, their stories are horror stories. The

Julia Roberts' *Pretty Woman* prostitute is a myth—that kind of 'just putting myself through college and to buy a Gucci handbag'. That doesn't happen. These women really are in a very difficult position.

758 The Hon. H.M. GIROLAMO: I was actually going to ask whether—you have just mentioned the Office of Crime Statistics, whether that's something our secretary would be able to pull together on both sex work offences but also people engaging in it.

759 The Hon. I. PNEVMATIKOS: We should have that before the police come.

760 The Hon. H.M. GIROLAMO: Yes, that will be really good.

Ms O'CONNOR S.C.: As a legal aid lawyer for many years, we were doing overnight arrests on minor offences for a long time. It became apparent that police had stopped charging people. They just stopped. There was a cluster in the eighties and then as the times went on—and then suddenly these entrapment cases started. I'm just starting to think, were the police just sitting there going, 'Well, this would be fun?' It just doesn't smack of an interest in criminal activity in our community. Something else was happening. I don't know whether you're hearing from the police at all?

761 The CHAIRPERSON: We will at some stage and certainly we are interested in those statistics that did change quite markedly after the last piece of legislation passed the upper house of the parliament.

Ms O'CONNOR S.C.: Was that the catalyst? Right.

762 The CHAIRPERSON: Yes. Do other members have final questions? Thank you so much for your evidence today.

Ms O'CONNOR S.C.: That's alright. Thank you. Good luck.

763 The CHAIRPERSON: As I noted, the transcript will be forwarded to you for those clerical corrections.

Ms O'CONNOR S.C.: Excellent.

THE WITNESS WITHDREW