



**Sex Workers Outreach Project (SWOP)
Amnesty NSW Consultation on Draft Sex Work Policy - May 2014**

BACKGROUND

SWOP was established over twenty one years ago and is Australia's largest and longest established community-based sex worker organisation focused on HIV, STI and Hepatitis C prevention, education and health promotion for sex workers across NSW. A key element in the success of SWOP's work is the building of strategic, collaborative and multidisciplinary working relationships with sex workers, other key health, government and non-government organisations, advocating for a holistic approach to the health services provided to sex workers.

The success of SWOP's approach is remarked upon in the current *NSW HIV Strategy 2012-2015: A New Era by NSW Health* which states: "Sex workers in NSW have been very successful at protecting their own and their clients' health, as evidenced by the extremely low prevalence of HIV and STIs among sex workers. Peer education and outreach by the Sex Worker Outreach Project (SWOP) based at ACON, have played a central role in achieving these health outcomes."

The Benefits of Decriminalisation

Sex workers, as with all other workers, should be protected from physical and mental harm, and from injury in the course of their occupation. SWOP believes that decriminalisation of sex work has largely served the interests of sex workers and the wider NSW population well, resulting in very low rates of STI prevalence and incidence, high rates of access to health promotion and support services by sex workers, and increased capacity of sex workers, including those from Asian and other non-English speaking backgrounds, to look after their health and welfare.

The process of decriminalisation has succeeded in addressing the issue of police corruption and helped to reduce criminality associated with the sex industry prior to 1995. As you will see later in this submission in the accounts of NSW sex workers, this has increased the trust between sex workers and NSW Police, ensuring that they feel able to go to the police without fear of prosecution. The effect of greater trust between sex workers and police has also worked to reduce the potential of perpetrators viewing, and targeting, sex workers as victims.

The social marginalisation arising from the resultant stigma associated with this profession that continues to manifest due to criminalisation across the globe is extremely harmful, and in and of itself, a serious barrier to health. To this end we see that Amnesty's draft *Policy on Sex Work* as a vital addition to the global push towards ending the criminalisation of, and

reducing harmful discrimination towards, sex workers. This ongoing stigmatisation and discrimination is the largest barrier to equality of health outcomes for sex workers across the globe.

The Australian sex industry

Here in Australia, in the same way that anti-vilification law worked at reducing the stigma against, and the resulting barriers to equitable health access, for GLBT and HIV-positive people; occupational vilification laws would significantly improve inequities in healthcare access between sex workers and the general population. Short of legally entrenched protections, the next best thing that sex workers and their sex worker organisations have when governments change, is the ability to veto the implementation of particular laws that will have harmful effects upon the health and safety of sex workers.

The most effective way to apply pressure to governments, who do not always have concern for the health and safety of sex workers central in their decision making, is the ability to advocate using the support of globally recognised entities including UNAIDS Advisory Group on HIV and Sex Work, UN Women, The World Health Organisation and Open Society Foundations. We would see Amnesty International calling for the decriminalisation of sex work as falling into step with these world leaders on sex work policy, and therefore contributing to the ongoing protection of sex worker health and safety, and the full realisation of their human rights.

While it is difficult to measure progress in reducing the health impact of stigma, discrimination, legal and human rights, it is not impossible. As sex work is legislated differently in each state and territory here, Australia provides a both a unique and particularly useful testing case, and we are disappointed that Australia is not mentioned alongside New Zealand in the Amnesty discussion paper. As Crofts et. al point out in *Ambivalent Regulation: The Sexual Services Industries in NSW and Victoria* (2012):

"In Victoria, the creation of a special category of sex work regulation enables and encourages the ongoing expression of ambivalence about sex work, while in NSW the discourse and pragmatic aspects of planning have contributed more to the identification of sex services premises as legitimate businesses with rights and responsibilities. The framing of sex work as work and the positioning of sexual services within general business and planning schemas offers greater opportunity for the inclusion of sex workers as workers, which in turn enhances opportunities for worker security and safety."

To this end, we see a particularly strong case for the Amnesty NSW to strongly support decriminalisation. The clear distinctions between the public health outcomes for sex workers in NSW where decriminalisation has been in place for nearly two decades when compared with their Victorian counterparts, shows what protecting the legal rights of sex workers' vocation can do to reduce the health impacts.

To read more about this, we point you to *The Sex Industry in New South Wales: A Report to the NSW Ministry of Health*, which points out: “Condom use at work approaches 100% in Sydney brothels and when the LASH team tested the Sydney sex workers the prevalence of four STIs – chlamydia (2.8%), gonorrhoea (0), *Mycoplasma genitalium* (3.6%), and trichomoniasis (0.7%) – was at least as low as the general population.”ⁱ To this end we would see benefit in strengthening the section of Amnesty’s draft policy that states: “*This policy recognises that legitimate restrictions may be imposed upon sex work if they comply with international human rights law. Such restrictions must be for a legitimate purpose, provided by law, necessary for and proportionate to the legitimate aim sought to be achieved, and not discriminatory.*”

SWOP would advocate that the health and safety of sex workers is more important than the types of concerns that more frequently motivate “legitimate restrictions” to the sex industry, which might include mandatory testing. SWOP is strongly against mandatory testing of both STIs and HIV for sex workers because the evidence-base supports that greater rates of testing, and lower incidences of STIs and HIV, within this priority population follows in states where mandatory testing is not in place.

In a 2012 article **Mandatory Testing for HIV and Sexually Transmissible Infections among Sex Workers in Australia: A Barrier to HIV and STI Prevention**ⁱⁱ printed in the World Journal of AIDS it states that “there has been demonstrated success among sex workers in Sydney and Perth (where testing is voluntary), who show uniformly low STI prevalence when compared with sex workers in Melbourne (where testing is mandatory)”. SWOP believes mandatory testing is, in and of itself, a health barrier to sex workers, as well as a barrier to the full exercise of sex workers’ human rights. The shame associated being mandatorily tested in some states ensures that all sex workers across Australia remain stigmatised.

Another “legitimate concern” commonly used against sex workers, even here in NSW where we’ve had nearly two decades of decriminalisation, is amenity. Certain local councils continue to make it difficult to get development approval for a sex services business, with only a tiny proportion of councils offering ‘exempt’ or ‘complying’ development status to home based workers in residential areas, where it is safest for them to work.

In SWOP’s experience the majority of sex service premises have limited residential – and commercial - amenity impacts. Owners, clients and workers all share a desire for discretion and thus act to limit the visible impact of their business activities. This experience is supported by recent empirical research (Crofts and Prior 2012) which shows that the majority of residents near sex services premises are unaware of the presence of these businesses or regard their impact as neutral or positive.

Crofts and Prior also note that the nature and volume of negative responses to development approval submissions for sex services premises differs markedly from the actual experiences of residents living in close proximity to such premises. They note that there are a range of verifiable amenity impacts identified, including parking, noise and traffic, and that these may be amenable to a mutually satisfactory resolution should they be identified in the development submission process.

In the case of home based workers, the amenity impact is even less discernible. The vast majority of home based workers work discreetly, safely and largely unnoticed in their neighbourhoods. Unfortunately, few are offered the same rights from councils as is offered to other home based occupations. This results in home based workers either working 'without consent' or in areas that are unsuitable or unsafe. There is no justification for this ongoing discrimination of home based sex workers relative to other home based occupations.

This is why SWOP advocates for Amnesty to further unpack what constitutes a "legitimate purpose" as something that ensures a strong evidence basis underlies any laws that may be applied in addition to the decriminalisation of sex work. We believe "legitimate purposes" are ones that do not impact upon the health, safety and human rights of any members of society.

NSW Sex Workers

We note the *Summary: proposed policy on sex work* is already clear about the various public health issues stemming from criminalisation. We thought you might find it helpful to hear from NSW sex workers who replied to our call-out asking for their lived experience of working in NSW under decriminalisation:

"I can and do go to police if I have a problem. I don't have fear."

"I have reported crime related to sex work and they have been compassionate and respectful and I felt like every other Aussie - safe."

"At no time have I felt under pressure to do unsafe sex acts, ie: natural oral or natural sex. Sure I have been asked but my refusal is final. Even at low times when money was tight, I have never had to offer unsafe services. Why? Because sex workers here have the right to carry condoms without fear. Because sex workers here can say NO. Because if sex workers here say no, there is no fear of repercussions. We can't be "dobbed" in to police, we can't be threatened."

"The free sexual health clinics I can go to are awesome! I seriously think all people should go. We can get tested whenever we like for all STIs and HIV. I even been given the HEP injections (I forget what it's called, but the vaccine thingy). I am given free condoms in all sizes. ALL FOR FREE! I can use my work name if I like! Having these services available and with the option of being anonymous makes it a lot easier to get the courage to actually go there!"

SWOP also supported transgender street-based sex workers to make a submission when the Better Regulation Office suggested changes to decriminalisation in 2012. These sex workers had been working in NSW prior to decriminalisation in 1995:

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

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

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

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

The same group of sex workers had this to say about doing street-based sex work in NSW after decriminalisation:

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

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

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

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

SWOP would strongly advocate for Amnesty, and in particular Amnesty NSW, to privilege the voices of the affected communities and their actual lived experiences under decriminalisation, over those who are not presently working in the sex industry, instead basing their arguments upon radical feminism, moralistic or paternalistic grounds.

Sex Work and Trafficking

We support the way that the proposed Amnesty policy draws a clear distinction between sex work and trafficking. The United Nations Special Rapporteur on Trafficking in Persons, especially Women and Children, Ms Joy Ngozi Ezeilo, noted in her report at the conclusion of her 2011 visit to Australia that the “issue of trafficking in persons in Australia is sexualised and often conflated with prostitution” leading to an under-recognition and lack of action against trafficking in other sectors, such as the agricultural, food processing and other sectors, to the detriment of trafficking victims in those industries (and, we would add, to the reputation of well-run sex service premises). She notes there remains “a need to move away from over sexualising the discourse on trafficking, which invariably contributes to common stereotype of victims of trafficking as being women and girls forced into prostitution or other forms of sexual exploitation”ⁱⁱⁱ.

This is backed up more recently here in NSW by the 2013 *Inquiry into the exploitation of people through trafficking, in all its forms in NSW* which points out that: “The focus of the media is typically on exploitation of women in the sex industry, in particular Asian women migrants working in brothels. In contrast, the Inquiry heard from community groups and service providers that exploitation more frequently occurs in family homes and businesses.”^{iv} We see Amnesty separating their policies upon trafficking and sex work as a

vital step in reducing the conflation that unfairly impacts both those who are trafficked and those who are choose to do sex work of their own volition.

Recommendations

- SWOP strongly suggests that Amnesty changes the wording of: *"In particular, individuals who engage in sex work often have limited choices."* This is not a global truth for sex workers, nor do all sex workers view themselves as in need of *"empowerment"*. This line also fails to acknowledge sex work as work, and the self-determination of sex workers. As one sex worker writes: "If anti-prostitution advocates are really concerned about sex workers' limited choices, they should instead combat oppressive regulations that prevent people from pursuing other entrepreneurial avenues. Then, if additional options become available and some people still choose to work in the sex industry, it can no longer be said that sex work is an illegitimate profession chosen out of desperation."^v SWOP would suggest that there are many people who feel an economic necessity to do a wide range of jobs. Sex work is but one job that may not seem palatable to people who are in the position of not ever being motivated by strong economic necessity. By singling sex work out in this way, Amnesty implies there is something particularly heinous about this sort of work, which in turn is stigmatising to those who do sex work.
- SWOP would also argue that in saying we must *"ensure the empowerment of people involved in sex work"* which again implies that all sex workers need empowerment, and is embedded in paternalistic motives rather than in labour rights and equity.
- SWOP recommends that Amnesty adds specific reference to sex worker health and safety being kept as any legislator's primary concern whenever any "legitimate restrictions" are imposed upon sex work.

SWOP thanks Amnesty NSW for the opportunity to provide feedback on this new policy area, and looks forward to seeing NSW's sex workers' considerable successes under decriminalisation recognised and celebrated in your positive and affirmative response to the global consultation on Amnesty's *Policy on Sex Work*. We encourage you to draw upon our expertise in this area should you need more information.

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ⁱ Donovan, B. et al, (2012), *The Sex Industry in New South Wales: A Report to the NSW Ministry of Health*, Sydney: Kirby Institute, University of NSW, vi.

ⁱⁱ Mandatory Testing for HIV and Sexually Transmissible Infections among Sex Workers in Australia: A Barrier to HIV and STI Prevention (2012)

http://www.afao.org.au/_data/assets/pdf_file/0020/11198/Mandatory_Testing_for_HIV_and_STIs_among_Sex_Workers_-_A_Barrier_to_Prevention.pdf.pdf accessed 01/05/14.

ⁱⁱⁱ *The UN Special Rapporteur in Trafficking in Persons, especially Women and Children concludes her country visit to Australia* (2011), <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11664> accessed 08/05/14.

^{iv} *Inquiry into the exploitation of people through trafficking, in all its forms in NSW*, (2013) Community Relations Commission For a Multicultural NSW, 4.

^v Whiting, Erin, *Get This Straight: Sex Workers and Sex Slaves are Not the Same* (2014)

<http://thoughtsonliberty.com/stop-using-the-terms-sex-trafficking-and-sex-work-interchangeably> accessed 08/05/14.