

## **SIN submission to the draft:**

### **South Australia Sex Work Industry Bill 2011**

The South Australian Sex Industry Network (SA SIN), Scarlet Alliance (The Australian Sex Workers Association) and Sex Workers around the world support a decriminalised model and a whole of government approach to regulating Sex Work. In jurisdictions where decriminalisation has been implemented, such as New Zealand and New South Wales, the evidence shows successful outcomes for sex workers' health, rights and wellbeing; and no negative impacts for sex workers, clients of sex workers or the general community. We applaud that the Hon. Stephanie Key has chosen to use a decriminalised model and hope that we can work together to ensure the bill has the intended outcomes.

The following response to the draft bill is aimed at assisting the government to introduce legislation that :

1. Is explicit in its meaning, leaving little room for misinterpretation and confusion. We believe this will assist with compliance and lessen tensions between Sex Workers and the South Australian Police Force (SAPOL).
2. Leaves no Sex Worker in South Australia worse off than they are under the current legislation.
3. Does not threaten the intended best practice outcomes of decriminalisation approach.

With this in mind we draw your attention to the following clauses in the draft bill:

#### **Purpose of the bill:**

We would like the purpose of the bill to be clearly articulated to assist in the future with possible legal tests about interpretation.

#### **Recommendation:**

To include under the section 'A Bill For' "An Act to decriminalise prostitution and allow sex workers access to the same rights and responsibilities as other workers in South Australia."

#### **Section 3 - Definition of children's facilities:**

We believe the current definition of children's facilities is too broad. Currently it includes childcare centres, schools, kindergartens, playgrounds, singing lessons, dance lessons, karate lessons, etc. It also includes anything that might be decided a children's facility at a later date by regulation. We are concerned that this could possibly include family day care or any other home based childcare. It is not reasonable to expect sex workers and sex businesses of all such facilities in their area.

#### **Recommendation:**

Remove 3 (d) "a playground, children's art, dance or drama studio or other similar facility used principally for children's activities" and 3 (e) "a facility of a kind declared by regulation to be a children's facility"

#### **Definition of small (worker based) sex business:**

We are looking for clarification. This clause states that a small worker based sex business is a business where no more than 3 sex workers are employed or otherwise engaged by the business. Does this clause refer to 3 workers on premises at any one time or 3 workers in total?

*Scenario 1: Two sex workers share a premises with two workrooms. They both work part time but allow other workers to rent rooms from them when they are not at work. Up to 5 workers in total work from that premises, but only ever two at one time.*

Recommendation:

Definition of small (sex worker based) businesses to be changed to 3 workers on premises at any one time.

#### **Section 4 – References to person involved in operation of sex business:**

We are concerned that the definition could potentially include support staff or family of sex workers who are being supported by the income.

Recommendation: To add “This clause does not refer to support staff who receive a salary but are not involved in the operation of the business, or friends and family members of those involved with the operation of a sex business who are being supported by the profits of a sex business but who are not involved in the operation.”

#### **Section 5 – References to premises used on systematic or regular basis for sex work:**

We want clarification as to what systemic or regular use means? Are there minimum hours/days premises are to be used?

Recommendation:

That a definition of systemic or regular use be included.

#### **Hotels:**

We understand that this clause is preventing arrangements with brothels and hotels to run sex businesses out of hotels, however we are concerned that (c)“by a person at the premises” could be interpreted to mean anyone who is physically staying in a hotel potentially affecting sex workers or clients arranging sex work as guests of the hotel.

Recommendation: That section 5 (c) be changed from “by a person at the premises” be changed to “by a person involved in or employed by the premises”

#### **Section 8 &9 - Minimum age of 18 for sex workers and clients**

We believe it is problematic to have the minimum age for sex workers as 18 when the age of consent for sexual activity is 17. It seems unreasonable that a person is old enough to consent to having sex but not old enough to consent to being paid or paying for it.

Recommendation: That the minimum age to practice as a sex worker or hire a sex worker is in line with the age of consent for sexual activity.

#### **Section 10 – Proximity to children’s facilities**

This clause states that sex businesses must not be within 200 metres of schools or children's facilities. We applaud the move to not restrict small worker based businesses in this same way making it possible for sex workers to work for themselves with ease. However we ask that this clause be reconsidered in relation to sex businesses.

There is no evidence to suggest that sex worker or clients of sex workers pose any risk to children, in fact many are parents of their own children and there is no evidence to suggest that sex businesses have any negative impact to the local surroundings.

Additionally this clause does not account for the fact that many businesses may only be operating outside of school hours.

200 metres is a long distance and in many built up areas such as the CBD and smaller towns will mean there is either nowhere for sex businesses to go, or that they are pushed out into industrial locations or that certain areas will become quasi red light districts due to the lack of legal locations (see attached maps).

We are also concerned that this clause does not protect sex businesses that are already established when a swing gets built at the park one block away or a dance school opens up.

And we ask for clarification in regards to the measurement of the distance. Is 200 metres measured in a straight line or on the shortest possible route?

Recommendation: That this section (section 10 (1) (a) ) be removed. Failing that, that the process of measurement is clarified and that the distance to be reduced to 50 metres and that a clause be added to protect existing businesses from being affected if a children's facility is later established in the proximity, including potentially that a children's facility would have its application denied where a sex business is already established.

**10 (1) (c) A person using a premises on a systemic or regular basis and ought to have known it was contravening this clause.**

This needs clarification, is this intended to be used against sex workers employed by the sex business and clients of the business? We believe it is unreasonable for individuals to be aware of every children's facility in the area and its distance to the business.

Recommendation 7: That section 10 (1) (c) is removed.

**Maximum penalty \$20 000**

This amount is too high. There is no comparison to other jurisdictions that have zoning requirements for sex industry businesses, nor is it comparable to other businesses that operate without zoning approval. The current maximum penalty for keeping or managing a brothel is \$1250 for a first offence and \$2500 for a second offence. SIN can not support any legislation that leaves any sex worker worse off than they are under the current criminalised system.

Recommendation : reduce maximum penalty be reduced to \$1250 for a first offence and \$2500 for a second offence.

**Section 10 (3) Street workers and their clients:**

As noted above in regards to section 10 (1) (a) The same issues apply to this clause in regards to not being 200 metres from a school or children's facility. The added clause "being in view or hearing of a person in a public place within 200 metres" leaves too much room for interpretation. It is unrealistic to expect street based sex workers or their clients to be aware

of the proximity of all children's facilities in the area. It leaves police in the role of policing street based sex workers rather than protecting them. It does not account for the fact that a lot of street based sex work is opportunistic and not organised. Many Indigenous people tend to congregate in Fawkes Reserve, Hanson road in the street work area. They may not be there to work but occasionally will engage in opportunistic sex work. This community is particularly vulnerable to this clause.

Scenario 1. *A street based sex worker is walking to her local spot that she is legally allowed to work in, when a client stops and asks her for a service., She agrees to the booking not realising that there is a closed childcare centre around the corner. The client turns out to be an undercover police officer entrapping her.*

*Please see attachment for a street based sex worker's perspective.*

Recommendation: That this section (10 (3) )be removed. Failing that that the distance is reduced to 50 metres and the clause about being within view or hearing be removed. It is also possible that the clause include "when children are present".

Recommendation: That a clause be added stating that police officers are not allowed to entrap a sex worker for the purposes of gaining evidence of this offence.

#### **Maximum Penalty \$20 000**

This is too much for an individual and is not comparable to any other similar crime. The maximum penalty for soliciting is currently \$750. SIN can not support any legislation that leaves sex workers worse off than they are under the current criminalised system.

Recommendation: That the penalty be reduced to a warning for the first offence and a fine only being applied when a sex worker continues to work in the same location, and that the maximum penalty should not exceed \$750.

#### **Section 11: Practices for prevention and treatment of sexually transmissible infections.**

We are concerned that this section could apply to small (worker based) sex businesses which would not be practical.

**Recommendation 12:** That section 11 specifically state it does not apply to small (worker based) sex businesses.

#### **11(a) Take all reasonable steps to ensure no unsafe sex is provided.**

The term "reasonable steps" is open to interpretation

Recommendation: That a definition of reasonable steps is given and includes the provision of free condoms, lubricant and other safe sex products appropriate to the service being offered. (I cannot make sense of this sentence)

#### **11(c) & (d) take all reasonable steps to minimise risks of transmission of STI's**

These clauses are not necessary, especially if a definition for "reasonable steps" is given as per above. Clause 11 (d) could be interpreted as forcing sex workers to provide medical certificates which is not the intention of this section.

Recommendation. That section 11 (c) & (d) are removed.

### **Maximum penalty \$20000**

This is too much and emphasis should be on assisting those involved in sex businesses to comply with best practice OH&S standards rather than penalising them.

**Recommendation 15:** In the first instance, operators are offered mediation via current OH&S structures to support sex businesses to implement best practice OH&S standards in the workplace. If those involved with sex industry businesses fail to engage with appropriate services or continue to not implement best practice OH&S standards for their workers, a maximum penalty not exceeding the current \$1250 for a first offence of keeping a brothel be implemented.

### **Section 12 development - special rules for small (worker based) sex business:**

Clarification needed. Under what conditions would could someone have their application under this section rejected? We are concerned the application process could impact on a sex worker's privacy.

**Recommendation 16:** That small worker based businesses are able to operate without an application and approval process.

### **Section 13: ERD Court order prohibiting use of premises on systemic or regular basis for sex work.**

We are concerned that this could be used against premises that could be seen to pose a threat to children or cause serious offence, simply due to unfounded stigma that the industry faces.

We are concerned that "protect public amenity" could be interpreted as protect market value of public amenity, with the suggestions that a brothel next door might affect market value.

**Recommendation:** "acting on sufficient level of complaint" be added.

**Recommendation:** That the clause states that moral objections and community attitudes towards the sex industry not be a valid reason to make an order against a premises.

### **Section 14 – Council by-laws relating to advertising of sex business.**

We believe the intention of this clause is to allow councils to regulate signage, not advertising.

**Recommendation:** that advertising is replaced with signage.

### **Section 18 – Regulations**

- We are concerned that this gives the Governor unfettered powers to impose any regulations they saw fit. We are concerned that this could include mandatory testing, individual licensing etc. This is not decriminalisation.
- Imposing regulation with fines attached threatens the effectiveness of decriminalisation. It reminds SIN of current brothels that impose illegal fines on workers for a number of reasons (such as lateness).The potential for this clause to undermine intentions of decriminalisation is immense.

- The New Zealand report on the decriminalisation of sex work demonstrates that the success of decriminalisation relies on a voluntary complaints system, not legal regulations with fines attached.

Recommendation : That regulations be changed to guidelines.

Recommendation : That section 18 (2) (a)& (b) are removed.

Recommendation: That the Governor “in consultation with sex workers and their representatives” be added to 18(1).

### **Schedule 1 – Related amendments**

#### **Part 3 - Amendment of Equal Opportunity Act 1984**

We are concerned that this section refers to a past sex worker and does not refer to current sex workers. Current sex workers also deserve protection from discrimination and are more likely to face it in areas such as accommodation and financial issues, where disclosure regarding source of income is required. Current sex workers also report facing discrimination in matters of family court.

Recommendation: Current sex workers be included in all amendments of the Equal Opportunity Act.

#### **Other areas of concern not addressed in the draft bill:**

##### **Planning approval for sex businesses:**

We note that there is no provision for the planning of sex businesses, leaving this with local councils. While we support the intention to treat sex businesses like other businesses, we are concerned that many councils may openly discriminate against sex businesses.

Recommendation: That a section be added called “Special planning regulations for sex businesses”. This section should leave the matter with local government, but provide instructions ensuring that local government can not pass bylaws that affectively blanket ban sex businesses, and that planning applications are considered based on genuine amenity and impact on the local community, not on moral or discriminatory objections to the sex industry.