



17 June 2005

The Hon Paul Harriss
PO Box 361
Deloraine Tas 7304

AUSTRALIAN
FEDERATION OF AIDS
ORGANISATIONS INC.
ABN 91 708 310 631

PO Box 51
Newtown NSW
2042 AUSTRALIA

Ph +61 2 9557-9399
Fax +61 2 9557-9867

Email afao@afao.org.au

Dear Mr Harriss

Submission on the Sex Industry Regulation Bill 2005

I am writing to ask your consideration of a number of crucial public health issues relating to the Sex Industry Bill currently under deliberation.

The Australian Federation of AIDS Organisations (AFAO) represents Australian HIV/AIDS community based organisations at a national level. Our membership includes Scarlet Alliance, the national organisation representing sex workers, State and Territory AIDS Councils, the Australian Injecting and Illicit Drug Users League and the National Association of People Living with HIV/AIDS (NAPWA). Amongst AFAO's activities is the provision of HIV policy advice to the Commonwealth government, advocating for our member organisations, developing and formulating policy on HIV/AIDS issues, and promotion of medical and social research into HIV/AIDS and its effects.

We welcome the Tasmanian Government's decision to address sex industry law reform. The Government has a unique opportunity to improve the health and safety of sex workers and to strengthen HIV prevention in the broader Tasmanian community. However, AFAO is concerned that the regulatory model of registration of workers and businesses proposed by the Bill is likely to result in a worsening of conditions for many sex workers and an undermining of health promotion efforts.

I would like to draw your attention to the following:

Compulsory registration of workers and businesses (including self-employed workers) (Sections 4, 5 & 6)

AFAO opposes the introduction of a registration scheme. A registration scheme will result in a two-tiered industry of legal and illegal sexual service

businesses. A registration scheme that ignores sex workers' desire for privacy is likely to be boycotted by many who are fearful of discrimination and other negative consequences of their loss of privacy.

Some sex workers choose to work from small home based businesses, sometimes with a small group of other women. This allows them to work without losing a significant portion of their earnings to a venue owner and to maximize the ability to work discreetly. It also allows them greater control over their conditions of work, including refusing drunken clients, particular types of services and insisting on the use of condoms.

In particular, forcing sex workers to carry and provide registration cards on demand is likely to ostracize many. We know that health promotion efforts are maximized in a conducive environment. Forcing sex workers to carry cards that mark them as a member of a stigmatized group is counterproductive to those efforts and undermines the Bill's intention.

Street work (Section 22)

AFAO opposes the offence of soliciting or loitering in a public place for the purpose of offering or procuring sex work services. Street based sex work should not be an offence. People engaged in street based work are often the most vulnerable, and tend to be involved in sex work opportunistically because of social and economic necessity. The use of the criminal law against such vulnerable individuals is likely to only aggravate their disadvantage and do nothing to address the social factors that have led to their participation in street based work. Street based work should be addressed by providing resources to support welfare, and health outreach services that can provide practical solutions for the individuals concerned.

Criminalising non-use of prophylactics (Section 28)

AFAO is concerned that the Bill will have adverse public health impacts if failure to use prophylactics during sex work is made a crime. The use of the criminal law to regulate the working conditions of adult sex workers is inappropriate and stigmatises the industry. These offences are likely to be impractical to police and difficult to enforce. Acts relating to possible HIV transmission are already covered by the *HIV/AIDS Preventative Measures Act* and the *Public Health Act*.

Experience elsewhere in Australia has been that universal condom use within the sex industry is more efficiently achieved through occupational health and safety standards that include comprehensive measures to promote safe sex practices. The effectiveness of this approach has been consistently demonstrated through epidemiological studies indicating the success of voluntary co-operation of sex workers. Internationally, there is no evidence that a reliance on the threat of prosecutions and fines has had any positive effect on the use of prophylactics within the sex industry.

Police powers (Sections 31 & 33)

AFAO opposes the empowering of police officers to arrest without warrant, to demand a person to give name address and date of birth, and to enter premises. Special police powers should be restricted to participation of children in sex work or in relation to involuntary work. AFAO is concerned about the civil liberties implications of the granting of special police powers that may be used against adults voluntarily engaged in sex work.

Broad discretionary powers to demand identification and to enter premises based on a police officer's belief of the likelihood of an offence being committed in the future may be misused by police and lend itself to selective policing. (For example, a person known by police to have been a sex worker in the past who is in a public area for legitimate reasons other than sex work could be targeted and required to provide identification. Vulnerable individuals such as homeless people could be targeted by these provisions, which could be used to detain people whilst investigations into entirely unrelated matters proceed.)

Recommendation

Australia's *National HIV/AIDS Strategy* is internationally recognised as a model public health response. Its strengths include a commitment to involve affected communities at every level including planning, delivery and evaluation of HIV programs and policies; protection of the rights of people affected by HIV; the creation of an enabling legal and policy environment for HIV prevention, treatment and care programs; and promotion of voluntary and confidential testing and treatment services. Sex worker organisations are recognised as playing an important health promotion role.

Prevalence of HIV has remained very low amongst sex workers in Australia, with levels maintained at less than 0.2% prevalence among female sex workers seen at sexual health clinics (*Annual Surveillance Report*, National Centre in HIV Epidemiology & Clinical Research 2002). This has largely been achieved through the voluntary development of a strong safe sex culture within the sex industry, promoted by sex worker organisations such as the Scarlet Alliance.

The Bill names its intended purpose as being "an Act to promote the welfare and occupational health and safety of sex workers ... and to safeguard public health". As such, it is vital that best practice health promotion principles guide the law reform process:

1. Sex work should be subject to the same legal frameworks as other industries and occupations. The sex industry should be regulated through standard business, planning and industrial law and policy.
2. Sex workers should be closely involved in the development and implementation of all new policies and laws affecting their industry. Both

individual sex workers and organisations representing the interests of sex workers should be supported in fulfilling this role.

3. Laws regulating sex work should address health and safety objectives as a priority. The health of sex workers is best promoted through:
 - occupational health and safety standards developed in partnership with sex workers
 - peer based approaches to the provision of health and safety information
 - requiring employers to provide condoms and lubricants for sex workers.
4. Laws and policies should be framed in a human rights context, and should pointedly avoid measures that might increase stigma associated with sex work or sex workers' vulnerability to exploitation or disadvantage. Laws should be consistent with the *National Strategy on HIV/AIDS* which seeks to develop a non-punitive and supportive legal environment that encourages people whose behaviour might put them at risk to respond to education campaigns and to access testing and treatment services on a voluntary basis.

AFAO urges consideration of decriminalisation of the adult sex industry as is the general approach in New South Wales, and the support of small sex worker businesses as is the approach under New Zealand's new legislation. Rather than regulation, full decriminalisation of the adult sex work industry is most consistent with a general approach of treating sex work as a lawful occupation to be regulated so far as possible under legislation that applies to other types of lawful business. Decriminalisation facilitates the breakdown of stereotypes and myths about sex work whilst assisting sex workers to take a fuller role in challenging unfair and discriminatory practices in their industry. Ultimately this facilitates good public health practices including reducing the risk of HIV transmission.

Yours faithfully



Don Baxter
Executive Director