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Emma Gunn
Department of Justice
15 Murray St
Hobart 7000
Tasmania

Dear Ms Gunn

Submission on the Sex Industry Regulation Bill 2004

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 as a social justice issue. The Government has a unique opportunity to improve the health and safety of sex workers by decriminalising adult sex work. However AFAO is concerned that the model of regulation proposed by the Bill may result in a worsening of conditions for some sex workers and an undermining of health promotion efforts with sex workers.

Context

Australia has a National Strategy on HIV/AIDS which is recognised globally as a model public health response (*National HIV/AIDS Strategy 1999-2000 to 2003-2004* Commonwealth Department of Health and Aged Care 2000).

Key characteristics of the Strategy include a commitment to involving affected communities at every level including planning, delivery and evaluation of HIV programs and policies; the importance of 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. Under the Strategy, sex worker organisations are recognised as playing an important health promotion role and the current Strategy states the need to "expand sex worker organisations' capacity to design, manage and participate in the broader partnership response to the epidemic."

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.

Principles to inform law reform

AFAO believes that the following principles should 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 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 in particular should avoid measures which might contribute to the stigma associated with sex work or increase 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.

Specific comments on the Bill

Registration scheme and planning controls

AFAO opposes the introduction of a registration scheme as proposed by Part 2 of the Bill.

AFAO's principal concern is that a registration scheme will result in a two-tiered industry of legal and illegal sexual service businesses. Some small sex work businesses are likely to remain unregistered because of privacy concerns. A registration scheme that does not recognize the need for sex workers to maintain their privacy is likely to be boycotted by many sex workers fearful of discrimination and other negative consequences of loss of privacy.

There is a risk that under the proposed registration scheme model, the industry will evolve in two directions: large registered brothels in restricted zones, and small unregistered, unlawful and underground private home based businesses. Part 3 of the Bill establishes a system whereby Councils will make zoning provisions for larger commercial brothels in industrial and commercial areas. Section 21 of the Bill, which prevents Councils from making provision

for the small business sector to operate in residential areas, is likely to result in a significant proportion of small businesses operating illegally.

AFAO believes that private sex workers' home based businesses should be allowed to operate without Council consent in the same way as other home based businesses and occupations.

Small home based sex work businesses consist largely of small groups of women who wish to work discreetly without an operator taking a significant proportion of their earnings. If the status of these businesses is illegal, the businesses are likely to be unstable, relocating whenever detected. Women who work in a cooperative arrangement with other women have a greater ability to control the conditions under which they provide services. They are more likely to be able to refuse drunken clients, refuse particular types of services or insist on use of condoms than women working in large brothels controlled by businessmen seeking to maximize profits.

If these small businesses are forced underground by Council enforcement of planning controls, opportunities for corruption will arise, sex workers' safety will be compromised and it will be more difficult for health promotion services to reach these businesses.

AFAO prefers a model that does not require registration of businesses and allows small sex work businesses to operate in residential areas. Legislation should require Councils to provide supportive occupational health and safety standards for the industry developed in conjunction with sex workers, which can be enforced through self-regulation.

AFAO is concerned about the privacy implications of section 30 of the Bill, which requires operators to maintain a list of sex workers. If the Government chooses to proceed with a registration scheme, then the legislation should include specific privacy provisions to safeguard the identity of people who register sexual service businesses.

Health promotion impact

AFAO is concerned that the Bill will have adverse public health impacts.

Failure to use prophylactics during sex work should not be a crime. The use of the criminal law to regulate the working conditions of adult sex workers is inappropriate and stigmatises the industry. AFAO opposes the offences proposed in section 29 in relation to failure to adopt safe sex practices. These offences are likely to be impractical to police and difficult to enforce.

Experience elsewhere in Australia has been that the objective of promoting universal condom use in the sex industry is more efficiently achieved through promoting development of occupational health and safety standards which include comprehensive consideration of measures to promote safe sex practices. Such an approach is more likely to enlist the voluntary co-operation of sex workers than reliance on the threat of prosecutions and fines.

AFAO is also concerned that section 29(3) may have the indirect effect of encouraging brothel operators to require mandatory testing of sex workers. Health promotion experts agree that education campaigns should encourage all sexually active people to have periodic sexual health check ups for STIs on a voluntary basis. Australian HIV Testing Policy is to promote voluntary, confidential testing and counselling. Legislation which in effect encourages the targeting of specific groups such as sex workers with mandatory testing requirements are likely to prove counterproductive.

Police powers and offences for street work

AFAO opposes the empowering of police officers (sections 33 and 35 of the Bill) 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 in their application to enforcing provisions relating 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, eg, the Bill's powers apply to workers suspected of soliciting or loitering in a public place (section 24(1)), or for working in unregistered premises or other offences under the Bill. These provisions appear to be excessive.

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 themselves 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.

AFAO opposes the offence of soliciting or loitering in a public place for the purpose of offering or procuring sex work services (section 24(1)). 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 or to support drug dependency. 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.

Disqualifying offences

AFAO opposes the inclusion of the section 24(1) offence of soliciting/loitering in a public place in the list of disqualifying offences. According to Schedule 1 Part 3 Item 2 of disqualifying offences, someone who is convicted for soliciting/loitering will be disqualified from entering or remaining on the premises of a sexual services business (section 22(1)(c)) or from becoming a commercial operator (section 22(1)(a)).

This provision will undermine efforts to support street based sex workers in moving off the streets and into brothels. Moving street based workers into brothels is desirable both for the health and safety of workers and to meet community concerns about the impact of street work. The inclusion of this offence in the list of disqualifying offences reduces the options for street based sex workers and will only further marginalise the most vulnerable workers within the industry.

Conclusion

AFAO urges the consideration of options which positions adult sex work on an equal basis to other occupations. Such options include decriminalisation of the adult sex industry, such as has been the general approach in New South Wales and to support small sex worker businesses, as is the approach under New Zealand's new legislation.

Full decriminalisation of the adult sex work industry, rather than regulation, is more consistent with the 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 the industry.

AFAO recommends that, in addition to decriminalisation, the Government put in place policies to:

- protect sex workers from discrimination and promote equality of opportunity for people who are or have been sex workers, for example by amending Tasmania's Anti-Discrimination Act 1998 to include protection from discrimination on the grounds of profession, trade or occupation along the lines of the ACT's Discrimination Act 1991.
- reduce the stigma which is associated with the industry (eg, through community education to counter myths associated with sex work such as the labeling of prostitutes as deviant, immoral and a health risk),
- protect the privacy and confidentiality of individual sex workers, and
- support the establishment of a sex worker group that can operate effectively in representing the sex industry, by participating in the development and implementation of industry policy as equal partners with government and vigorously promoting safe sex practices which benefit sex workers and their clients – and thus the general community.

Thank you for the opportunity to respond to the Bill.

Yours faithfully

A handwritten signature in black ink that reads "Don Baxter". The signature is written in a cursive, slightly slanted style.

Don Baxter
Executive Director