

Unjust and Counter-Productive

**The Failure of Governments to Protect
Sex Workers from Discrimination**

Discrimination and harassment are a fact of life for the majority of sex workers. The Australian Capital Territory is the only Australian jurisdiction which protects sex workers from discrimination on the grounds of their occupation.

This document is a lobbying tool based on national research conducted with sex workers regarding their experiences of discrimination. It provides arguments for broadening State and Territory anti-discrimination provisions to cover occupational discrimination, overviews the current legal situation across Australia, and identifies strategies for advocacy and activism.

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¹ For a list of Scarlet Alliance member organisations and other relevant organisations see Appendix A.

Even though I'm proud of being a sex worker I feel I need to be careful whom I tell for personal as well as business or day-to-day living reasons. I feel kind of that sex workers are at that point of frustration that gays and lesbians must have felt in the past when wanting EQUALITY and to be able to be OUT and PROUD. Knowing how I can be discriminated against is the reason that I have to lie about my occupation (generally I am a very honest person). Having to lie like this probably perpetuates some of the myths surrounding workers.

Private worker in South Australia

An application for a credit card interest free period didn't ask my income – just occupation. I lied and said I was a receptionist. My application was refused as a receptionist income couldn't make the necessary repayments. When I told the bank my actual occupation I was told I could be done for fraud and my application was still refused.

Private worker in South Australia

Three escort workers leave a top motel in the City. The two blond escorts walk straight to the driver's car and get in. The third escort, having dark skin, was harassed by a police officer. The driver approached the police and asked what the problem was. He was told to return to his car. After 40 minutes I decided to drive downtown and find out what is happening. The escort by this stage is on the ground crying her eyes out, in fear, her personal belongings scattered over the footpath. I ask police why he is harassing her. No reason is given. He told me to get back in my car. The Escort is crying out for me to help her. She was charged with having two small hotel bottles of alcohol, which she could not prove she had bought.

Escort worker in South Australia

I would never disclose to a prospective employer of a 'straight' job that I was/am a sex worker because of fear of discrimination

Private worker in Queensland

Sex workers should receive the same treatment as any other tax-paying, law-abiding citizen and/or provider of service

Private/massage worker Western Australia

**This report was produced by Scarlet Alliance and the Australian Federation of
AIDS Organisations**

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Anti-Discrimination Protections for Sex Workers: Five Arguments

Discrimination Harms Sex Workers

An argument advanced for the failure to adequately reform sex industry regulations to ensure that sex workers have occupational conditions enjoyed by other service industries is that sex work is inherently exploitative and harmful to those who work in the sex industry. However, little consideration is given to how laws regulating the sex industry create the conditions for the exploitation of sex workers and contribute to the social and psychological harm of sex workers.

Laws in the majority of Australian jurisdictions are concerned with controlling the sex industry whilst not 'legitimising' or 'promoting' sex work as a viable work option. This is achieved by prohibiting work in certain sectors of the sex industry. Further, sex industry laws often actively discriminate against the development of, and sex workers access to, mechanisms and legal remedies to address discrimination experienced in the workplace or in conducting sex industry businesses. This is particularly applied to sex workers who work in prohibited sectors of the sex industry.

Discrimination affects sex workers in both their professional and personal lives. Professionally this discrimination is apparent in the restrictions on how sex workers may operate. These restrictions may include:

- Designated sectors of the sex industry in which sex workers can legally obtain employment;
- limited occupational health and safety standards;
- preventing sex workers access to health services;
- an absence of workplace benefits and conditions (e.g. Work Cover, leave entitlements, superannuation, workplace fines for breaching rules);
- employment on a contract rather than full-time basis;
- special local council provisions to approve location of sex industry businesses, including private or solo workers;
- preventing sex workers access to small business opportunities required to establish successful businesses;
- mandatory health checks for sexually transmitted infections (STI) as a requirement of employment;
- discrimination on the basis of health status;
- fear of public identification or retribution limiting sex workers access to legal remedies to address unfair work practices;
- preventing access to justice and legal remedies to address crimes of violence in a work setting;
- police harassment and corruption;

- restrictive advertising practices (e.g. pre-payment of advertising, designated area of paper in which to advertise, design, size and working determined by publisher, higher cost of advertising);
- difficulties in obtaining goods and services to operate a sex industry business (e.g. higher rent/lease agreements, income protection and business insurance coverage, credit card facilities, banking facilities such as loans and other credit arrangements); and
- stigmatisation of the profession.

Personal discrimination may affect sex workers by:

- Limiting sex workers access to legal remedies to address crimes of violence due to a perception that crimes against sex workers are not taken seriously by police;
- affecting personal relationships because friends/families/partners may fear criminal prosecution or police attention for associating with sex workers;
- exposing friends/family/partners to the risk of prosecution for sex industry offences such as - 'living off the earnings of prostitution';
- silencing sex workers from disclosing previous or current employment in the sex industry for fear of discrimination when seeking alternative employment, membership of organisations, undertaking study or travel;
- restricting the purchase of goods or services for personal use (e.g. home and contents insurance, private health care insurance, personal loans and other consumer items); and
- limiting sex workers participation in community activities.

Discrimination Impedes Health Promotion Activities

Research demonstrates that the implementation of STI education and prevention strategies and occupational health and safety standards in the sex industry is hindered by sex industry laws which criminalise sectors of the sex industry (Alexander, 1998; Banach 1999).

The first National HIV/AIDS Strategy recognised the potential for discriminatory laws and practices to damage public health interventions. It stated that:

State government's should review legislation, regulations and practices which may impede HIV education and prevention (1989: para.4.2.22)

Current medical research indicates that the risk of contracting an STI in Australia from a sex worker is negligible (National Centre in HIV Epidemiology and Clinical Research, 1998: 18). However, sex workers and clients must be able to adequately access health care information and services to encourage the development and maintenance of healthy work environments. Criminalised frameworks do not support the development of mechanisms and standards to enhance the occupational health of sex workers. Sex

workers who are the most marginalised by their work environment, as determined and influenced by legal constraints, are at greatest exposure to health risk (Alexander, 1998).

The Legal Working Party of the Intergovernmental Committee on AIDS (IGCA) examined the public health implications of sex industry laws and concluded that laws which criminalised the sex industry significantly hindered public health initiatives. They stated:

...laws which punish those working in the sex industry reduce the effectiveness of measures designed to prevent the spread of STDs (IGCA, 1991: 20).

Specifically, the IGCA recommended that discriminatory practices such as mandatory sexual health testing and identification of sex workers should be prohibited in the sex industry. Further, the display of health certificates to clients was inappropriate as they may undermine best risk management practice with respect to condom use. They recommended that sex industry businesses should supply free condoms and sexual health educational material to sex workers and make it an offence for sex industry employers to compel a sex worker to provide sexual services without a condom. The IGCA recommendations are annexed at B.

Discrimination Undermines Regulatory Objectives

The pressure for legislative changes to sex industry laws in Australia has generally derived due to external concerns such as police corruption and organised crime (New South Wales and Queensland), community health (ACT), or local council planning (Victoria). Criticism can be made of legislators addressing external factors rather than concern for the discriminatory practices which sex workers experience.

Failing to provide adequate anti-discrimination protections for sex workers undermines the achievement of regulatory objectives. Sex workers are unable to confidently participate in supporting law reform objectives (such as curbing criminal activity and minimising police corruption) without anti-discrimination protections built into a legalised framework. Research indicates that the discriminatory application of criminal laws shapes the sex industry, the provision of services and facilitates the creation of underground/illegal operators where corruption and organised crime may feature as controlling parties in the sex industry (CJC, 1991; Fitzgerald, 1989; Royal Commission in the New South Wales Police Service, 1997).

Anti-Discrimination Protections are a Human Right

The right to work in the sex industry free from discrimination is articulated in a number of International Covenants to which Australia is a signatory.

The *Universal Declaration of Human Rights* (UDHR) states that:

Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

Although Australia is bound to honor the UDHR it has largely failed to grant freedom from discrimination to sex workers on the basis of employment. The Australian Capital Territory is the only jurisdiction to amend existing anti-discrimination legislation to include occupation prohibiting discrimination on the basis of “profession, occupation, trade or calling” (*Discrimination Act 1991*).

Other relevant international covenants to which Australia is a signatory are the *International Labor Organisations Employment Policy* (ILOEP) and the *Convention to Eliminate All Forms of Discrimination Against Women* (CEDAW).

The ILOEP states that:

...the policy shall aim to ensure that all who wish to work may be able to do so, that there is freedom of choice of employment and the fullest possible chance for each worker to use his skills for a job for which he is well suited, irrespective of their race, colour, sex, religion, political opinion, national extraction or social origin (Convention 122).

The Convention to Eliminate all Forms of Discrimination Against Women applies to female sex workers. It proclaims:

... the right to work as an inalienable right of all human beings (11.1 (a)) and ... the right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training (11.1(c)).

It has been argued that the government’s failure to comply with these Covenants by failing to eliminate discrimination against sex workers is in contravention of international obligations (Metzenrath, 1997). This is particularly relevant with respect to Australia’s international obligations to provide equal treatment to all its citizens under the law. The UDHR states that:

All are equal before the law and are entitled without any discrimination to equal protection of the law (UDHR, Article 7).

To varying degrees, existing State and Territory laws regulating the sex industry in Australia fail to provide sex workers with equal treatment and protection under the law. This discrimination is apparent in laws which restrict where and under what conditions sex workers can work in the sex industry; may prohibit their financial support of partners/friends/families; acts against implementation of occupational health and safety standards; may perpetuate discrimination on the basis of sex workers assumed health status through mandatory testing provisions and registration; limits sex workers confidentially utilising legal remedies to address crimes of violence and to travel freely.

Anti-Discrimination Protections can be Easily Implemented

Addressing the discrimination that many sex workers face has not been a priority of governments in Australia. One of the reasons advanced is that it is too difficult to achieve. However, the actions of Australian Capital Territory government in amending their territory Anti-Discrimination Act to include unlawful discrimination on the basis of occupation demonstrate that simple and effective remedies are available.

States and Territories could amend existing Anti-discrimination legislation to include “profession, trade, occupation, calling” as a category of unlawful discrimination. A public inquiry by the Federal Anti-discrimination Commissioner could investigate discrimination in an occupational setting and explore Commonwealth coverage of discrimination matters.

Discrimination Against Sex Workers Research Findings

A National Survey was conducted in 1999 to identify discrimination in the employment conditions and personal lives of sex workers in Australia (see Appendix C for a description of methodology and demographics). The results are presented below and highlight that, with the exception of the ACT, sex workers perceived or had few legal avenues through which to address discrimination regardless of their legal status in the different jurisdictions. However, experiences of discrimination and lack of access to mechanisms or legal remedies to address discriminatory practices were more pronounced where respondents indicated they worked illegally.

Restrictions on Working as a Sex Worker

In 1991 The IGCA Legal Working Party recommended that statutory laws criminalising work in the sex industry should be repealed. In addition, laws which limited work in the sex industry such as 'living off the earnings of prostitution' should also be abolished. To date this recommendation has been largely ignored or selectively directed at specific sectors of the sex industry.

The research findings strongly indicate that sex workers who operate under highly restrictive or criminalized frameworks have the least opportunity to utilise existing remedies to address occupational discrimination. Laws which prohibit work in specific sectors of the sex industry undermine occupational health and safety by forcing sex workers 'underground' and limit their access to legal remedies to address discriminatory occupational practices. These practices range from crimes of violence and a perception by sex workers that these crimes are not taken seriously by the police or judicial system, unfair employment practices and unacceptable work conditions, police control of local industry determining how and where sex workers may work, to higher costs being charged for the provision of goods and services.

Most respondents indicate that they are unfairly restricted from obtaining employment in the sector of the sex industry in which they seek to work. This is due to sex industry regulations that criminalise a range of work options (see section 3 for a description of current laws regulating the sex industry in Australia). The extent to which sex workers ignore these laws relates to police enforcement and practices. Legal restrictions range from laws that prevent sex workers from sharing premises, prohibit street work, hamper operating privately and restrict employment in sex industry businesses such as escort agencies and brothels.

New South Wales and Victorian respondents indicate that local council attitude to sex industry businesses varied. Some local council's, irrespective of sex industry regulations or power of local authorities, exert pressure on individual sex workers or sex industry businesses to relocate to other localities or close premises. Respondents believe that many local council's are hostile to sex workers and exercise power they do not possess such as inspection of premises and orders to relocate. Often local councils responded to complaints from residents and some private workers indicate they were then forced to relocate by real-estate agents or landlords for operating a home business.

Some respondents report that the employment of sex industry support staff, such as receptionists and security guards is often problematic as it is often prohibited either under law or hindered by advertisers refusal to place advertising. Respondents also complain of police entrapment in many jurisdictions. By posing as potential employees or clients they are able to obtain information to charge sex workers with offences such as, 'procuring', 'working on premises for the purposes of prostitution', and 'living off the earnings of prostitution'. These practices further erode relations with police and the judicial system, making it unlikely that sex workers will seek legal remedies for crimes of violence. Sex workers often ignore the law rather than comply with onerous restrictions in those jurisdictions (primarily QLD, WA and SA) which criminalise working for sex industry businesses or limit working together in order to maximise their occupational safety or employment conditions. Respondents report that dependent upon local policing practices they were arrested for 'keeping premises for the purposes of prostitution' or feared sex industry charges. Sex workers consider it unfair and discriminatory that in order to maximise their occupational health and safety they are required to break the law.

The survey results highlight that laws regulating the sex industry contribute to sex workers' experiences of occupational discrimination. The greatest encouragement to the use of legal mechanisms to address discriminatory practices is a framework in which sex work is legal. Education regarding the legal remedies available to sex workers who work in the legal sectors of the sex industry is also required.

Health Restrictions

It is widely acknowledged that mandatory health testing is not an effective means of achieving satisfactory health outcomes in the sex industry. It is feared that mandatory testing can be used as evidence of the 'clean' sexual health status of sex workers, thereby undermining the importance of always using condoms with clients. Mandatory testing of sex workers does not assist sex workers in avoiding sexually transmitted infections (STIs) as a client's sexual health status is not considered as relevant. Further, test results are unreliable as the 'window period' for each infection varies and an individual's sexual health status cannot be assured even at the time of testing. Targeted education and prevention messages to sex workers and their clients regarding sexual health, access to primary health services and the compulsory use of condoms in the workplace are the most effective means of ensuring that sex workers and clients are protected from STIs (Metzenrath, 1999).

All respondents to the survey indicate that they regularly test for STIs, including HIV. This testing is either voluntary or a mandatory condition of employment. Sex workers report that all brothel and escort agency operators require their employees to undertake sexual health testing as a condition of ongoing employment. However, some operators demand sexual health certificates monthly, whilst others prefer to adopt a policy of education and encouragement regarding STIs and safe sex.

Western Australian respondents report that the Vice Squad requires sex workers to produce monthly medical certificates to their employees or they are unable to continue working in the tolerated/contained brothels. Similar practices appear to be widespread in NSW brothels although the frequency of testing varies. There is some support by sex workers for mandatory testing. However, the majority of respondents believe testing should be voluntary as sexual health testing is current practice in the Australian sex industry.

One of the participants to the survey had tested positive to HIV and did not report experiencing any discrimination working in the sex industry due to their HIV status. However, it is likely that as a private worker who is operating legally in a jurisdiction with no specific public health legislation directed at sex workers that discrimination was not reported. Alternatively, the respondent's HIV status and occupation are unknown to public health authorities.

Condoms Used as Evidence in Prosecution

The IGCA recommended that legislative action be taken in those jurisdictions which criminalised sectors of the sex industry to prohibit the evidentiary use of condoms for securing convictions for prostitution related offences. This has not occurred. The use of condoms as evidence in prosecuting a sex industry offence undermines health practices in the sex industry as it discourages sex workers from carrying or having present on premises sufficient quantities of condoms. Condoms are essential to ensure that sex workers, clients and the general community are protected from STIs and their use as evidence in prosecuting offences mitigates against this public health measure.

Reports that sex workers experience police harassment for carrying condoms are of concern because of the potential health implications. Although none of the respondents had been charged with prostitution related offences for carrying condoms a small percentage of respondents indicate that police use condoms to justify a range of harassment including: full body searches, to demand identification, to remove them from public amenities such as transport and streets, and to make disparaging comments.

One participant reported that safe sex materials and resources had previously been used as evidence in South Australia to secure convictions with respect to prostitution related offences. A Queensland respondent reported that whilst condoms are exempt as evidence, other safe sex material such as lubricant had been used as evidence in court proceedings

against sex workers. Other sex workers report that police use the presence of large quantities of condoms to pressure sex workers into pleading guilty to prostitution offences. The approach adopted in the ACT, sets out legal conditions for the compulsory use of condoms in commercial sexual transactions and represents best practice as it supports health initiatives rather than undermines them.

Relations with Police

Laws that criminalise the sex industry in various jurisdictions impact on sex workers' relationships with the police. The IGCA recommended that police practices that restricted sex workers movements should be discontinued because they limited sex workers civil liberties and breached Australia's obligations as signatory to international human rights conventions. This has not been achieved in Australia.

The nature of sex workers' contact and interaction with police determines whether they feel confident making complaint to police regarding crimes of violence. Better relationships with the police were apparent in those States and Territories where the majority of the sex industry was legalised and where the police had no role in regulating the sex industry.

Some participants indicate they had been charged with sex industry related offences and experienced a range of police attention ranging from harassment to detainment. However, these police encounters had generally not deterred respondents from working in the sex industry. Instead, sex workers restructure their work either by changing the way in which they provided sexual services, seek employment in another sector of the sex industry or in some cases leave the state.

One respondent moved from brothel to escort work as a result of criminal convictions and stated that many sex workers in South Australia paid off fines by swapping from illegal brothel employment to tolerated escort work. Another respondent stated that she had left the sex industry because police threatened to charge her if she continued to work in an illegal brothel. The decision to comply with police directives was due to the fear of obtaining a criminal record and the implication for ongoing care of her child.

The presence of a special sex industry-police liaison personnel in NSW and the ACT has had a marked effect in improving relations between police and the sex industry.

Use of Industrial Protections

Sex workers who work illegally do not have access to the same industrial protections as other workers in the sex industry. Sex workers who work legally are limited by the sector in which they work (e.g.: private work), the manner in which their employment is structured (e.g.: contractor), fear of retribution by employers and a desire not to be publicly identified as a sex worker. The IGCA recommended that sex workers who were

employed by sex industry businesses should be entitled to industrial benefits such as holiday and sick leave, superannuation and workers compensation. In practice, the majority of sex workers in Australia work for illegal businesses and are therefore, not guaranteed these benefits. Legal workers are also generally denied industrial benefits and protections for a range of reasons outlined below.

Respondents who had been unfairly dismissed or experienced unfair work practices (such as non-payment of wages) did not pursue their employer primarily due to fear of public identification as a sex worker. Available legal mechanisms, such as the Industrial Relations Commission or Small Claims Court, were not considered practicable because of the publicity such a case would attract. In the majority of cases the respondent had not informed their friends and family of their employment and feared discrimination if employment was known.

The other factors which respondents cited were: fear of workplace retribution, working for illegal businesses, a perception that sex workers are unprotected by the law; a perception that pursuing employers would fail, the lack of assistance available to pursue such actions, fear of disclosing occupation to government authorities, non-payment of taxation, fear of social security investigations and fear of discrimination in the provision of goods and services.

It appears that sex workers in the legal sectors of the sex industry are often unaware of the legal remedies available. The use of industrial protections to address discriminatory work practices can only be successful if the sex industry is legalised/decriminalised and legal workers are aware of their rights in this regard. Government instrumentalities must take a proactive role in enforcement and education campaigns.

Restrictions on Movement

Sex workers, regardless of their legal status, can be prevented from entering certain countries if they list their occupation on visa and passport applications. Sex workers who do not have sex industry related charges have to lie on visa or passport occupations to gain entry to countries which prohibit sex workers. Those sex workers who work in the illegal sectors of the sex industry constantly risk sex industry-related offences which would have significant restriction on their movement between countries.

None of the sex workers surveyed had experienced difficulties travelling between countries. This is because they fear being prevented from entering certain countries and therefore did not inform immigration officials of their occupation. A few respondents were apprehensive about traveling between countries because of previous sex industry charges. One respondent was completing community service as a result of a sex industry conviction states she was restricted from leaving the state until completion of the order.

Discrimination Against Sex Workers Associates

The IGCA recommended that laws pertaining to ‘living off the earnings of prostitution’ be repealed in Australia. In practice only a few jurisdictions have done so. The implication of such laws for sex workers is that their partners and family can be charged with sex industry offences if they are partially or completely supported by their earnings. It is unacceptable to limit whom and on what sex workers may spend their earnings.

The majority of respondents report that their associates had not experienced police attention or criminal prosecution. However, two sex workers’ partners were threatened with “living off the earnings of prostitution”. Another respondent’s friend was detained by police for leaving premises suspected of being “used for the purposes of prostitution” in order for police to obtain evidentiary statements as to the nature of the business. One respondent reports that a friend, who was confined to a wheelchair, was charged and convicted for attending a brothel whilst visiting her for coffee.

Generally, sex workers seek to shield their friends and family from discrimination by not disclosing their occupation to people outside their immediate network. This sometimes includes not informing family and friends of employment in their sex industry for fear of both family reactions and potential discrimination against family and friends. One respondent describes her reason for not informing anyone of her employment as, “I’m not game to tell people due to the possibility of discrimination because of fear of the ignorance and misconception of the realities of being a worker”. Sex workers report that remarks intended to be disparaging such as ‘pro’ and ‘whore’ are shouted at them when it is public knowledge they work in the sex industry, which explains a reluctance to disclose their occupation widely.

Allegations of drug use and drug dealing were directed at a sex worker and her friend by police who were unconvinced that her income was derived solely from sex work. Two respondents believe that police knowledge that they worked in the sex industry had direct implications for their immediate associates. In these cases a partner facing non-sex industry related criminal charges was severely treated and the sister of the other respondent was denied entry to the Police Service.

For sex workers with primary care of children there is the added fear that custody/parenting issues and harassment of their children may occur if their occupation is known. In addition, the duality of maintaining family life and occupation separate is a cause of stress for many sex workers. Those sex workers who work under heavily criminalised systems are less likely to disclose their occupation, and are more likely to fear discrimination for working in the sex industry, which suggests that legislation plays both an educative as well as protective role.

Advertising Sex Industry Services

One of the most significant areas of discrimination affecting sex workers throughout Australia is in the advertising of sex industry services. Participants to the survey across all jurisdictions working in a variety of legal and illegal settings report discriminatory advertising practices. Publishers generally seek to justify discriminatory practices on the ground that they comply with sex industry legislation. These practices are usually accepted by sex workers who are concerned that their advertising will otherwise be refused.

Some or all of the following practices were evident across all State's and Territories and included:

- Newspapers refusal to accept advertising for sexual services;
- special conditions applying to sex industry advertising such as advance payment, charging higher fees, limits on how long advertisements could run and having to place advertising in person rather than over the telephone;
- publishers failing to place advertising which had been accepted and paid;
- denied placement of advertising in the relevant sections of the newspaper;
- advertisers ignoring complaints or threatening to cancel future advertising;
- advertisers determining the content and design of advertisements;
- regularly changing policy and guidelines with respect to sex industry advertising without advisement;
- unapproved changes to pre-paid advertising; and
- rudeness of staff when placing advertising.

Generally, participants to the survey believed that they were treated differently from other businesses and “singled out for special attention” by advertisers. They believe that discriminatory advertising practices are perpetuated by the absence of mechanisms for pursuing complaints. It appears that legalisation has had little affect on discriminatory publishing practices.

Other Forms of Discrimination Against Sex Workers

The primary survey finding is that sex workers limit discrimination against them by not disclosing their occupation. This need to maintain secrecy places significant stress upon

respondents who have been charged with prostitution-related offences or fear their employment in the sex industry is or may become known.

Seeking other employment

When applying for a job outside the sex industry the majority of respondents do not inform potential employers of their history of employment in the sex industry for fear of discrimination. This poses significant challenges for sex workers' in explaining gaps in employment history, particularly in smaller communities where the workers occupation is known or assumed.

Sex workers with criminal convictions are often prevented by law from applying for government positions or fear their employer will discover their previous convictions for prostitution related offences. These factors dissuade sex workers from seeking work outside the sex industry. As one respondent, who had previously disclosed her previous employment commented:

They weren't too sure what to say at job interviews – I think this was mainly because I was so matter of fact about it. “What was your previous job?” “I was an escort” – awkward silence. The first job I got where I felt comfortable, I didn't mention previous employment.

A worker's willingness to disclose a sex industry related employment history was dependent upon the position sought, whether disclosure was relevant to the position or where they were confident the employer would not discriminate on the basis of prior occupation.

Membership of trade unions

None of the respondents reported discrimination in seeking membership or services from a trade union due to their employment in the sex industry. This was because they had either not sought membership or were unsure of the appropriate union to join. One respondent feared repercussion from her employer if she joined a union. It may be appropriate to investigate union coverage of sex workers and the types of services they could provide to sex workers in providing protection from discrimination in the workplace.

Entry to clubs or hotels

Similarly the majority of sex workers did not report being refused entry to clubs or hotels but believed this was because they were not soliciting from the premises or because management/staff were unaware of their occupation. Those respondents who stated they were refused entry believe this was due to inappropriate attire. One respondent was

asked to leave a particular nightclub on a number of occasions and believed this was due to her work in the sex industry.

Education

None of the respondents had experienced direct discrimination in educational pursuits. However, those respondents currently studying fear discrimination on the basis of occupation and therefore are unwilling to disclose their employment history in the sex industry. One respondent who disclosed her employment status in her education course is unsure of the eventual implications or outcomes of such a disclosure.

Goods and services

Sex workers reported a wide range of discrimination with respect to the purchase of goods or services and that avenues to address such practices are limited or non-existent. Those respondents who have not experienced discrimination believe this is because they work legally or do not disclose their occupation. However, on occasion it is necessary for sex workers to disclose their occupation to obtain basic amenities or services to run their businesses. It appears that sex workers working in a legal framework are unaware of the legal remedies available to address discrimination although they report discrimination less frequently than those sex workers who work illegally.

Sex workers experiences of discrimination is reported below:

Banking:

Credit cards are often denied when financial institutions seek information about applicants' occupation rather than income level. Rejections do not appear to be based on evidence of a bad credit rating, or unstable or low income; banks threaten fraud charges for failing to record correct occupation; banks often require sex workers to provide business records covering a longer period than they require of other businesses, as proof of stable income, when securing a business or personal loan; difficulties in obtaining home and car loans that do not relate to their credit rating; and difficulties in increasing credit card limits that do not relate to their credit rating. Sex workers who report discrimination in obtaining banking services believe it is due to banks not applying the same business standards as they would to other service industries.

Insurance:

Similarly experiences are described with respect to insurance matters, with some respondents indicating that irrespective of their 'good rating; they are unable to secure home and contents insurance and mortgage insurance against loss of income. Sex workers stated that they found questions on insurance plans such as "have you ever had sexual relations with a prostitute" offensive and discriminatory. Such practices dissuade

sex workers from disclosing their occupation which has resulted in a refusal to settle claims once the matter is investigated and occupation is known. Some respondents stated that they been refused health insurance due to an assumption that they are at a greater STI risk.

Business services:

Sex workers report that businesses occasionally refused to supply basic amenities; that phone companies sometimes deny applications for mobile phones because sex workers income and address is not considered permanent or stable; other respondents report inappropriate sexual suggestions by shop attendants and other service providers once occupation is known.

Health services:

Some limited evidence of health care providers refusing to conduct STI examinations on the basis of a respondent's occupation was reported.

Housing and accommodation

Sex workers experience a range of discrimination in securing temporary and permanent housing once they disclose or their occupation is known. This is irrespective of whether they are working from the premises. Discrimination in accommodation ranges from refusal to rent properties and hotel rooms; eviction from hostels and hotels; rude treatment by employees of hotels; eviction from private rental accommodation; landlords from business premises contacting landlords from private rental premises about their residents occupation; and city councils informing landlords of sex workers' occupation. The majority of respondents indicated that they would "never put my occupation because I feel sure my application would be rejected".

In all the cases reported none of the respondents took further action. This is because they are unaware of the avenues by which to do so or because they work illegally.

Law Reform

Sex workers were asked to describe what law reform initiatives they believe are necessary to limit discrimination in the sex industry. Their responses were informed by the State or Territory in which they work as well as their experiences of discrimination. All respondents believe that laws regulating the sex industry must be changed in order to allow sex workers to legally work in the sector of their choice, to maximise sex workers occupational health and safety, to improve work conditions and to limit discriminatory practices. Sex workers suggest that working legally improves access to industrial protections. In addition, sex workers believe that greater mechanisms were required to address the discriminatory practices in the sex industry. Suggestions included

amendments to state based anti-discrimination legislation to include unlawful discrimination on the basis of occupation and strengthening privacy measures.

Respondents' suggestions for law reform are reported by outlining those laws which sex workers believe discriminate against them and law reform initiatives which would limit discrimination against sex workers and improve protections. All suggestions are reported and not all respondents may agree with the recommendations of other participants to the survey.

Laws that discriminate against sex workers

- An absence of laws which prohibit discrimination against sex workers;
- Unequal access to existing legal mechanisms to address crimes of violence or address unfair dismissal or work conditions;
- The cost of registering sex industry businesses in Victoria and New South Wales;
- Requirements for monthly STI medical checkups as a condition of employment in legal brothels and privacy concerns about the tests;
- Living off the earnings of prostitution offences which affect sex workers financial support of their families and partners;
- Laws prohibiting work in the sex industry if testing positive to an STI;
- Laws which prohibit or restrict work in certain sectors of the sex industry (such as brothels in NSW, QLD and SA; private worker restrictions in NSW);
- Private workers in Queensland being unable to employ affordable security or a receptionist;
- Laws which forbid the donation of blood on the basis of occupation rather than risk behaviour;
- Being required to register with the Vice Squad in Western Australia, Northern Territory and other jurisdictions where registration of individual sex workers is required by law; and
- Laws which limit the provision of sexual services by criminalising all associated activities such as 'being on premises for the purposes of prostitution'.

Respondents proposed law reform initiatives to address discrimination

- Extension of superannuation entitlements, sick leave and holiday pay, work care cover;
- Industrial Relations Commission clarification regarding employer practices of engaging contract labor rather than full-time employees;
- Education of sex workers regarding the current industrial protections and legal and other mechanisms to limit discrimination;
- Expansion of the legal sectors of the sex industry to increase the coverage of sex workers protected under industrial and legal mechanisms;
- Amendment of anti-discrimination legislation to include occupation as a category of unlawful discrimination;
- Sex industry business should be treated as other service industries in the formation of laws regulating the sex industry;
- Involvement and consultation with sex workers regarding appropriate models for law reform which maximise sex workers access to current legal protections;
- Insurance providers should be compelled to provide reasons for denial of health coverage to sex workers;
- Amendments to police powers legislation;
- Legalisation and decriminalisation of the sex industry and continuity of sex industry laws throughout Australian jurisdictions;
- Legal mechanisms to address exploitation in the workplace and legal avenues for complaint;
- Greater local council accountability in New South Wales and Victoria;
- Safe designated areas for street workers;
- Community education to address myths about sex workers;
- Greater regulation of sex industry businesses with respect to occupational health issues;

- Abolishing the ‘containment policy’ regulating sections of the sex industry in Western Australian and codifying the current practices into legislation removed from police control; and
- Establishment of independent statutory bodies to hear sex worker complaints and proactively protect their rights.

Current Laws Regulating the Sex Industry in Australia

There is a considerable difference between the States and Territories with respect to laws regulating the sex industry. Since the 1980's significant debate and law reform initiatives have been undertaken around Australia resulting in legislative changes. Some jurisdictions have mostly removed criminal law sanctions and replaced them with other forms of regulation, whilst others have strengthened criminal sanctions. In common, are provisions within legislation preventing coercion and employment of minors. Other jurisdiction sex industry regulations are currently under review.²

This section of the report provides a description of the approaches used to regulate the sex industry in Australia and highlights practices that may discriminate against sex workers under the legislation reviewed.

AUSTRALIAN CAPITAL TERRITORY

Framework:

The Australian Capital Territory moved from a criminalised system of regulation in 1992 to a minimal regulatory framework under reforms enacted under the *Prostitution Act 1992*. Owners and managers of escort agencies and brothels are required to register business operations with the Registrar of Brothels and Escort Agencies within 7 days of commencing business. Prescribed industrial areas have been designated for operations and it is illegal to locate outside zoned areas. Single workers may operate from their own premises but are required to register with the Registrar. Street soliciting remains an offence under the Act.

Health Offences:

The Act includes provisions relating to sexually transmitted infections, condom use and safe sex practices that:

- Require operators of brothels and escort agencies to take reasonable steps to ensure that sexual services are not provided by sex workers infected with sexually transmitted infections;

² This section draws heavily from two documents that have been updated to make information current as at November 1999. They are: Police and Corrective Services. (1998). *Review of Prostitution Laws in Queensland: Discussion Paper*. Brisbane & HIV/AIDS Implementation Working Group. (1998). *Status Report on Implementation of the Recommendations of the 1992 Final Report of the IGCA Legal Working Party*. Canberra, Australian National Council on AIDS and Related Diseases.

- make it an offence for a sex worker to provide or receive commercial sexual services if they know they are infected with an STI;
- require operators to take reasonable steps to ensure that condoms are used;
- make it an offence to provide or receive certain services without using a condom; and
- prohibit operators from using the fact that a sex worker has had a medical examination for the purpose of inducing a person to believe that the worker is not infected with a sexually transmitted infection.

The effect of these provisions is that whilst sex workers are not compelled to undertake sexual health testing exist offences relating to the exclusion of sex workers with an STI effectively encourages mandatory testing and provision of medical certificates to employers. The impact is not as serious as in Victoria as legislative requirements exclude the provision of medical certificates to clients.

Advertising Restrictions:

The *Prostitution Act* specifies that there be no restrictions on sex industry advertising. This includes the use of explicit language. In practice, the local newspaper determines the wording of sex industry advertising. The Canberra Times policy for sex industry advertising includes a list of words which it will not accept for publication. Recently a sex worker, claiming unlawful discrimination on the basis of occupation, sued the Canberra Times under ACT anti-discrimination legislation. The Judge determined that the publisher had not discriminated against the applicant on the basis of her occupation. The case is now under appeal.

Industrial Conditions:

Similar to Victoria, sex workers employed by escort agencies and brothels are entitled to industrial benefits. However, in practices sex workers are often not classified as employees but independent contractors. It appears that legal clarification through the Courts is required and the sex workers are educated as to their existing rights in order to challenge employers.

The establishment of a Sex Industry Consultative Group which advises the Government on the effective operation of the Act and other matters pertaining to the sex industry provides an avenue to address issues which arise.

Effectiveness of Legislation:

The intention of the act was to limit the barriers to open participation in registering business interests in the ACT sex industry. The absence of probity checks has facilitated the entry of people who have previously operated illegally and may therefore have criminal records into a legal framework. Consequently there is high compliance with registration. The absence of planning approvals and the number of approved premises means that an illegal brothel sector has been avoided.

Privacy concerns amongst private sex workers is believed to have hindered their registration. The only illegal operations in the ACT appear to be limited incidence of small two-person operations in residential areas.

Law Reform Initiatives:

Amendments to the Act were made in 1997 which compelled information held by the Registrar to be updated annually as a complete record of sex industry service providers was not being effectively maintained. Law reform initiatives are raised at the Sex Industry Consultative Group and recent initiatives include discussions to expand the definition of private worker to two operators, application of occupational health and safety codes and privacy concerns for registering individual sex workers.

NEW SOUTH WALES

Framework:

In 1995 the *Disorderly Houses Amendment Act* established a mechanism for the legalisation of brothels which enabled sex industry businesses to apply to local councils for planning approval. Private or solo workers may also be required to seek approval depending on the local council. Similarly, escort agencies may also be required to seek approval depending on the local council. Street work was decriminalised in 1979 although amendments in 1988 restricted solicitation near or within view of a dwelling, school, church or hospital. 'Living off the earnings of prostitution' offences apply to street workers under the *Summary Offences Act*.

Health Offences:

It is an offence for knowingly allowing a person with a sexually transmitted infection to work in the sex industry. Although no specific law exists which requires testing for STIs and provision of medical certificates the impact of public health legislation effectively encourage mandatory sexual health testing and provision of medical certificate as a condition of employment. There are no offences for sex industry employers who compel sex workers to provide sexual services without a condom or require them to provide condoms to employees.

Industrial Conditions:

Industrial benefits are not set out in law. Individual Councils have developed occupational health and safety standards which apply to brothels in their local areas (see South Sydney Councils brothel policy which seeks to regulate brothels in a similar manner to other businesses). This is a voluntary code and no uniformity in implementation has occurred.

Advertising Restrictions:

There is no legislation relating to advertising of sex industry businesses. In practice local newspapers determine the wording of sex industry advertising. There is no uniformity across publishers and sex workers conform to the policies of the various newspapers in which they advertise.

Effectiveness of Legislation:

Since the introduction of the *Disorderly Houses Amendment Act 1995* brothels are subject to planning processes set out under local council Local Environment Plans. Significant problems have occurred in brothels obtaining development approvals where specific councils have banned the location of brothels and applications are rejected on moral or minor planning grounds. As in Victoria, cost and delays preclude many businesses from appealing applications. The experience of brothels seeking approval has dissuaded other brothel owners who operate illegally from drawing attention to their location and operation. It has been reported that street workers are experiencing difficulty in operating in designated areas due to 'gangs' demanding protection money to allow operation in specific areas.

Law Reform Initiatives:

The focus for law reform has been to achieve local council uniformity on decisions regarding planning approvals, to make these approvals on health and safety standards rather than moral and to expand the *Anti-Discrimination Act* (NSW) to include occupation as a category of unlawful discrimination.

NORTHERN TERRITORY

Framework:

Licensed escort agencies are legal in the Northern Territory under the *Prostitution Regulation Act 1992*. Prior to the introduction of the Act all forms of organised prostitution related activity in brothels and escort agencies was illegal although tolerated by local police. The legislation appears to have formalized these processes. Operators and Managers of sex industry escort agency businesses must be licensed and all sex workers employed in licensed escort agencies must be registered and certified with the

police. Individual or private escort workers are exempt from certification but are not allowed to provide 'in-house' sexual services. Certain offences, such as drugs and violence convictions, disqualify individual sex workers from obtaining certification. Brothel and street work is illegal.

Health Offences:

The legislation contains specific reference to medical examinations with the aim of preventing the use of certificates as evidence that sex workers are free from STIs. Section 20 (2) of the Act states:

A licensee shall take all reasonable steps to ensure that the fact of a prostitute's attendance at a medical examination or the result of such an examination is not used for the purpose of inducing a person to believe that the prostitute is not infected with a sexually transmitted disease.

There is no legal requirement for mandatory sexual health testing and specific reference is not made in public health legislation to HIV positive sex workers.

Industrial Conditions:

The Escort Agency Licensing Board has the power to make orders with respect to working conditions that are subject to approval of licenses. If an employer/employee relationship is said to exist between the license holder and the employee then the *Work Health Act* applies and sex workers have entitlement to workers compensation for a work-related injury. In practice this rarely occurs.

Advertising Restrictions:

Section 19 of the Act specifies that explicit advertising for sexual services is illegal. The onus for compliance with the Act is upon the proprietor of the publication in which advertising occurs. Regulations made under subsection (1) of the Act specify the size, form and content of advertising. In practice, the Northern Territory newspapers have discretionary power to determine the content and placement of advertising.

Effectiveness of Legislation:

The Northern Territory legislation has not attracted similar problems with respect to planning approvals as experienced in other States. The intention of the Act was to eliminate opportunities for police corruption and illegal involvement in the sex industry through licensing provisions. Conditions attached to the provision of a license include maximizing sex workers occupational safety, providing sex workers with a contract of the terms of their conditions, informing sex workers of sexual health support services provided by the Sex Industry Association of the Northern Territory; and to compel sex workers to practice safe sex. However, the following criticism is directed at the model:

- It is highly restrictive;
- registration of individual sex workers employed by escort agencies is unfair as many workers seeking to avoid registration operate alone to avoid certification;
- certification of sex workers employed by escort agencies raises privacy concerns and dissuades sex workers from obtaining work in this sector of the sex industry; and
- the aim of maximizing sex workers occupational safety under the law has not been met due to a failure to legalise brothels.

Law Reform Initiatives:

In 1998 the Attorney General tabled a report on the operation of The Prostitution Regulation Act recommending that brothels be legalised. The aim of amending the Act to legalise brothels was to monitor the sex industry more effectively, to increase safe sex practices, to provide safer working conditions and to reduce exploitative practices in the sex industry. A Working Party has been established to consider the proposals and options for reform.

QUEENSLAND

Framework:

The *Prostitution Laws Amendment Act 1992* criminalises brothels, lap dancing establishments and escort agencies. Under the Act it is an offence to: knowingly participate, directly or indirectly in the provision of prostitution; be found in places suspected of being used for the purposes of prostitution; procure another person to work in the sex industry; have a financial or other interest in premises and knowingly allow the premises to be used for the purposes of prostitution. Associated living off the earnings of prostitution offences are still contained within the legislation.

The *Vagrants, Gaming and Other Offences Act 1931* prohibits publicly soliciting for the purposes of prostitution and advertising explicit sex industry services. The only sector in which it is legal to operate in Queensland is as a private sex worker operating from his or her own premises. The definition of prostitution is broad and encompasses: allowing a sexual act to be done to the person's body; doing a sexual act to the person's own body or to the body of another person; or otherwise engaging in an act of an indecent nature with another person under a commercial arrangements. Various health-related provisions also apply (discussed below).

Health Offences:

To mitigate against the potential harmful effects to public health of sex industry legislation a range of provisions were included to encourage safe sex practices

irrespective of the whether services provided were conducted in a legal or illegal setting. Evidence of condoms are not admissible in court; evidence of health checks undertaken within 3 months prior to commission of offence can be used as a mitigating factor in sentencing and a health care provider cannot be compelled to provide evidence.

In practice, whilst condoms are inadmissible the presence of safe sex materials such as lubricant, health education and prevention material have been used to proceed with prostitution related charges. Whilst the Attorney General's Department issued a directive that no prosecutions based on safe sex evidence were to proceed this is not a statutory requirement and it is reported that such materials continue to be used to obtain admission of offences. Whilst there are no mandatory testing requirements for sex workers the admission of medical tests in mitigation of penalty has a similar effect. There are no requirements for medical certificates to be provided to clients or for condoms usage. There are no sex worker specific provisions within public health legislation preventing HIV positive sex workers from working in the sex industry.

Industrial Conditions:

As 'organised'³ sex work is criminalised there are no industrial benefits or occupational health and safety conditions set out in law and access to work place mechanisms to address industrial abuses are denied to sex workers.

Advertising Restrictions:

Explicit advertising is regulated under Section 18B of the *Vagrants Gaming and Other Offences Act 1931*. The prohibition covers advertisements that imply or explicitly state that sex industry services are available. In addition, advertising for staff or seeking employment in the sex industry is prohibited. Advertisements are limited in where they may be placed, their size and format, and artwork and words describing services are determined by the publisher. Special conditions apply to sex industry advertising such as higher costs and a requirement for payment in advance.

Effectiveness of Legislation:

The legislation has been widely criticised as ineffectual, expensive to administer and for undermining sex workers occupational health and safety. The murder of five sex workers and reports by private workers that their safety is compromised by laws which do not allow employment of security led to the establishment of a Working Group to inform the outcomes of a report commissioned by the Police and Corrective Services Ministers under the previous and current governments.

³ Defined as any sector of the sex industry which does not conform to the strict definition of legal sex work. That is a private worker operating alone from his or her own premises.

Law Reform Initiatives:

A model for regulating the sex industry has been released and recommends the legalisation of small-scale brothels in non-residential areas in population centers with less than 25 000 people. Establishment of a Licensing Board is proposed to oversee the granting of licenses to brothel owners and to conduct probity checks of potential owners. A Prostitution Advisory Board with wide ranging responsibilities will also be established to examine issues that arise with respect to legalised brothels. Street workers will face increased penalties. Escort agencies will be illegal and private workers operations will remain unchanged. It is intended that legislation will be introduced to Parliament by the end of the year and become effective from July 2000.

SOUTH AUSTRALIA

Framework:

The *Summary Offences Act 1953* prohibits street work (loitering, soliciting and accosting), keeping or managing or assisting in running a brothel, allowing premises to be used for the purposes of prostitution, receiving money paid in a brothel, and living off the earnings of prostitution. Private sex workers can be charged for receiving money paid in a 'brothel'. The laws do not directly target escort agencies. The *Criminal Law Consolidation Act 1935* contains the offence of procuring a person to become a prostitute (s.63).

Health offences:

As the sex industry is criminalised there are no specific offences for mandatory HIV-testing, provision of medical certificates or working with a sexually transmitted infection contained in legislation. Public health legislation does not specifically refer to sex workers. Similarly, there is no legislative requirement for condom use or to encourage education around sexual health matters. to compel condom use or encourage education

Industrial Conditions:

As sex work is criminalised there are no industrial benefits or occupational health and safety conditions set out in law. Access to work place mechanisms to address industrial abuses is denied to sex workers.

Advertising Restrictions:

Advertising is limited in respect to where they may be placed, the size and format of advertisements, and the words used to describe services. Special advertising conditions are applied to sex industry advertising such as having to place advertisements in person, advance payment of advertisements, higher costs and a limitation of how long they may run. The publisher determines the terms and conditions at their discretion.

Effectiveness of Legislation:

South Australian sex industry laws are widely criticised for being ineffectual in prohibiting sex work. A range of other concerns has been raised about the appropriateness of continuing to criminalise the sex industry and instead legislation should seek to regulate the sex industry through legalisation of brothels and escort agencies.

Law Reform Initiatives:

Numerous attempts at sex industry reform have been undertaken over the past twenty years. The South Australian Parliamentary Select Committee for Social Development is currently conducting an inquiry into prostitution. Its report was tabled in Parliament in 1996 and recommended that “while prostitution should not be encouraged, its existence must be acknowledged and stringent controls placed on how and where the industry operates”. A regulatory framework was proposed for the operation of brothels and escort agencies with a range of restrictions relating to location, ownership and advertising. In 1998 a Ministerial Working Party on Prostitution was convened by the Minister for Police to consider options for addressing sex industry reform in South Australia.

TASMANIA

Framework:

The Tasmanian sex industry legislation is similar to South Australia and Western Australia. The legislation prohibits: soliciting in a public place; living off the earnings of prostitution; keeping a brothel; procuring a person for the purposes of prostitution and permitting premises to be used for the purposes of prostitution. In practice, brothels are well established in Tasmania and are not prosecuted by police.

Health Offences:

As the sex industry is criminalised legislation does not contain specific offences for mandatory HIV-testing, provision of medical certificates or working with a sexually transmitted infection. Public health legislation does not specifically refer to sex workers. Similarly, there is no legislative requirement for condom use or to encourage education around sexual health matters, to compel condom use or encourage education.

Industrial Conditions:

As sex work is criminalised there are no industrial benefits or occupational health and safety conditions set out in law and access to work place mechanisms to address industrial abuses are denied to sex workers.

Advertising Restrictions:

Sex industry legislation does not make specific reference to advertising of sex industry services. Individual publishers have in place policies with respect to restrictions on the types of words that may be used. The three newspapers in Tasmania do not limit the size or format of advertising, are liberal with words that may be used and do not charge more for advertising sex industry services. There are no credit arrangements and advertising must be pre-paid. However, individual sex workers have been successful in obtaining accounts.

Effectiveness of Legislation:

The legislation has been criticised for undermining occupational health and safety standards of sex workers. Currently the sex industry is unregulated and some brothel/escort operators have been accused of oppressive working conditions and intimidating practices.

Law Reform Initiatives:

The Parliamentary Committee established to investigate possible regulation of the sex industry has recently reported. It recommended a legalised framework with a range of restrictions on brothels and escorts such as the number of workers permitted to work. Amongst suggested reforms is mandatory testing, location of brothels in commercial or industrial areas, registration of sex workers, private workers (up to two) allowed to operate without registration, regulation not by local councils but a licensing body.

A decision has not been made yet about the model to be put before Parliament. There are some concerns that the government may alter the recommendations or intention of the report. The intention is to introduce legislation in Parliament later this year.

VICTORIA

Framework:

Since 1995 the Victoria sex industry has been regulated by a combination of local council planning and licensing of brothels (until 1986 to 1995 only planning requirements applied). In 1995 the *Prostitution Control Act* was introduced and the Prostitution Control Board (later replaced by the Business Licensing Authority) was established to issue licenses to operators of brothels and escort agencies. The legislative framework is detailed and the most comprehensive regulatory model in Australia. Small brothels of one or two workers do not require licenses but must register with the Business Licensing Authority and provide photographic identification. Street soliciting remains an offence and criminal penalties apply for providing sexual services outside the planning and licensing system. Living off the earnings of prostitution offences still exist for income generated in the illegal sectors of the sex industry.

Health Offences:

The *Prostitution Control Act 1994* includes a range of offences relating to health which apply to both business operators and individual sex workers. It is illegal for:

- A brothel owner or manager to permit a prostitute infected with a sexually transmitted disease to work. An owner or manager is deemed to know of the infection unless they can show that the sex worker had undergone regular health checks and was not infected; and
- A sex worker to work while infected with a sexually transmitted disease. A sex worker is deemed to know of an infection unless it can be shown that s/he had undergone regular health checks and believed on reasonable grounds that s/he was not infected.

There are no specific laws in Victoria relating to the identification and mandatory testing of sex workers. However, in practice offences under the Act excluding HIV positive sex workers effectively encourages mandatory HIV testing and the provision of medical certificates to brothel owners. Under the *Health (Brothels) Regulations 1990* it is illegal for an employer of a sex worker to require the provision of sexual services without a condom.

Industrial Conditions:

Sex workers who are classified as employees are entitled to industrial benefits such as sick leave, holiday pay, superannuation etc. However, the practice of employers classifying sex workers as independent contractors means that these conditions are generally not met. Unionisation of the sex industry, which is in the process of developing, may have some impact on changing or clarifying this classification problem. Sex workers operating as private workers or outside the legal framework do not have access to any industrial benefits.

Advertising Restrictions:

The *Prostitution Control Act 1994* and the *Prostitution Control Regulation Act 1995* set out the restrictions on advertising sex industry services. Publishers can only accept advertising which contains the providers exemption or license number, photographs can only contain head and shoulder shots of a consenting adult, total size limitations of all advertising 18cm x 13cm apply and reference can not be made to health status or medical testing, ethnic background, race or colour.

Effectiveness of the Victorian Legislation:

The detailed and complicated nature of acquiring planning and licensing permission has dissuaded many potential operators from obtaining approval. Although local councils are

prevented from rejecting a brothel application on moral grounds in practice many applications are denied and operators must go to appeal. The expense and delay in granting permits has not facilitated the entry of small to medium sized brothels to the legal industry. Combined with the failure to decriminalise street work the Victorian model has resulted in the creation of a two-tier system of legal and illegal workers.

WESTERN AUSTRALIA

Framework:

The sale of sex is not illegal in Western Australia. Associated activities are illegal and include: Keeping or managing premises for the purposes of prostitution; procuring a person for the purposes of prostitution, permitting a woman under 21 years on the premises of a brothel; living off the earnings of prostitution; permitting premises to be used as a brothel; being an occupier of a house used for the purposes of prostitution; consorting with prostitutes; street soliciting, loitering, importuning, wandering in public places and behaving in a riotous or indecent manner. It is legal to work privately from your own premises as long as you work from the same premises and do not employ any support staff or share premises with another sex worker.

In practice, since 1975 Police have enforced a ‘containment policy’ which operates in Perth and Kalgoorlie. The policy is not set out in writing and its interpretation depends upon Police Officers employed in the Vice Section of the Western Australian Police Force. Generally, the ‘containment policy’ allows or tolerates brothels in designated areas (Perth and Kalgoorlie). In Perth, the Vice Squad permits 13 premises to operate and conditions include registration of sex workers, prohibition on alcohol and drugs on premises, regular health checks and no involvement by minors. In Kalgoorlie, the Containment Policy allows four brothels to operate.

Health Offences:

As the sex industry is criminalised there are no specific offences for mandatory HIV-testing, provision of medical certificates or working with a sexually transmitted infection contained in legislation. Public health legislation does not specifically refer to sex workers. Similarly, there is no legislative requirement for condom use or to encourage education around sexual health matters, to compel condom use or encourage education. However, the containment policy requires that health checks be regularly undertaken which has encouraged a de facto mandatory testing arrangement in brothels.

Industrial Conditions:

As sex work is criminalised there are no industrial benefits or occupational health and safety conditions set out in law and access to work place mechanisms to address industrial abuses are denied to sex workers.

Advertising Restrictions:

There are no legislative limitations on advertising sex industry services. The newspaper groups in Western Australia have established a voluntary code of practice which sets out controls for the use of graphics and text in the personal section of the newspapers.

Effectiveness of Legislation:

Concern about the effectiveness of the 'Containment Policy' has arisen over the past five years. The police estimate that only small proportions of sex workers are registered under the Policy with the majority of the sex industry being unregulated. Criticism has also been made of the potential for police corruption. Anecdotal discussions within the sex industry suggest that the current system of police control means that sex workers are unlikely to report crimes of violence to police, particularly where police are a category of perpetrator.

Law Reform Initiatives:

In 1997 a Ministerial Working Group was established to report on more effective regulations for the sex industry. The recommendations included: the establishment of a Prostitution Control Board reporting to the Minister for Health; mandatory health requirements for sex workers; establishment of an Advisory Council; legalisation of brothels in designated areas; increased penalties for people operating outside the legal framework; controls on advertising; and criminalisation of street soliciting. The Ministerial Working Group did not consult with workers in the sex industry. Sex workers considered the proposed 'reforms' to the sex industry unworkable. The current government has decided not to proceed with law reform in the foreseeable future.

Current Remedies for Discrimination

The findings in this report highlight that a significant issue for sex workers is a fear of publicly identifying their occupational status regardless of their legal status. The reasons for this include: fear of working illegally, discriminatory practices in obtaining basic goods and services, community attitudes towards sex workers and not having informed family and friends. It is this framework that contextualises sex workers' ability to address discrimination in the workplace. That is, that whilst some legal remedies and mechanisms exist which sex workers could access to address discrimination the barriers to utilising them are significant. A legal framework provides the greatest opportunity for sex workers to access existing legal mechanisms and industrial protections. However, use of these remedies still requires education of sex workers in order to improve their uptake of these remedies and protections and education of the community. The benefits of education are that they assist in decreasing stigma against sex workers whilst increasing the capacity to regulate the sex industry in a way which promotes occupational health and safety.

The remedies currently available for sex workers vary according to the State in which they live and the laws regulating the sector of the sex industry they work in. Sex workers who work illegally generally have no redress for workplace discrimination although they have other rights with respect to occupational safety. There is a range of existing mechanisms and procedures which both illegal and legal workers in the sex industry can use which are set out briefly below as a guide⁴. Sex worker organisations in the various states and territories provide information, advice, support and referral to relevant organizations for discrimination matters⁵.

Sexual Assault and Other Violent Crimes

All sex workers regardless of the laws regulating the sector of the sex industry in which they work have access to legal remedies to address crimes of violence – irrespective of whether these crimes occur in a private or workplace setting. Sex workers seeking to proceed with complaints can approach the sex worker organisation in their state who can provide support in police procedures, make appropriate referrals to community legal services, women's organisations and other relevant support agencies.

⁴ The information contained in this section is not exhaustive and is intended to highlight possible avenues to address discriminatory practices. Specific details have been provided where there is Commonwealth coverage of matters. State and Territory coverage is not detailed in full due to length constraints. Information is correct as at November 1999.

⁵ Appendix A sets out the sex worker organisation in each Australian state and territory.

Unfair Dismissal

Sex workers employed illegally have no protection under their respective Industrial Relations laws. Sex workers who are employed legally have similar protections to workers employed in other industries under industrial relation laws. Sex workers who are not covered under industrial relations laws may have common law remedies through the Courts for unfair dismissal claims. Small Claims Courts can be an effective means of seeking payment for unpaid services provided by sex workers for amounts under \$5 000.

Contact: Australian Industrial Relations Commission: (07) 3227 6666 or Office of the Employment Advocate: 1300 366 632

Union Membership

Union membership may be an option for some sectors and individual workers in the sex industry. Some states such as Victoria have progressed towards increasing union membership amongst legal sectors of the sex industry. Union membership would raise awareness of the discriminatory practices endemic within the sex industry and may be successful overtime in changing practices, supporting sex workers in arbitration and conciliation for workplace breaches and improved working conditions.

Advertising

Individual publishers determine the terms and conditions under which they will accept advertising. Publishers are self-regulated under the National Advertising Standards Board and the sex industry laws of the relevant State or Territory. The Advertising Standards Board does not hear complaints regarding discriminatory practices such as costs. There is no simple or effective body to direct complaints about advertising practices.

The Australian Competition and Consumer Commission has responsibility for administering the *Trade Practices Act* and the *Prices Surveillance Act* in conjunction with relevant legislation in the States and Territories. The objectives of the *Trade Practices Act* are to promote competition and fair-trading. The objectives of the *Prices Surveillance Act* are to hold inquiries into pricing practices. It may be possible to make complaint regarding unfair pricing practices where legal business is being conducted. A complaint can be made to local branches or through the

Contact: National Office: (02) 6243 1111 or e-mail: cbrcompl@acc.gov.au.

Whilst specific sex industry laws may set out prohibitions on types of advertising these are often misinterpreted by publishers to refuse advertising from sex workers who make complaints. An approach to dealing with advertisers that is effective in securing credit arrangements is to ask for a credit check to be conducted In dealing with advertisers, sex

workers and sex industry businesses should negotiate their dealings in the same way as other small businesses. Small businesses in general have no rights in law with respect to advertising.

Banking

A National Banking Ombudsman has been established to hear and adjudicate complaints with respect to a wide range of matters including discrimination in the provision of banking services. This includes: obtaining credit facilities and business and personal loans; being denied services for no apparent reason; and 'over-servicing' or charges.

Contact: Banking Ombudsman: 1800 337 444

Insurance

It is essential that full disclosure be made to the insurer with respect to the nature of business or services being insured. Fail to make disclosure allows the company not to make payment in the event of a claim. A brokerage firm that negotiates on behalf of businesses may be useful if obtaining insurance is difficult. Any complaints with respect to insurance matters can be directed to:

Contact: The Insurance and Superannuation Commission: (07) 3221 2533

Health

Complaints regarding discrimination by health care providers, including private and government, can be directed to the State Ombudsman or equivalent such as the Health Rights Commission in the relevant State or Territory.

Contact: relevant State or Territory Ombudsman or Health Rights Commission

Anti-discrimination Legislation

Those states whose anti-discrimination legislation includes occupation as a category of unlawful discrimination have specific rights set out in law to address discrimination in the workplace. Currently, the only territory to cover occupation is the ACT.

Provision of other Goods and Services

Many government and private institutions have rules of conduct and bodies established to administer these guidelines. It is unlikely they specifically refer to the sex industry but

depending on the nature of the complaint it may be possible to facilitate a positive outcome.

Other Commonwealth Remedies – social security, taxation

The Administrative Appeals Tribunal is a cost-effective means of addressing complaints against Commonwealth Instrumentality's. The Tribunal may be relevant with respect to appealing against tax rulings that are unfairly or arbitrarily applied to sex industry businesses or individual workers with respect to income levels which have been incorrectly assessed.

Administrative Appeals Tribunal: (03) 9282 8444

Tenancy

The Tenants Union in the relevant states and territories have been established to inform and educate tenants about their rights. They can provide advice and in some instances act for their clients in respect to private rental agreements.

Contact: Relevant tenants union in State or Territory

Before proceeding with complaint legal advice can be sought from a Community Legal Service, Law society or Legal AIDS Office in the relevant State or Territory.

Strategies for Action

Anti-discrimination legislation

1. Law reform initiatives include seeking amendments to Anti-discrimination legislation to include occupation as a category of unlawful discrimination.

Strategy: The most effective barriers to discrimination against sex workers is an acknowledgement under the relevant State and Territory legislation that sex work is an occupation. An effective and simple recognition of occupational discrimination is the inclusion of occupation as a category of unlawful discrimination in the respective Anti-discrimination legislation. In some jurisdictions it may be effective to argue for amendments to Anti-discrimination laws to include occupation based on the evidence of discrimination against sex workers alone. An alternative strategy in State's and Territories with laws that criminalise all sectors of the sex industry may be a multi-faced approach such as: arguing for all occupational groups which experience discrimination (funeral directors, abattoirs, real estate agents, door to door sales people); or highlighting discrimination against sex workers when seeking alternative employment or education opportunities. This could be achieved by seeking a public inquiry by the Federal Anti-discrimination Commissioner into occupational discrimination and to determine the Commonwealth coverage of discrimination matters.

Legalisation/decriminalisation of sex industry

2. That law reform efforts of the various States and Territories be supported by collaborative efforts between sex worker organisations and other health and legal community based organisations;
3. That the recommendations of the IGCA Legal Working Party be integrated into law reform responses to maintain a focus on the health consequences of criminalising sex work.

Strategy: Those sex workers who work in illegal sectors of the sex industry are the most vulnerable to discrimination as they generally have little recourse to the limited legal avenues available. To this end it is important to maintain a focus on the decriminalisation/legalisation of all sectors of the sex

industry. Inter-agency support from a broader based coalition of groups may be more effective in approaching law reform. Arguments for law reform are strengthened by linking law reform arguments to the health consequences of an illegal sex industry because government Instrumentalities (such as State and Commonwealth Health Departments and sexual health centers) can provide support. Looking at current legislative best practice models for condom use in commercial sexual transactions (eg.ACT) should be integrated into law reform responses. Establishment of special sex industry liaison personnel may assist in improving relations between police and the sex industry

Privacy and sex workers

4. A national campaign be conducted to address the stereotypes about sex workers which reinforces that employment in the sex industry is work;
5. An information booklet be produced for media purposes.

Strategy: A significant barrier towards utilising existing legal mechanisms to address discrimination is a fear of being publicly identified as working in the sex industry. If effective use of existing legal remedies are to be achieved then sex workers must feel assured that privacy and confidentiality is assured. Whilst it would be more effective for privacy protections be codified in law the practicalities of covering all areas in which sex workers face discrimination prohibits such an initiative. An alternative strategy is to strengthen the profile of sex workers in the broader community.

Legal remedies currently available

6. An information booklet be produced for sex workers in each State and Territory that sets out legal remedies available to address discrimination.

Strategy: There are currently a range of legal remedies available to sex workers in seeking redress from discrimination. The production of an information booklet for each State and Territory could expand upon those set out in this paper and detail the range of remedies available for each sector of the sex industry in the relevant jurisdiction. It could include strategies for dealing with advertisers and in the provision of other goods and services which have been effective in other States and Territories and for other service industries.

Funding to achieve strategies

7. That funding for a National Strategy be sought to support the states and territories.

Strategy: There are two avenues that can be investigated to obtain Commonwealth funding. The first is project based funding which can support infrastructure, wages, resource production and support of member organisations. The second is for a National Secretariat which has the advantage of security. Recent Commonwealth developments suggest that National Secretariat funding is currently being considered for other AFAO member organisations. Support from AFAO in negotiations and preparation of funding proposals should be sought. Funding proposals from organisations (i.e.: AVIL and Australian Hepatitis C Council) currently seeking Secretariat funding would assist in preparation of proposals.

Appendix A: Health related sex worker organisations in Australia

<p>SQWISI – BRISBANE</p> <p>404 MONTAGUE RD WEST END QLD 4101 PO BOX 5689 PH: (07) 3844 4565 FAX: (07) 3846 4629 L.HOST@HUM.GU.EDU.AU</p>	<p>SQWISI – GOLD COAST</p> <p>Level 2, Trust House 3070 Gold Coast Highway Surfers Paradise QLD 4217 PO Box 578 Ph: (07) 5531 7833 Fax:(07) 5531 6671 sqwisigc@fan.net.au</p>	<p>SQWISI – CAIRNS</p> <p>Suite 32 Andrejic Arc. 55 Lake Street Cairns QLD 4870 PO Box 6041 Ph: (070) 4031 3522 Fax: (070) 4031 0996 sqwisic@sqwisi.org.au</p>
<p>WISE – ACT</p> <p>Suite 1/29 Lonsdale Street Braddon ACT 2601 PO Box 67 Ph: (02) 6247 3443 Fax:(02) 6247 3446 wise@apex.net.au</p>	<p>SIN – SOUTH AUSTRALIA</p> <p>Hutt Street Adelaide SA 5000 PO Box 7072 Ph: (08) 8362 5775 Fax: (08) 8363 1046 sin@chariot.net.au</p>	<p>SWOP – NSW</p> <p>461 Riley Street Surry Hills NSW 1300 PO Box 1453 Darlinghurst NSW 2010 Ph: (02) 9319 4866 Fax: (02) 9310 4262 swop@rainbow.net.au</p>
<p>TAS-WISE – TASMANIA</p> <p>2/297 Wellington Street Launceston TAS 7250 PO Box 205 Prospect TAS 7250 Ph: (03) 6343 4061</p>	<p>PCV – VICTORIA</p> <p>10 Inkerman Street St Kilda VIC 3182 Ph: (03) 9534 8166 Fax: (03) 9525 4492 pcv@paradigm4.com.au</p>	<p>SAINT – NT</p> <p>C/- NTAC 6 Manton Street GPO Box 2826 Darwin NT 0801 Ph: (08) 8941 7711 Fax: (08) 8941 2590 saint@topend.com.au</p>
<p>PHOENIX – WA</p> <p>162 Aberdeen Street North Bridge WA 6003 PO Box 8054 PBC WA 6849 Ph: (08) 9328 1387 Fax: (08) 9227 9606 worker@wantree.com.au</p>	<p>Queer & Esoteric Workers Union – NSW</p> <p>10 Devine Street Erskineville NSW 2043 Ph: (02) 9519 6145 amurraynsw@hotmail.com.au</p>	<p>SCARLET ALLIANCE (National Peak Body)</p> <p>PO Box 76 Red Hill ACT 2603 Ph: (02) 6239 6098 Fax: (02) 6239 7871 scarlet@dynamite.com.au</p>

**Appendix B: Recommendations from the Legal Working Party of the
Intergovernmental Party on AIDS**

SEX WORKERS AND THEIR CLIENTS

RECOMMENDATION 6.1: DECRIMINALISATION

- 6.1.1 Laws (statutory and common law) criminalising sex industry work in brothels, escort agencies and on the street should be repealed. Laws applying to those associated with the sex industry such as living off the earnings of prostitution, except for offences relating to violence or coercion and exploitation of minors, should be repealed. If repeal of these laws is not immediate, then action should be taken as soon as possible to legislatively prohibit the evidentiary use of condoms or HIV/AIDS education and prevention materials for any prostitution-related or planning offences.
- 6.1.2 If the application of special laws controlling the operation of the sex industry is chosen by governments in addition to decriminalisation, no regulation should be made which requires identification or mandatory testing of individual sex workers. Production or display of any medical certificates or evidence of medical attendance to clients should be prohibited in the sex industry.
- 6.1.3 Governments should be able to place controls on land use by premises used for acts of prostitution (analogous to other small service businesses), and enforce public nuisance protections (applicable to both workers and clients). If controls placed on operators or owners are included in special laws, then the system should not be so onerous as to drive some sectors of the industry underground.
- 6.1.4 Police practices restricting the movements of or association of sex workers which are not as prescribed by law should be discontinued because of their unacceptable limitation on civil liberties and also because they may breach Australia's international human rights obligations (even taking into account exceptions thereunder).

RECOMMENDATION 6.2: REGULATION OF WORKING CONDITIONS

- 6.2.1 Regulations, or some other legislative instrument such as Code of Practice, should be enacted at State and Territory (rather than local law) level for premises where sex workers are employed. Working conditions should be regulated for occupational health and safety reasons by provisions such as requiring management to supply free condoms and sexual health educational material including, where appropriate, translations which relate to the predominant ethnicity of clients and workers. Care should be taken in drafting such regulations

so that operators do not falsely classify workers as independent contractors, thereby escaping these provisions.

- 6.2.2 It should be an offence for the employer of a sex worker to require the provision of sexual services without the use of a condom.
- 6.2.3 Sex workers working for employers as employees should be treated as such for industrial benefits (e.g. holiday and sick leave, superannuation, and workers' compensation) as well as obligation (e.g. taxation).

RECOMMENDATION 6.3: HIV/AIDS AND SEX WORK

- 6.3 There should be no special offences for sex workers, brothel operators or owners of premises used for prostitution where a sex worker is HIV-infected. Public health offences of knowingly transmitting or significantly exposing others to the HIV should not specifically target sex workers. Instead reliance should be made on general measures for exceptional cases relating to offences for significant exposure to or transmission of the HIV where HIV-infected persons have penetrative sex (see Recommendation 2.5.3 above), whether of a commercial nature or not. It should be noted that such offences could only be brought after certification by health authorities, and that they would also apply to HIV-infected clients of sex workers. The approach taken in relation to STDs should be generally consistent in public health legislation to that suggested for the HIV.

Intergovernmental Committee on AIDS Legal Working Party. (1991). *Recommendations of the Legal Working Party of the Intergovernmental Committee on AIDS*. Canberra: Department of Health, Housing and Community Services: 13-15.

Appendix C: Methodology

Between February and May 1999, the Scarlet Alliance undertook a national scan of sex workers through its State and Territory member organisations. Participants to the survey completed a self-administered questionnaire that took between half to one hour to complete. It included questions on the experience of sex workers in the following areas:

- Advertising sex service;
- Restrictions on working with others and location of work;
- Willingness to use industrial protections regarding unfair treatment or dismissal;
- Relations with police;
- Restrictions on movement
- Discrimination against associates on the basis of the respondent's sex work;
- Employment outside the sex industry including trade union membership and support; and
- Access to goods and services including education, insurance, health care and accommodation.

The questionnaire also sought basic demographic data and the opinions of sex workers on law reform. Demographic data is reported in the table below:

Gender	Female	32
	Male	3
	Transgender	2
Sector*	Street	3
	Solo worker (privately)	15
	Small brothel (up to 10)	16
	Large brothel (over 10)	5
	Escort Agency	6
	Other	6 (massage parlors)
Legal Status*	Legal	22
	Illegal	19
Sector Preference*	Street	3
	Solo worker (privately)	16
	Small brothel (up to 10)	17
	Large brothel (over 10)	4
	Escort Agency	7
	Other	3 (massage parlors)
State/Territory*	NSW	21
	Victoria	2
	Queensland	5
	Western Australia	7
	Tasmania	--
	South Australia	7
	Northern Territory	2

	Australian Capital Territory	--
Prefer legal or illegal work*	Legal	34
	Illegal	4
Reasons?	<ul style="list-style-type: none"> • Less stress about work status; • Protection under law from management and public; • Occupational health and safety, training, same benefits as other industries, be recognised as legitimate, covered by law – not hidden industry, stigma reduced, protection and security; • Want the industry legal but when the Council isn't applying laws the way they should I may as well work illegally; • In theory workers get a better deal but in reality that's just bullshit • Feel more secure in being able to call upon services – such as police, council, real estates, banks etc. Health and safety; • Law enforcement; • Because its safer; • Fear of criminal record; • In a private situation there is no certainty that the place can remain. We are at the mercy of our neighbours as they can inform the Council; • I feel safer and more at ease with what I do; • Workers need laws to protect them against unfair practices that management engage in – arbitrary fines, sacking, and harassment. Also with unfair treatment from areas outside the industry; • Wouldn't hesitate to report crimes of violence; • So we can legally provide a service like any other without being harassed or arrested and charged; • To avoid raids, fines and lawyers fees. More sex worker friendly service providers for support, education and STD minimisation. Being able to pay correct taxes and not risk tax evasion, superannuation and Work Cover. Higher safety; • No criminal record, less stress re: police, able to report criminal activity such as assault theft, income protection, loans and other business benefits, less discrimination; • Legal brothels tend to be more professional with their staff i.e.: set rosters and reliable with shifts, better work conditions (supply work tools), work facilities are better, get certification of employment if you're going for a lease, loan and can pay tax. 	

*Multiple responses possible.

Recruitment of participants to the study throughout Australia involved the distribution of self-administered mail-back questionnaires through Scarlet Alliance member organisations in each State and Territory. It is not possible to determine how many questionnaires were distributed therefore response rates cannot be calculated. Whilst it is not possible to assess the degree to which the participants to this study are representative of sex workers across Australia the results support anecdotal discussion of the types of discrimination sex workers experience.

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