

Report
on the Review of the
Sex Industry Offences Act 2005

Foreword

Section 20 (Review of Act) of the *Sex Industry Offences Act 2005* provides as follows:

“A review into the provisions of this Act including an investigation of the effectiveness of its mechanisms will be conducted by the Minister and tabled in Parliament within 3 years after the commencement of the Act”.

The Act commenced on 1 January 2006.

On 25 November 2008 an advertisement was placed in the “Adult Services” section of all daily newspapers circulating in Tasmania outlining the terms of reference of the review and inviting submissions.

The review is a review into the effectiveness of the Act, not a broad public inquiry into the sex industry in general. The advertisement was placed as it was to ensure that persons working in the sex industry were likely to see it as it seemed that sex workers would be in the best position to comment on whether the legislation was effective in protecting them from exploitation.

Twelve submissions were received from a variety of interested people and organisations. The submission received from Scarlet Alliance (the Australian Sex Workers Association), included the views of 10 Tasmanian sex workers who were interviewed in person or over the phone by staff of the Alliance.

This paper sets out the terms of reference, issues arising from the submissions and suggestions for future action.

Background to the Sex Industry Offences Act and Review

In 1998 and 1999 the House of Assembly Community Development Committee (CDC) conducted an inquiry into the sex industry in Tasmania. The Inquiry held hearings across the State and received numerous submissions. The CDC Report on the Inquiry recommended legislative regulation of the sex industry to provide controls and standards in the operation of brothels and to minimise harm to sex workers and the community.

In December 2002 Cabinet agreed to the drafting of legislation to legalise and regulate the sex industry. In September 2003, Cabinet approved the release of the draft *Sex Industry Regulation Bill 2003* for consultation. This Bill proposed a registration system for operators of sexual services businesses. A person convicted of certain offences would be disqualified from operating a sexual services business. The Bill also set out a number of offences relating to sexual services businesses.

Consultation with agencies, local government, interested persons and organisations occurred during 2004, and as a result a number of changes were made to the draft Bill. Finally, in June 2005 the *Sex Industry Regulation Bill 2004* (the Regulation Bill) was tabled in Parliament. The Regulation Bill included offence provisions to ensure that Tasmania met its international obligations under the United Nations Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, which was signed by Australia in 2001.

The Regulation Bill was passed by the House of Assembly and was tabled in the Legislative Council, where it soon became clear that the Bill would not be passed.

When it became clear that the Regulation Bill would not be passed by the Legislative Council, the Government introduced a second Bill, the *Sex Industry Offences Bill 2005* (the Offences Bill) which included a number of the offence provisions contained in the Regulation Bill as well as consolidating and clarifying the existing law in relation to sex work by providing that it was not illegal to be a sex worker and provide sexual services but that it was illegal for a person to employ or otherwise control or profit from the work of individual sex workers.

During debate on the Offences Bill, the Member for Nelson, Mr Wilkinson, moved an amendment to insert a review clause into the Bill. In speaking to the motion Mr Wilkinson remarked – “It would seem that in the brief debate all members were concerned whether this was the right way to go or there was a better way. This will enable it to be ongoing, enable the Government to look at it within three years to see whether it can be improved or otherwise”.

The Bill was passed by Parliament in 2005 and the Sex Industry Offences Act 2005 commenced on 1 January 2006

Terms of Reference

Despite the wording of section 20, the *Sex Industry Offences Act 2005* (the Act) contains no actual “mechanisms” to regulate the sex industry other than investigation and prosecution by police of offences under the Act.

A decision was made that the Terms of Reference of this Review should therefore relate directly to whether the Act had achieved its objects as expressed in the long title to the Act. Accordingly the Terms of Reference were –

1. Has the Act restricted/prevented the operation of commercial sexual services businesses?
2. Has the Act protected children from exploitation in the sex industry?
3. Has the Act protected sex workers from exploitation in the sex industry?
4. Has the Act safeguarded the health of sex workers and the public?

A Fundamental Dichotomy

There are two fundamentally different views of the sex industry: the first is that all sex work is intrinsically wrong and the second that, when freely chosen, sex work is no different from any other work.

The view that sex work is intrinsically wrong is the historic approach in Australia, partly based on the view that sex should be confined to marriage. This view is still put forward by Christian groups, for example the Australian Christian Lobby (ACL), which in its submission states that sex “is meant to be exercised within marriages, as a form of celebration of the lifelong commitment that a husband and wife have made to one another, and as a way of welcoming children into a family”.¹ However, the ACL also opposes the sex industry on the basis that it “is intrinsically harmful to and exploitative of those involved”.² In this respect the view of the ACL is paralleled by a second group opposed to the sex industry who argue from a feminist

¹ Australian Christian Lobby *Submission to the Department of Justice – Review of the Sex Industry Offences Act 2005* November 2008 P 4

² *Ibid* P 3

perspective that “prostitution [is] a gender specific crime as the majority of victims are women and girls...Prostitution is... a serious barrier to gender equality in all societies”³. This approach is best exemplified by the Swedish law which came into force in 1999 as part of a larger *Violence Against Women Act* package. This law criminalises the person who purchases a sexual service, not the sex worker, and is supported by programs focussing on men taking responsibility and changing their behaviour.

The alternative view is that sex work per se is just another form of work and that many of the problems encountered by sex workers stem from the criminalisation of sex work, or of certain forms of it, and the stigmatisation of workers resulting from that criminalisation. This viewpoint is perhaps best represented by Scarlet Alliance, a national organisation representing sex workers, which works to promote the civil and human rights of past and present sex workers and towards ending all forms of discrimination against them.

As would be expected, the ideological positions taken on the sex industry affects everything that follows. For example, proponents of the first viewpoint necessarily see all sex workers as victims and implicitly deny that a person could freely choose to work as a sex worker. Because sex work is not regarded as legitimate work, the term “prostituted person” is preferred to the term “sex worker” by these proponents, which in itself reinforces the view that a person selling sex is a passive victim.

In contrast, proponents of the second viewpoint consider that “sex worker” is a correct and respectful term to use for their chosen occupation and that a term such as “prostitute” reinforces a stigmatised stereotype. From this point of view, decriminalisation and normalisation of the sex industry will ensure that sex workers are no longer vulnerable to discrimination and potential exploitation.

These two contrasting viewpoints were the basis for most of the submissions received in relation to this review. Submissions received from Christian organisations and a number of individuals urged adoption of the Swedish model of criminalising the whole sex industry whereas submissions received from individual sex workers and Scarlet Alliance argued for decriminalisation.

³ Ekberg,, Gunilla *Update on Swedish Model of Sex Industry Reform* Debate, Issue 3, September 2008 P25

Interestingly, while there appears to be a flourishing sex industry in Tasmania (judging purely by the number of advertisements in the “Adult Services” columns of the papers) and therefore presumably a number of regular clients of sexual services, no submissions were received from anyone identifying as a client of the industry.

Another point to note is that while there are male sex workers all submissions received either came from female sex workers or were about female sex workers. While information about the sex industry generally is poor, even less is known about male sex workers.

Limits of the Review

It is not the intention of this Review to revisit this fundamental debate in depth or inquire into the pragmatic success, or otherwise, of sex industry legislation in other jurisdictions. This Review is simply to assess, as far as possible, whether the 2005 Act has met its stated objectives. Where the Act is found to fall short of these objectives, suggestions have been made for possible ways forward.

I. Has the Act restricted/prevented the operation of commercial sexual services businesses?

Section 4 of the *Sex Industry Offences Act 2005* provides that “A person must not be a commercial operator of a sexual services business.”

"Commercial operator" means

- (a) a person who is not a self-employed sex worker and who, whether alone or with another person, operates, owns, manages or is in day-to-day control of a sexual services business; and
- (b) if the person referred to in paragraph (a) is a corporation or a body corporate, a director, within the meaning of the Corporations Act, of that corporation or body corporate.

“Self-employed sex worker” means

- (a) a sex worker who solely owns and operates a sexual services business; or
- (b) a sex worker who, together with no more than one other sex worker, neither of whom employs or manages the other, owns and operates a sexual services business;

The Department of Police and Emergency Management (DPEM) advises that in relation to section 4 of the Act there have been no reported incidents, complaints or prosecutions involving non compliance with the prohibition on operating a commercial sexual service business. DPEM believes that there may have been a reduction in the number of commercial sexual services businesses since the commencement of the Act. Estimates provided to the House of Assembly Community Development Committee Inquiry into the Sex Industry in Tasmania in 1998/9 suggested that up to 15 commercial sexual services businesses operated across the State.⁴ However, then as now, it is extremely difficult to obtain sufficient evidence to prove that a suspected operation is an illegal commercial sexual services business.

⁴ Community Development Committee Report on *The Need For Legislative Regulation And Reform Of The Sex Industry In Tasmania* P 21

DPEM also advises that, since the introduction of the Act, there has been a significant reduction in complaints relating to five premises state wide that have long been suspected of being involved in the sex industry. This may be indicative of a change in operation and/or a desire to not attract unwanted attention.

DPEM advises that it appears that at least two former operators of commercial sexual service businesses have altered their business operation intentionally to remain within the current legislation. These operators now sublet rooms to individual sex workers. The sex workers pay rental for an 8 hour period and in return receive a serviced room with all overheads (electricity, telephone etc) paid. Linen, towels and laundry facilities are also supplied as is advertising. There is no evidence that the “landlords” are commercial operators within the meaning of the Act, although they do indirectly profit by renting out the rooms.

The advice of DPEM in respect of this change in business practices is borne out by submissions received from sex workers.

Submissions from sex workers also indicate that other commercial sexual services businesses have adapted to the Act by ensuring that there is no owner on site (or even in the State) and that only two sex workers are on the premises at one time, although there may also be a “receptionist” on the premises who helps to “organise the rosters” (and presumably answers the phone and makes bookings).

No details were given of how the owner profited from the business or whether there was any day-to-day control exerted by the owner although it appears that there may be a percentage of the profits that goes to the owner and possibly the reception staff. This could lead to pressure on the workers to provide more services to increase the profits. Operations of this nature may be contrary to section 4 of the Act by virtue of the definition in section 3(2). According to the submissions there is also a concern that in a situation where the owner is taking a “hands-off” approach inevitably one of the persons on-site will end up “managing” some part of the service and may therefore be breaking the law.⁵

⁵ Scarlet Alliance submission 20 November 2008

A different adaptation to the impact of the new Act reported to the Review by a previous commercial sexual services operator has been to scale back so that the owner works only with one other sex worker, rather than employing a number of workers as was the case prior to the Act .

The submission from the Hobart Community Legal Service⁶ reports that a least one commercial sexual services business has closed down and suggests that, at least anecdotally, this was a relatively well run establishment in terms of looking after the health and safety of its workers.

Two submissions raised a concern about the increasing number of advertisements in the “Adult Services” column of the newspapers which appear to be advertising interstate sex workers who work in the state for a few days at a time. One submission complained that this took money out of the state. A self-employed sex worker commented on the impact of this increasing competition in difficult economic times and queried whether a number of these apparently independent workers may in fact be part of a commercial sexual services business organised either here or interstate.

2. Has the Act protected children from exploitation in the sex industry?

DPEM advises that there have been no recorded complaints or prosecutions under section 9 of the Act which provides that a person must not procure, or otherwise cause or permit a child to provide sexual services in a sexual services business.

A number of submissions stated that there was no evidence of child involvement prior to the introduction of the Act and there is no record or evidence of any now. One sex worker made the point that if a person under 18 needs money and wants to work it is likely to be done informally rather than through an established sexual services business.

⁶ Hobart Community Legal Service submission 28 November 2008 p1

3. Has the Act protected sex workers from exploitation in the sex industry?

Submissions from both sides of the debate answered this question in the negative, but for completely different reasons.

According to the Australian Christian Lobby “Prostitution is inherently exploitative...it is not possible for any legislation that accepts the continued existence of prostitution to protect those involved from exploitation...The ban on larger-scale brothels is commendable and certainly limits exploitation by reducing the number of people trapped in the trade, but the legalisation of certain types of prostitution still sends the message that it is acceptable to use women for sex, meaning that sex workers are still being exploited.”⁷

On the other hand, Scarlet Alliance submits that “The criminalisation of brothels in Tasmania means that all workers who are based at established premises or work with another sex worker operate in uncertainty about their legal status...Criminalising the sex industry only supports the stereotype that sex work is inherently wrong and that the public needs to be protected from sex workers. Although this model of legislation is designed to protect sex workers it in fact makes sex workers more vulnerable by targeting them as victims who need protection.”

A number of submissions from sex workers also explicitly or implicitly reflected confusion about their legal status, which makes workers less likely to report offences against them. One submission stated “I enjoyed working in brothels prior to the changes in the law. I still work in brothels however it appears that there is more uncertainty and basically it is harder to stand up for your rights now that we are illegal. I travel to the mainland and work also. I know that in NSW if there is a violent client or someone who tries to rip me off I will be able to call the police, and I would have no hesitation in doing so. However when I am at home [in Tasmania] I know that I would never call the police because I don't want a "working in a brothel" criminal charge on my record.”

⁷ Australian Christian Lobby *Submission to the Department of Justice – Review of the Sex Industry Offences Act 2005* November 2008 p6

Another submission states “The Act has increased opportunities for exploitation in the sex industry, not decreased it. Many sex workers don’t understand their rights, and most of us have no rights because our work is now illegal”

Under the Act, a sex worker simply working in a brothel could not be charged with a criminal offence. However, a number of the submissions from sex workers and Scarlet Alliance reflect concern that where a worker working with another undertakes some “managerial” activities, such as taking bookings or paying the rent then they may be breaking the law.

The Hobart Community Legal Service submits that “The Act has done nothing to take away any of the stigma attached to sex work and if anything has increased this stigma, particularly due the confusion of whether sex work is illegal or not”.⁸

Even if the sex worker could not be charged with a breach of the Act, the simple fact remains that if a complaint is lodged by a sex worker against a client or operator of a commercial sexual services business and as a result the commercial sexual services business is closed down, the worker has lost her place of employment.

The fact that operating a commercial sexual services business is illegal means that workers in these businesses do not believe that they are covered by normal industrial relations and occupational health and safety safeguards.

Another submission from a sex worker, who works in a former brothel that has made some changes to the way it is run following the introduction of the Act, makes the point that “At the moment the owners/managers know that they are walking a fine line of the law and they are paranoid and this paranoia is in the workplace too. It is not really very healthy or a very pleasant environment to work in.” The Scarlet Alliance submission reports that “Sex workers who choose to work from established premises have noticed a lack of stability in their workplace and individuals are cautious of ‘outsiders’ and are concerned about having their workplace structure revealed”.

⁸ Hobart Community Legal Service submission 28 November 2008 p 2

Sex workers who are self-employed also do not consider that the Act has protected them from exploitation. The Scarlet Alliance submission quotes a worker commenting that “Clients now know that it is illegal to manage workers and so you can’t pretend to ring in to your “boss” – it makes it more difficult to call anyone. Clients are aware that we are more vulnerable.”

In the same submission a sex worker is quoted as reporting “I went to an appointment at a hotel the client was behaving really strangely and when he went to the bathroom I noticed a video camera hidden in a bag, sitting on top of the television. It was switched on. When he came out of the bathroom I asked, “What’s this?” he just shrugged his shoulders and said “Well, who are *you* going to call?”

Because the Act only allows for self-employed sex workers, the workers have no choice about whether they wish to be self-employed or an employee. As with any other occupation or business, not every sex worker has the desire or ability to invest the business skills, time and money to set up their own business.

Submissions also remarked on the fact that there is a lack of peer support, education and security as a result of sex workers being forced to work in isolation. One detailed submission from a person who had worked as a male assistant to the owner in a brothel in New South Wales outlined the comprehensive security measures in place at the premises to prevent the entry of persons affected by drugs or alcohol or who appeared or were known to be violent. These security measures are not generally available to self-employed sex workers.

Even those sex workers who work independently, and who did so prior to the change in the legislation, argued for the legalisation of commercial sexual services businesses on the grounds that it provided a choice for workers and remarked that some workers preferred to be employees.

One self-employed sex worker who previously managed her own commercial sexual services business reports that because now she can no longer employ anyone and can only work with one other person she has to work long hours to keep the business viable and to pay her mortgage. She has also been unable to keep up her university studies because of her work hours. While this may not fall within the definition of “exploitation” it certainly means that her life is far less fulfilling than it was prior to the Act.

Sex workers have also complained that there has been “an increase in media attention (usually misinformed), an increase in the public profile of the sex industry and an increase in the level of discrimination experienced by sex workers. One sex worker commented – “Exploitation? Our house has been put in the paper as an ‘alleged sex venue’. My children get teased at school; my parents have to deal with comments down the street. What have my children got to do with me being a sex worker? It is really unfair. Exploitation makes me feel like a scum bucket”⁹.

4. Has the Act safeguarded the health of sex workers and the public?

Section 12 of the Act requires sex workers and clients to take all reasonable steps to minimise the risk of acquiring or transmitting a sexually transmissible infection and makes it an offence to not use a prophylactic. However, it should be recognised that there is more to “health” than guarding against sexually transmitted infections (STIs).

The Department of Health and Human Services (DHHS) submits

“from a public health perspective, a decriminalised industry is safer for sex workers both in terms of their physical health and their personal safety. Health services and information are more readily accessible, and sex workers are more likely to report incidents of violence to the police.¹⁰

Stigma and criminal status present barriers to information and treatment services and can have a negative impact on the health and wellbeing of sex workers. In an environment where sex work is taboo and legal status is ambiguous, workers are often reluctant to disclose their occupation to GPs and may be deterred from seeking medical advice.

While marginalisation can create barriers to accessing health and social care, stigma and discrimination per se can affect psychosocial wellbeing.”

⁹ Scarlet Alliance submission 20 November 2008

¹⁰ New Zealand Government. Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003. Ministry of Justice, NZ. May 2008.

The submission from Scarlet Alliance supports the analysis that stigma and discrimination can impact on a workers' health generally – “All sex workers experience the direct effects of stigma and discrimination...in Tasmania (the Act) means increased marginalisation and reduced access to information and services. Many private workers work in complete isolation from any other worker. For sex workers who work collectively it means increased need for secrecy and discretion.”¹¹

One submission from an individual sex worker stated “How can a government force everyone into isolation then not provide them with support and a base to exchange information about ugly mugs and clients to look out for...clients know sex workers are working by themselves...this needs to be changed (as soon as possible).”

In respect to sex workers, clients and STIs, DHHS provides the following information:

“There is a strong safe sex culture within the sex industry in Australia which is promoted by community based sex worker organisations. There has never been a documented case of HIV transmission in Australia as a result of sex work and the incidence of HIV among sex workers remains very low.

As there are no specific sex worker health services in Tasmania, sex workers use mainstream services such as private GP's and the Sexual Health Service where they may or may not identify the nature of their work to the doctor or other health worker. The DHHS Sexual Health Service, which provides clinical services in Hobart, Launceston and Devonport, records whether clients are sex workers. For the 24 months, from 1 July 2006 to 30 June 2008, their statistics show that they conducted 56 consultations with people identifying as sex workers.

Information shared by sex workers with their practitioners is usually kept within confidential health records and is not collated in any way. The exceptions to this are sexually transmissible infections (STIs) which are notified to the Department of Health and Human Services.

¹¹ Scarlet Alliance submission 20 November 2008

DHHS conducts enhanced surveillance on all STIs. As part of this process, disease specific standardised questionnaires are distributed to diagnosing clinicians. These include a question regarding whether a patient is a known sex worker. This is a nationally agreed question for all cases of gonococcal infection and infectious syphilis. Tasmania added this specific question in 2004 to all chlamydia questionnaires.

During the period January 2004 to October 2008 there were no notifications of syphilis, gonorrhoea or HIV among sex workers in Tasmania. Only seven patients with chlamydial infections were identified as sex workers out of 4818 notifications. Three of these notifications were from the Sexual Health Service, four from GP's and one from a public hospital. There were no notifications from Family Planning Tasmania or Hobart Women's Health Centre of infections in people who identified as sex workers. Although the number of infections documented in Tasmania is too small to be statistically significant, at 0.14 percent of all chlamydia notifications, the proportion of infections among sex workers correlates very roughly with the estimated size of the sex industry. While a much larger data set would be necessary to draw any conclusive evidence, it is worth noting that during the 2004-08 timeframe, the incidence of chlamydia infection appears to have been no higher than for the general population.

Nationally, the incidence of HIV prevalence among women self-identifying as sex workers has been very low and has dropped over the past eight years.¹² There is good evidence from NSW that the rates of STI's among sex workers in a de-regulated environment are, if anything, lower than the population average. A survey of 4000 Sydney sex workers found the chlamydia rate was about two per cent among the sex workers, compared with five per cent in the general population, with the majority of cases affecting those aged 15 to 29. The survey also indicated that the Sydney sex workers have fewer sexually transmitted diseases than sex workers in states where prostitution is either illegal or regulated.¹³

¹² National Centre in HIV Epidemiology and Clinical Research. HIV/AIDS, viral hepatitis and sexually transmissible infections in Australia Annual Surveillance Report 2008. National Centre in HIV Epidemiology and Clinical Research, The University of New South Wales, Sydney, NSW. Figure 39.

¹³ McDonald, A. *Health experts want sex work decriminalised nationwide*. Article referencing unpublished study by Professor Basil Donovan, University of NSW.

A similar study of STIs among 388 sex workers working in a decriminalised and regulated system in Victoria¹⁴ also found a low incidence of STIs. Most infections that were found had been acquired through personal relationships outside work. Sex workers involved in the study reported 100% condom use during commercial sex..”

Again, submissions from Scarlet Alliance and individual sex workers support the DHHS submission. One sex worker stated “All working girls I know use condoms for sex and are concerned about STIs. Sometimes clients don't want to wear a condom but I just tell them that I am a professional woman and I look after myself and my colleagues. I know how important it is to use condoms for our own safety and would not compromise that. When I tell clients about my professional standards they always agree (many of them are married)”. Another worker who states she is struggling to pay her mortgage comments “I would rather lose my house than not use a condom”.

The evidence appears to be that there is a high rate of awareness of STIs among sex workers and accordingly there is a very low rate of infection. However, even though section 12 can be seen as giving sex workers a mandate to require clients to use prophylactics, a self-employed worker may not have any real ability to enforce this law, and a worker in an illegal commercial sexual services business may be reluctant to make a complaint about a client to police for fear of closing down the business.

DHHS also advises that Tasmania is the only jurisdiction in Australia without a dedicated sex worker support service. According to DHHS

“Scarlet Alliance (the Australian Sex Workers Association) has continued to lobby for funding to establish a peer outreach service in Tasmania and has developed a detailed project proposal regarding how such a service would work and what resources would be required...

The need for such a service was also endorsed by TasCOSS (Tasmanian Council of Social Service) in their budget submission, and has been included as part of a broader

¹⁴ Lee, DM; Binger, A; Hocking, J; Fairley, CK. The incidence of sexually transmitted infections among frequently screened sex workers in a decriminalized and regulated system in Melbourne. *Sexually Transmissible Infections* 2005;81:434-436.

proposal for a Sexual Health Promotion Strategy put forward by Population Health through the internal government budget initiative process. This proposal incorporates:

The establishment of a dedicated community-based sex worker initiative in Tasmania that will focus on education and other preventative measures that will raise overall health and safety standards within the sex industry, minimise the risk of violence and illness, and increase the ability of workers to make informed choices regarding entry and exit from the industry.

It is anticipated that qualitative and quantitative evidence gathered during the course of this project will allow for a better understanding of the Tasmanian sex industry, informing other agencies and Government Departments in their work with Tasmanian sex workers.

Over the past two years Scarlet Alliance has been running a Chlamydia Awareness Pilot Project (funded through Commonwealth Dept of Health & Ageing) as an interim means to support sex workers in the State. Funding for this project ceased in September 2008.

To ensure that the infrastructure, networks and trust that were established with sex workers during the course of the chlamydia project are not lost, and in anticipation of further support being made available, Population Health has provided some interim funding to Scarlet Alliance to continue work in Tasmania. This is directed at the maintenance of networks, dissemination of public health messages, and monitoring of the industry.

It is the view of DHHS that the health of sex workers and the public will best be safeguarded by the legalisation of brothels and development of services to protect the rights of sex workers. These measures will help ensure the dissemination of health and safety information, and enable public health surveillance of the industry. The adoption of a rights-based approach toward the sex industry will enable the needs and rights of all stakeholders to be taken into account.”

Conclusions

From the submissions received the response to each of the terms of reference is as follows:

1. It would appear that businesses that may have some characteristics of a commercial sexual services business continue to operate in Tasmania. As there was no conclusive evidence of the number of these businesses prior to the commencement of the Act, and there is no conclusive data now, whether the number of these businesses has decreased is unknown. However, there does seem to have been some effort to change the way these businesses operate to comply with the terms of the Act and this may have resulted in some operators having a less “hands on” role in the operation of the businesses.

A significant number of sex workers choose to work collectively in what may be a commercial sexual services business, even though they are uncertain whether they are breaking the law in doing so.

2. There is no conclusive evidence of children being exploited in the sex industry in Tasmania either before or after the commencement of the Act. There is likely to be some involvement of vulnerable children in the industry, but it is most likely on an informal or opportunistic basis.
3. From the submissions received, neither side of the sex industry debate believes that the *Sex Industry Offences Act 2005* has been effective in achieving its objective of protecting sex workers from exploitation in the industry.

Submissions from groups and individuals like ACL believe that any sex work is exploitative, and because the Act provides for self-employed sex workers, then those workers are necessarily being exploited.

On the other hand, sex workers themselves believe they are still exploited because they either work collectively and therefore are concerned about their legal status or because they are forced to work in virtual isolation. In either case the sex workers do not feel

able to access the normal occupational health and safety safeguards available to other employees.

4. According to DHHS there is a high rate of awareness of sexually transmitted infections among sex workers and accordingly there is a very low rate of infection. However, in respect to health more generally, the confusion of some sex workers regarding their legal status, the possible illegality of some of the places of work and the continuing stigmatisation of and discrimination against sex workers may lead to higher levels of psychological stress.

There are no easy answers in respect of dealing with the sex industry. The legislative options range from legalising and deregulating the industry to making it completely illegal. The current Tasmanian Act is a half-way option that supports neither of the two fundamental positions and is therefore roundly criticised by both.

To the public at large the sex industry is all but invisible and consequently it is a matter about which the general public rarely expresses an opinion, leaving the proponents of two diametrically opposed views to argue their cases. There is very little knowledge about the industry or the people who are involved in it as workers, clients and managers. Most people, to their knowledge, have never met a participant in the industry, so most perceptions of the industry are based on media stereotypes or general assumptions. This ignorance is not a good basis for informed public policy decisions. However, it is unlikely that further information will be forthcoming about the industry while it remains partially illegal in the state.

Recommendations

1. Produce a pamphlet that outlines the legal status of sex work for distribution to sex workers. This will help to address some of the confusion and misconceptions about the legal status of sex workers who work collectively and encourage them, where necessary, to seek the assistance of authorities such as Tasmanian Police and Public Health services.

DHHS advises that Family Planning Tasmania (FPT) is currently drafting a publication on Sexuality and the Law which will include information on the legalities of sex work. It might be possible to liaise with FPT on this publication, or to produce a separate publication dealing only with the legalities of sex work for distribution to sex workers.

2. Work towards a dedicated community-based sex worker health initiative as included as part of a broader proposal for a Sexual Health Promotion Strategy put forward by Population Health. The aim of this initiative is to “focus on education and other preventative measures that will raise overall health and safety standards within the sex industry, minimise the risk of violence and illness, and increase the ability of workers to make informed choices regarding entry and exit from the industry”.
3. Consider inclusion of “occupation” in section 16 of the *Anti-discrimination Act 1998*, to make it an offence for a sex worker to be discriminated against because of his/her means of earning a living.
4. Consider the suitability of alternative legislative models for adoption in Tasmania.