

Health Consumers' Council

Prostitution Control Act Submission

February 2003

Background

The Health Consumers' Council is an independent community based organisation, representing the consumers' 'voice' in health policy, planning, research and service delivery. The Council advocates on behalf of consumers to government, doctors, other health professionals, hospitals and the wider health system. Funded by the WA Department of Health, the Council has 3 key activities:

1. consumer advocacy at an individual and systemic level
2. recruiting, training and supporting consumer representatives on decision making bodies
3. policy and legislation review from a consumer perspective.

General Comments Prostitution Control Act

The Health Consumers' Council recognises the particular complexity and tradition of the sex industry in Western Australia. It is acknowledged that there are a range of views in the community about the sex industry and that government is required to find a balance between competing interests.

Nevertheless the Health Consumers' Council finds the tone, approach and proposed regulatory framework to be punitive and self defeating. This proposed legislation will re-criminalise prostitution in Western Australia and treats people in the sex industry differently to other citizens. In the view of the Health Consumers' Council the proposed legislation is in breach of the United Nations Charter signed by Australia "everyone has the right to recognition everywhere as a person before the law" (Article 76) United Nations Declaration of Human Rights (1948). We believe that the following articles are also breached:

Article 9 Freedom from Harassment

Article 13s Freedom of Movement

Article 23 Access to Employment

Article 3 Access to Safety

Article 12 Right to Privacy

Article 11 Right to Fair Trial

Part 1. Preliminary

Section 5. Objectives

(a) to safeguard public health and well being against adverse effects of

prostitution.

It is the view of the Health Consumers' Council that this proposed legislation will jeopardise public health and lead to the rise in the current incidence of sexually transmissible infections including HIV. The proposed legislation punishes prostitutes and suggests that criminalisation will deter people from becoming involved in prostitution and thus reduce the spread of sexually transmissible infections. There is little or no evidence that criminal sanctions affect the numbers of people who become involved in prostitution. More importantly, there is no evidence that prostitutes play an important role in the transmission of sexually transmissible infections. Despite existing laws, many sex workers and brothel owners have adopted responsible safer sex policies. Control of STI's and HIV in the sex industry currently operates successfully on a voluntary basis.

The Health Consumers' Council believes that the proposed legislation, with the provision of licensing of individual workers is most prejudicial to good Public Health Outcomes. Any system that risks alienating workers, who may then work outside the formal requested system, making them hard to reach with education and prevention runs the risk of achieving entirely the opposite outcome, that is, an increase in the incidence of sexually transmissible infections. In addition, these workers will be more vulnerable to the predations of clients and the threat of exposure and thus induced into unsafe practices. This means an increased risk of transmission of infection.

The Public Health Objectives of reforming prostitution law, according to the Intergovernmental Committee on AIDS Legal Working Party are as follows:

- removing provisions which make it difficult for sex-workers and their clients to take steps to protect themselves against infection. Obstacles in the present law include
 - fear of prosecution
 - concerns about confidentiality
 - the role of police as enforcers of prostitution law;
- encouraging responsible behaviour by workers and clients and others who have control over their activities e.g. brothel owners;
- allowing free flow of information and education on public health preventive measures and encouraging attendance for advice, counselling, information and treatment;
- alleviating the stigma associated with the industry, which attaches to sex workers who have been publicly labelled as such (thereby making it more difficult for them to leave the industry);
- combating the fear of identification which inhibits some sex workers from seeing themselves as part of the industry by self denial factors, thereby making it harder to reach them by targeted education and prevention strategies;
- promoting conditions with the "culture" of the sex industry to permit and encourage safer sex activities which must facilitate HIV/AIDS prevention, and generally improving work conditions within the industry contributing to disease transmission; and

- treating HIV-infected sex workers consistently with other workers performing invasive, or skin penetrative procedures or HIV-infected members of the public who wish to engage in penetrative sex, and facilitating rehabilitation and alternative employment in work not involving risk of transmission, or providing financial assistance (e.g. workers' compensation) if this option is not feasible.

It is the view of the Health Consumers' Council that the Draft Prostitution Bill fails to meet any of these objectives. The need for palm printing and the keeping of names on registers for 7 years, contributes to the stigma of an industry that is a personal service industry based on consensual sexual activity, in private, between two adults.

Objective (b) by promoting the welfare, occupational health, and safety of prostitutes and by other means, to protect prostitution from exploitation.

It is the view of the Health Consumers' Council that the proposed licensing of sex workers will create a two tiered system that will expose vulnerable and marginalised sex workers, (indigenous, non english speaking, disabled or drug dependent) to unscrupulous operators in the illegal industry, a decrease in safety and reduced power to negotiate safe practices.

In addition, the important role of sex worker organisations and other community service providers would be undermined by a reduction in access for marginalised "illegal" sex workers fearful of exposure and detection.

It is the view of the Health Consumers' Council that funding and support for sex worker advocacy organisations is essential for public health purposes because cohesiveness and confidence amongst workers is a precondition for successful health interventions. Any barrier to accessing services, support and even a sense of community should be actively discouraged.

Part 2. Prostitution Control Board

Division 1. Establishment of Board

Section 8. Membership of Board

The Health Consumers' Council has a long tradition of encouraging and supporting consumer and community participation in decision making bodies.

The Council is of the view that the composition of the proposed board should include a perspective from the sex industry.

Recommendation 1.

That three members of the Board be from the sex industry, either having worked in the sex industry within the past five years or working currently. Representation should cover the range of unique issues for particular parts of the industry, individual workers, employers and self employed.

Recommendation 2.

That a sexual health physician be appointed to the Board to provide accurate, evidence based clinical advice to the board.

Recommendation 3.

The Health Consumers' Council believes it is inappropriate for the Commissioner of Police to be a member of the Board. The police cannot and should not have a regulatory, investigatory and prosecutory role in the sex industry.

Advice about policing issues that come to the attention of the Board may require expert technical advice from the Police Service.

Recommendation 4.

That representatives from Worksafe and Unions WA be members of the Board, as well as the Chamber of Commerce and Industry.

Part 2. Prostitution Control Board**Division 2. Function of Board****Section 14. Functions**

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