

## The sexual health of sex workers: no bad whores, just bad laws

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Sex workers are a group vilified, discriminated against and without many of the legal and social protections most people take for granted yet since the beginning of the HIV epidemic, sex workers in Australia have enjoyed extremely low rates of HIV transmission. Peer education and sex worker advocacy at individual and systemic levels are necessary to maintain these low rates of transmission.

Australian sex workers occupy a very strange place within our public health systems, at once criminalised, vilified, discriminated against, monitored, regulated, decriminalised yet even empowered. Still, within the literature sex workers largely continue to be seen as immoral deviants, 'vectors of disease'; even health workers and researchers are not immune to these ideas. Consequently, health discourse often concentrates on the nature of sex work itself rather than the conditions of sex work and the workplace yet it is the latter that needs to remain the focus (Wolffers and van Beelen, 2003). A range of factors can have a varying affect on the sexual health of sex workers. Systemic structures, social, cultural and legal barriers all impact; however, the overarching factor affecting the sexual health of sex workers can be found in the legal context in which they work.

### The legal context in Australia

"To assess the legislation [and it's impact], it is important to consider the voices of sex workers...." (Fawkes 2005:22). At present, each state and territory administers their own sex industry laws. Each has adopted

one of four legislative frameworks, each one different from the other. For example, New South Wales has largely decriminalised sex work; the Australian Capital Territory, Victoria and Queensland have established a licensing system for brothels and/or the registration of some sex workers (this is often referred to as 'legalisation'); whereas sex work in Western Australia and South Australia has remained partially or completely criminalised.

Criminalisation and legalisation frameworks generate laws and policies based on moral or religious grounds and as a result, hinder public health objectives.

### Criminalisation

Criminalisation is a restrictive policy that transforms the selling of sex between consensual adults into a criminal act. Criminalising sex workers makes it harder for them to protect their health as they may avoid health services for fear of prosecution: (Jordan, 2005). This not only creates barriers to achieving the effective implementation of STI/HIV prevention strategies but also distances sex workers from support organisations and peer education. As a result, these policing practices act in direct opposition

to public health objectives. For example, the possession of condoms has been used as proof of sex work which has in turn promoted the prosecution of sex workers).

The overall effect of criminalisation is that it has the potential to increase STI/HIV transmission rates and is more likely to increase the stigma and discrimination experienced by sex workers. Violence and exploitation have been reported as features of the criminalised environment. When the sex industry remains or is pushed underground (West, 2000), sex workers have less control over the conditions of their workplace. There is no evidence that criminalisation has reduced the amount of people working in the sex industry. Therefore, criminalisation is unlikely to have the desired impact of reducing the size of the sex industry or of protecting the sexual health of the community.

### Licensing and registration

Often called 'legalisation', this model operates by brothels applying for a licence or sex workers entering their names on a police register. The police register acts similarly to a criminal database and once a person's name is listed it can never be removed, even after they have left the sex industry. The stigmatisation of this lasts a lifetime and sex workers, past and present, may avoid health professionals for fear of being discriminated against or of having to disclose their name. Brothel licensing legislates for mandatory STI/HIV testing; however, this increases the stigma on sex workers who may choose to work

Funded by NSW Health

NCHSR is partially funded by the Australian Department of Health and Ageing.

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illegally in order to avoid discrimination. Mandatory testing and health certificates simply increase the risk that clients will gain a false sense of security, and by believing that they are safe, may add to the request for unsafe sexual services.

Legalisation can also prevent certain sex workers from working legally. Street-based sex workers and those in unlicensed brothels are pushed further underground, where violence and exploitation have the potential to increase. Access to services becomes limited and constrained due to the consequences of working within an illegal environment. Sex workers are extremely vulnerable to STI/HIV although in spite of this it has been established that legalisation has the same counter-productive and damaging impact as criminalisation (Healy, 2006).

### Decriminalisation

Decriminalisation exists when all criminal sanctions have been removed and regular labour as well as OH&S laws apply. Regulatory models like decriminalisation, which increase control over workplaces and therefore over the sexual interactions of sex workers, result in the increased capacity to implement safer sex practices (Brunton et al., 2010). A decriminalisation model allows more sex workers to gain greater access to services while producing the most successful health outcomes.

### Swedish model

This model criminalises and prosecutes the client but decriminalises the sex worker. Sex workers are positioned as 'victims' and clients as 'perpetrators' (Ostergren 2010). This model causes sex workers to work in dangerous situations in order to continue working such as locations with poor lighting, industrial areas, and in outdoor areas rather than in the safety of premises. In these settings it is possible for violence, discrimination and stigma towards sex workers to thrive as workers have no control over their workplace, which in turn can lessen their capacity to implement safer sex practices. Again, there is no evidence to suggest this model has achieved its desired outcome of decreasing the number of sex workers and/or the total abolition of the sex industry.

### Public health strategies

Sex workers have sustained low rates of STI/HIV transmission and high rates of condom usage. In one Australian study, female sex workers achieved 95% condom use (Perkins, 1991). All Australian states and territories have secured on-going funding to provide a sex worker organisation in all major cities. These organisations gain access to the sex work population and target them with sex-work specific health promotion programs. This

is illustrated through the provision of peer education, support and outreach services; information regarding safer sex strategies; free condoms, dams, lubricant, gloves and fit packs; and sex worker-specific education. These services have continued to specifically target sex workers over the past 20 years (Donovan et al. 2010). However, resource constraints continue to impact on sex worker organisations and particularly on the outcomes for trans\*, male, CALD, IDU, Aboriginal, HIV-positive and street-based sex workers.

### Existing challenges


There are numerous challenges for the sex work community such as maintaining low rates of STI/HIV transmission. Adequate resources and on-going funding for sex worker organisations are essential. It must be noted that new sex workers enter the industry every day and must be targeted for information and support as they are often unaware of safe sex practices; the transient nature of sex work must be acknowledged; additionally private sex workers, who may be isolated from other sex workers, require peer education and community support to be able to engage with HIV/STI prevention implementation; migrant and CALD sex workers need information on the culture and practices of the Australian sex industry (including high condom use).

## ARTICLE SUMMARY 1 The Big Picture: maintaining a successful response

NSW is leading the world in developing an effective and coordinated response to law and policy development to minimise public health risk from the sex industry.

In 1995, NSW decriminalised sex work. This sparked the development of one of the most progressive health promotion strategies and legislative environments in the world. The implementation of sex worker-specific health promotion strategies existing alongside a decriminalised sex industry established the most effective and successful model to minimise public sexual health risk posed by the sex industry. Contrary to popular belief, there is absolutely no evidence to suggest that this has increased the demand for commercial sex. Without punitive criminal sanctions, excessive cost factors and access barriers caused by sex industry regulation, the NSW Department of Health has been able worked collaboratively with the Sex Workers Outreach Project (SWOP) for over 20 years to improve the health of sex workers and combat any risk to the general community. Although NSW has a diverse sex industry, of which the largest section is now mainly staffed by Asian workers, 99% condom usage rates have been achieved. This has resulted

in extremely low transmission rates of STI/HIV, lower than that of the general community. These results can be directly attributed to the collaborative response preformed in NSW. However challenges in maintaining this success remain. Injecting drug users who are also sex workers, migrant sex workers, male and transgender sex workers must all be targeted with specific messages. Further, sex worker organisations must be adequately resourced to address the particular vulnerabilities and access issues presented by these groups. This article notes that only a small proportion of Australian men access the sex industry each year which strongly suggests that it is very unlikely that the sex industry would be able to sustain a widespread heterosexual HIV pandemic in Australia. NSW has effectively and successfully minimised the public health risk presented by the sex industry. As high numbers of new workers enter the sex industry on a daily basis, the potential for this to change remains and the need for more complex ongoing health promotion strategies is essential..

 Donovan, B., Harcourt, C., Egger, S. & Fairley, C. 2010. Improving the health of sex workers in NSW: maintaining success. *NSW Public Health Bulletin*, 21(3-4).

## Sustaining success

Since the beginning of the epidemic, the sex worker community has engaged in HIV prevention. Peer educators must ensure that sex workers are equipped to maintain current safe sex practices and have adequate resources to adapt to a changing industry including new technology. This requires more complex education and community development approaches by sex worker organisations. Continued funding and support for these organisations providing peer education, outreach and effective engagement with STI/HIV prevention programs is essential, as is recognition of the diversity of sex workers.

An evidence-based approach that has clearly identified what is working well to protect the health, safety and well being of sex workers must be implemented and maintained throughout Australia. This approach includes the decriminalisation of the sex industry, the implementation of anti-discrimination legislation, explicit acknowledgment of sex worker rights, continued resourcing of peer education and support services in collaboration with mainstream services to target sex workers, and sex worker consultation in policy development and law reform. Collectively, these factors have proved to work well in protecting the health and rights of both sex workers and their clients.

## 2 The Diversity of the sex industry

Sex workers and the type of sex work that is engaged in are diverse – sex workers are not an homogenous group. There is direct and indirect sex work. Direct sex work is paid sex in visible or known areas such as brothels. Direct yet covert sex work is more isolated, for instance private and escort sex workers would fall into this category. This group is more tolerated by the law, due to their invisibility, but are at risk of more violence from clients. People who work in indirect sex work may work on a casual basis and may not identify as a sex worker. Covert and indirect sex workers may have less access to services and less exposure to health promotion programs thus establishing a higher risk to public health.

Harcourt, C. & Donovan, B. (2005). The many faces of sex work. *Sexually transmitted infections*, 81, 201.

## 3 Decriminalisation: The best health outcome

Sex industry laws in Australia and their impact on health promotion activities and service delivery were studied in Melbourne (licensed and legal), Perth (criminalised) and Sydney (decriminalised). It provided clear evidence that sex work legislation significantly impacts on the delivery and result of health promotion services that target sex workers. It demonstrated that licensing, where police control unlicensed brothels and other illegal environments such as street-based sex work, excludes these workers from health promotion programs as they remain isolated from peer-education and support. Decriminalisation provides the best legislative framework. Community-based organisations have a higher capacity to provide advocacy services and hence achieve better health outcomes for sex workers.

Harcourt, C., O'Connor, J., Egger, S., Fairley, C., Wand, H., Chen, et al. (2010). The decriminalisation of prostitution is associated with better coverage of health promotion programs for sex workers. *Australian and New Zealand Journal of Public Health*, 34, 482–486.

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## Further information

Scarlet Alliance, National Sex Workers Association

<http://www.scarletalliance.org.au/>

- Training and public health promotion workshops
- Advocacy and law reform
- Promoting the rights of sex workers

Scarlet Men

<http://www.scarletmen.org.au/>

- run by male sex workers for male sex workers

Sex Workers Outreach Program (SWOP) Sydney

<http://www.swop.org.au/>

- Free access to condoms, fits, lube, gloves, dams

Touching Base

<http://www.touchingbase.org/>

- Linking people with a disability with sex workers

Sydney Sexual Health Clinic

<http://www.sesiahhs.health.nsw.gov.au/sydhosp/Services/sshc.asp>

- Confidential and comprehensive service that helps put you in control of your sexual health

NSW Department of Health

[http://www.health.nsw.gov.au/publichealth/sexualhealth/sexual\\_phus.asp](http://www.health.nsw.gov.au/publichealth/sexualhealth/sexual_phus.asp)

- Sexual health clinic listings

## 4 Mandatory testing is expensive but is it effective?

STI/HIV transmission rates are extremely low in Australia and previous studies have identified that there is almost 100% condom usage. However, sex workers in Victoria have a legal obligation to provide evidence that they have undergone regular STI/HIV testing (mandatory testing). STIs are screened for monthly, while HIV is screened three-monthly. A cost-effectiveness analysis of the associated cost compared to the health benefits was undertaken. The results showed that sex workers could be screened less often, lessening the expense on the public health system, without any negative impact on the sexual health of sex workers or on the public health of the general community. Testing intervals should not be determined by legislation but instead by STI epidemiology.

Wilson, D., Heymer, K., Anderson, J., O'Connor, J., Harcourt, C. & Donovan, B. (2010). Sex workers can be screened too often: a cost-effectiveness analysis in Victoria, Australia. *British Medical Journal*, 86, 117.

## 5 Sex workers living with HIV: what should we know?

Sex workers who are HIV positive and who employ safe sex strategies create absolutely no risk to the sexual health of their clients or to the public. Despite this, they experience a dual stigma of being both a sex worker and being HIV positive. These workers are discriminated against, stigmatised in the media, criminalised for engaging in sex work and subject to disclosure laws. One high profile media case from the ACT is highlighted. Regardless that no risk of transmission was present, this sex worker was prosecuted and convicted for simply engaging in sex work whilst living with HIV. Legislation has supported a significant lack of access to health, legal and community policy development and a lack of direction when looking at issues that combine HIV and sex work. Sex workers living with HIV require rights and an enabling environment.

Jeffreys, E., Matthews, K. & Thomas, A. (2010). HIV criminalisation and sex work in Australia. *Reproductive Health Matters*, 18, 129–136.

<http://www.scarletalliance.org.au/projects/swpos/>



## Action points

- Criminalisation, legalisation and the Swedish model should not be considered as workable or effective legislative responses. Possible police corruption is heightened in these models.
- Decriminalisation is considered the best model of legislation for sex worker health, safety and well-being. It achieves the best health outcome for sex workers, placing the regulation of the industry in the hands of local councils and not police. While not perfect (e.g. local councils can abuse their power by denying Development Application's for brothels), it remains the most effective model.
- Extended and continued resourcing of peer programs to maintain low rates of STI/HIV transmission among sex workers.
- Peer educators to target health promotion programs for new, HIV-positive, CALD, IDU, Aboriginal, trans\* and male sex workers.
- Mainstream organisations which deliver services to sex workers should work collaboratively and consult with sex worker organisations on all forms of service delivery, policy and research to provide the best health outcome.
- Mainstream organisations should undertake professional development offered by sex worker organisations and Scarlet Alliance to address issues of stigma and discrimination, access, inclusivity, the diversity within the sex industry and the importance of confidentiality.
- Sex workers should be consulted in all relevant policy and law reform.