

**To**  
Clerk of the Committee  
Local Government and Environment Committee  
Select Committee Office  
Parliament Buildings  
WELLINGTON

**Submission**  
In Opposition to  
The Manukau City Council (Control of Street Prostitution) Bill  
And in support of  
The Rights of Street Based Sex Workers



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Submission in opposition to The Manukau City Council (Control of Street Prostitution) Bill  
& in support of the Rights of Street Based Sex Workers  
**Scarlet Alliance, Australian Sex Workers Association**



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***Manukau City Council (Control of Street Prostitution) Bill***

Local Government and Environment Committee

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Local Government and Environment Committee Secretariat

Bowen House, Parliament Buildings, WELLINGTON

To Robina Richardson, Clerk of the Local Government and Environment Committee,

**RE: *Manukau City Council (Control of Street Prostitution) Bill***

Please accept our submission to your Parliamentary Inquiry. Sex workers around the world have watched with interest the developments in New Zealand since decriminalisation in 2003. Not only are these developments of world importance but for Australasia they hold a special significance. It is in the interest of Australian sex workers to see New Zealand successfully implement appropriate laws and as such provide a leading light for law reform in Australia as well.

To those ends Scarlet Alliance has contributed in a number of ways to the New Zealand process, including endorsing the use of the Scarlet Alliance Occupational Health and Safety *Best Practice Guide* which has been adapted for use in New Zealand. We now also submit our concerns, experiences and recommendations in relation to street based sex work. Thank you for this opportunity.

Submission in opposition to The Manukau City Council (Control of Street Prostitution) Bill  
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The Scarlet Alliance contact details are publicly available, and we give permission for the Local Government and Environment Committee to publicise our organisations' contributions, our contact details, and our submission. Scarlet Alliance is also interested in speaking and presenting oral evidence at your inquiry, pending the dates and our availability.

Once again thank you for this opportunity and we look forward to a positive outcome from the committee – that the ***Manukau City Council (Control of Street Prostitution) Bill*** is opposed and that safe houses are considered as a viable option for the street based sex workers of New Zealand.

Many thanks,

Janelle Fawkes  
Manager  
Scarlet Alliance

## **Contents**

Cover Page	1
Support Letter	2
Executive Summary	5
Scarlet Alliance	7
Legal Frameworks in Australia	9
Why do sex workers choose street based sex work?	10
Decriminalisation	11
New South Wales – Safe Houses	12
Victoria – Sex Work Centres	13
Physical Assault	15
Sexual Assault	17
Indigenous sex workers & ‘Sex for Favours’	18
Health	19
Policing Tactics	20
Visibility	23
Conclusion and Recommendations	28
References	29
Acronyms, Organisations and Terminology	30

## **Executive Summary**

Scarlet Alliance does not support the ***Manukau City Council (Control of Street Prostitution) Bill*** or any proposals to criminalise street based sex work.

Scarlet Alliance applauds the political strength and leadership shown by the New Zealand Parliament and the decriminalisation of all sex work, including street based sex work.

Scarlet Alliance urges all members of the New Zealand Parliament to maintain a focus on street based sex worker safety while solving current issues raised by non-sex working residents in relation to amenity impact.

Scarlet Alliance recommends safe houses for street based sex workers as a win-win solution for sex workers and non-sex working residents in street sex work areas. Safe houses provide safety for sex workers, and also lower amenity impact in sex working areas by giving sex workers and clients a private and discreet location in which to meet and provide services.

### **Why do Sex Workers Choose Street Based Sex Work?**

Street based sex work is a choice for many sex workers, regardless of the criminality, and is a permanent sector of the industry not least due to the flexibility and independence from other forms of organised sex work. Street based sex work allows sex workers greater choice over the types of services, clients, and pricing of their work. Street sex workers can work as often or as little as they need, unlike organised sex work where commitment to rosters and shifts are the expectation. In addition, street sex workers retain all of their money themselves, so can see less clients to make their money.

### **Decriminalisation of Street Based Sex Work**

The decriminalisation of street based sex work in NSW has had varying outcomes but the most significant has been in relation to sex worker health and safety and the ability to work without fear of prosecution. This has taken some negotiation in certain areas (Kings Cross, East Sydney, Port Kembla and Bankstown for example) and sex worker rights groups including The Australian Prostitutes Collective and the Sex Workers Outreach Project of New South Wales have played a leading role in ensuring that sex worker safety is a priority. South Sydney Council also showed leadership in providing regulatory support for the safe house brothels which have been authorised in Kings Cross, Sydney.

### **Safe Houses/Sex Worker Centres**

Safe Houses are in operation in the Kings Cross area of Sydney and have been debated among sex workers, residents and government as a viable model for St Kilda in Victoria. They provide sex workers with safety, and they also allow for a degree of a

non-criminalised regulatory framework to be established around the operation of the safe house; occupational health and safety and local council compliance.

### **Physical and Sexual Assault**

Physical and sexual assault against street based sex workers is a relevant topic in the discussion of regulation surrounding the street based sex industry. We draw attention to the assaults perpetrated as a result of bad planning, discriminatory laws, criminalisation and stigma. Physical assault of street based sex workers by non-sex working residents has been a characteristic of localised 'vigilante' campaigns against sex workers. Research also shows that in areas where police have strong powers against street based sex workers, sexual assault by police is also prevalent, up to 50% (Dowd 2002).

### **Health**

The health of street based sex workers is directly affected by the laws and policing practices. (Woodward and Fischer, "Regulating the World's Oldest Profession: Queensland's Experience with a Regulated Industry" Research for Sex Work Edition 8, June 2005 pg 16 - 18). Where condoms are used as evidence, this acts as a barrier to sex workers maintaining their own supply of condoms, and undermines health education and HIV/AIDS prevention work. In addition, sex workers who are charged and imprisoned become cut off from their community of support, and may lose their homes and custody of their children. This in turn affects the individuals self-esteem and coping mechanisms, bringing additional health problems that may become cyclic in nature.

### **Policing Tactics**

Australian policing strategies have often been initiated after pressure from residents and politicians to be seen to do something, with no long term outcomes. Strategies have included entrapment, media coverage of arrests and intensive targeting of street work areas with non-sex work related operations that impact on clients (vehicle roadworthiness, road breath testing) or sex workers (move on orders, bag and body searches). Constant "stop and interrogate" approaches to street sex workers, amounting to harassment in some cases, have also been used. Potential police corruption in relation to these interactions is a direct outcome of criminalisation.

### **Visibility**

The visibility of street sex work is a factor in driving community perceptions. The community may hold a spectrum of opinions on street sex work, and differing levels of tolerance. The discomfort some individuals express about this activity may be based in perceived differences relating to class and gender roles, however, often is expressed as intolerance of street sex workers and their clients. Political leadership in relation to sex workers' rights to be visible on the street is an essential factor in the success of realistic policy towards street based sex work.

## **Scarlet Alliance**

Scarlet Alliance is the Australian Sex Worker Association. Through our objectives, policies and programs, we aim to achieve equality, social, legal, political, cultural and economic justice for past and present workers in the sex industry, in order for sex workers to be self-determining agents, building their own alliances and choosing where and how they work. This includes supporting the rights of street based sex workers to work how and where they choose.

Scarlet Alliance was formed in 1989 following the first HIV & Sex Work Conference. Scarlet Alliance is Australia's national peak body of community based sex worker organisations and projects, with membership made up from sex worker organisations and projects in the states and territories. Each year a National Forum and AGM is held at which time key policies are developed, an executive and spokespersons are elected, and workshops on issues for sex workers are conducted.

Scarlet Alliance currently plays an active role in Australia's response to HIV/AIDS and has produced a range of resources in collaboration with AFAO, including: *A Guide to Best Practice, Occupational Health and Safety in the Australian Sex Industry (2000)*, and *Principles for Model Sex Industry Legislation (2000)* (available at [www.scarletalliance.org.au](http://www.scarletalliance.org.au) and used as the basis for *A Guide to Occupational Health and Safety in the New Zealand Sex Industry* published by the Occupational Safety and Health Service of the Department of Labour, New Zealand). Scarlet Alliance is a leader when it comes to advocating for the health, safety and welfare of workers in Australia's sex industry.

Australia has the lowest rate of HIV/AIDS amongst sex workers in the world, due to the work of community based sex worker organisations and projects who make up the membership of Scarlet Alliance along with the response by those working in the sex industry. Scarlet Alliance member organisations and projects have the highest level of contact with sex workers in Australia of any agency, government or non-government. Our projects have close to 100% access to sex industry workplaces in the major cities. Many of our sex worker organisations and projects within Australia also have CALD (Culturally and Linguistically Diverse) or NESB (Non English Speaking Background) Projects employing bi-lingual project workers.

Scarlet Alliance has played a critical role in informing the Australian Government at all levels, and informing the health sector, both in Australia and internationally, on issues affecting sex workers in the Australian sex industry. In addition, Scarlet Alliance has been active in promoting to other countries the models of service delivery which have been most effective in minimising the transmission of HIV and STIs amongst sex workers and their clients.

Many Scarlet Alliance member sex worker organisation/project/group provides an extensive outreach service to sex industry workplaces, thus ensuring a high level of contact with sex workers and other sex industry staff. Scarlet Alliance members also

make political representation and collect first hand anecdotal evidence and information about the impact of the laws in Australia.

**Scarlet Alliance Opposes the Manukau City Council (Control of Street Prostitution) Bill.**

In support of the rights of street based sex workers, as workers and as residents, we oppose the Manukau City Council (Control of Street Prostitution) Bill. Our sister organisation in New Zealand, NZPC has also made submissions to your committee, and we endorse their submissions, including their opposition to the ***Manukau City Council (Control of Street Prostitution) Bill***. We have chosen to provide the Committee with background information and lessons learnt through Australian approaches to street sex work. This submission will reflect on research and investigation into the street based sex industry that has been carried out in Australia over the last 30 years.

## **Street Based Sex Work Legal Frameworks in Australia**

Australia has a range of approaches to street based sex work and as such provides comparative models of legislative and policing approaches to street based sex work. Street based sex work is decriminalised under certain circumstances in New South Wales and is criminalised and policed in other states and territories. Regardless of the legality however, it thrives as a small but constant sector of the sex industry. Numbers and percentages vary but Scarlet Alliance estimate that street based sex work makes up 2 to 5% of the entire sex industry in Australia. The history of street based sex work goes back to the 19<sup>th</sup> century and there is no doubt the legal regimes have been unable to contain, control or eradicate street based sex work.

In the Australian experience, levels of criminality, police activity and local council road diversions have resulted in moving locations of the street based sex industry but have never had the outcome of eradicating it. Even in the face of harsh police crack downs, in 80 - 120 years of criminalisation in Australia the industry still exists as a consistent if small percentage of the sex industry.

## **Why do Sex Workers Choose Street Based Sex Work?**

Sex workers choose street based sex work for a number of reasons, the most relevant being that it is the best environment for them at that time. Street based sex workers don't have to share their income with a boss or sitter, they can work periodically without having to commit to either long shifts or place an advertisement and giving out their phone number. It suits people who are travelling, transient, street present, or simply wishing to fill a financial stop gap. However it also suits people who are independent, desire to control their own workplace and surroundings and like to be able to choose when they work and don't work. For this reason, many sex workers in Australia have worked on the streets at some time during their working lifetime, and have possibly used it to supplement income from a non-sex work job, or other sectors of the sex industry including private and brothel work.

*'What I like about the streets is you can start when you want to, finish when you want to: you are virtually an independent person. You don't have to put up with half the things you have to put up with in the parlours. And the money's better on the street.'*

Kelly, Street based sex worker, interviewed by Roberta Perkins for *Working Girls; Prostitutes, their Life and Social Control*, Australian Institute of Criminology, 1991, pg 15

*'Basically, quick money, and in my own time and space, and whenever I need it, I only need to go down and get it.'*

Lee, Street based sex worker, interviewed by Dona Macik for *A Qualitative Study of the Victorian Sex Industry*, 1995, pg 17

## **Decriminalisation**

Sex workers in Australia were not illegal for the first 100 years of white colonisation, however were arrested under vagrancy and offensive behaviour laws. The original laws came into place as a reflection and late uptake of moralism that characterised the Victorian era in England, and 'public soliciting' laws were passed and enforced from the 1890's and early 20<sup>th</sup> century. In New South Wales the early laws included the 1902 Vagrancy Act 1908 Police Offences Amendment Act which strengthened the original Vagrancy Act and also introduced the infamous 'living off the earnings' clause which was only decriminalised in the mid '90s, but is still relevant in other states and territories of Australia. New South Wales first decriminalised street based sex work in 1979 under the Wran Labor Government. In 1988 the Greiner Liberal Government altered the laws to disallow street based sex work in *view* of a resident, school, church or hospital. As such the street based sex working areas in a given suburb or city become well known, however not everywhere falls into a legal zone.

### *Summary Offence Act (SOA) 1988 (NSW)*

*"a person in a public street shall not, near or within view from a dwelling, school, church or hospital, solicit another person for the purpose of prostitution"*

The implementation of the laws is not always smooth sailing however, and contemporary examples include clashes over specific working sites, for example in Bankstown, NSW. Disagreements between police and sex workers were mediated by joint meetings held by SWOP. Some of the outcomes of the meetings include:

*'Establishing agreement as to where the legal working area is, police acknowledged [that the building used as a] church is no longer in operation, police committed themselves to directing officers to take a more objective approach to policing of this area and police to remain courteous and polite to the women just like they would with any other citizen.'*

Wotton, R, *The Relationship Between Street Based Sex Workers and the Police in the Effectiveness of HIV Prevention Strategies* Presented at the XVth International HIV/AIDS Conference in Bangkok, Thailand, July 2004

### **New South Wales – Safe Houses**

Following decriminalisation of street based sex work and eventually the decriminalisation of 'living off the earnings,' for people organising brothels, Safe Houses were approved by the local council to run as independent businesses providing short stay rooms at reasonable rates (\$15 for half an hour) for street based sex workers to take their clients.

**Andrew Miles (South Sydney Council)** *The primary function of a safe house brothel is to provide a room where a street based sex worker can provide a commercial sexual service to their client. The advantage of having them recognised under Council's planning policy is that we can apply design and health standards to those premises, which support safe sex practices for the workers, and a safer work environment for everyone involved*

**Damien Carrick (ABC Radio)** *So it's all about harm minimisation?*

**Andrew Miles (South Sydney Council)** *That certainly informs the health standards of the sex industry policy. The location of the safe house brothels is essential. They're within a very short walk of this designated street sex working area.*

**Cindy (Street Based Sex Worker)** *The advantages of having a safe-house are pretty obvious really, because otherwise we'd be left to the resources of doing car jobs, and the problem in doing a car job is the guy can have a knife in his sock, or he can have a knife under the seat, he can slit your throat at any time. You can get bashed in the car, he can push you out of the car, you can get arrested if you do it in a car because it's called having sex in a public place. The advantages of having a safe-house as good as this one are really manifold.*

'Street Prostitution' The Law Report, ABC Radio, 30/04/02  
[viewed 21/02/06  
<http://www.scarletalliance.org.au/library/sherrifs03>]

The safe houses have provided a number of benefits for the local community of Woolloomooloo and Kings Cross. They are approved by the Local Council and as such are subject to Occupational Health and Safety requirements and other regulations relevant to any service industry. Sex workers have a safe place to go to service their clients. The safe houses are located very near the street sex working area, and have co-existed with residents and other businesses for over 30 years, and legally for the last 10 years.

### **Victoria – Sex Worker Centres**

In 2001 the Attorney General of Victoria formed the Attorney General Street Prostitution Advisory Group (AGSPAG) to inform the Government of ways to address the balance between amenity impact and sex worker health and safety in a specific sex working area of St Kilda in the City of Port Phillip. The final report suggested a two year trial of tolerance areas, chosen after comprehensive consultation and with approval by the City of Port Phillip. Unfortunately the political will did not prevail and the trial never went ahead, however the report and their findings are an important milestone in Government understanding of street based sex work in Australia today. In particular reference to designated street working areas and safe houses the committee had this to say:

*The establishment of tolerance areas only addresses some of the issues confronting residents, traders and street sex workers. Servicing activity is more widespread through residential areas of Port Phillip than collection activity, and is significantly more dangerous for street sex workers. During consultation, several street workers indicated that they have been victims of assault, sexual assault, robbery and abuse when servicing clients in alleys and cars. In keeping with its objectives of minimising harm to the community, the Advisory Group seeks to increase the safety of residents, traders and street sex workers in the City of Port Phillip. This means the issue of providing safe alternative servicing facilities cannot be ignored.... The proposal to establish street worker centres was widely supported by stakeholder organisations, residents and street sex workers... Currently, many street sex workers operate out of a room at one of the local hotels or nearby empty premises....and are typically unclean and unsafe. The high cost of such rooms means that many sex workers service clients in cars, at the risk of their personal safety. In consultation sessions conducted by the Advisory Group, street sex workers indicated they would welcome the establishment of street worker centres, and*

Submission in opposition to The Manukau City Council (Control of Street Prostitution) Bill  
& in support of the Rights of Street Based Sex Workers

**Scarlet Alliance, Australian Sex Workers Association**

*suggested around 80% of clients would also prefer to be serviced in a safer and more private environment.*

AGSPAG Final Report 2002 pgs 55 - 56

Importantly the trial of sex worker centres was approved by all stakeholders, including local residents. This points to successes that can emerge from consultative processes, if local councils, government, sex workers and the non-sex working community and residents all commit to such a process.

*With the clients over the 9 years [that I have worked] I've ended up with a sixth sense of which clients I shouldn't go with, and if I had any questions in my mind I make sure I go closest to the area that I know so if there are any problems I can get out of the car and quite easily get to a safe place...*

Trixie, Street based sex worker, interviewed by Dona Macik for *A Qualitative Study of the Victorian Sex Industry*, 1995, pg 30

*When I first started out, I was told 'always try and get control of the client,' let them know you're in charge... I just sort of call the shots basically, you don't want them telling you what to do...I always try and work from my room if I can. If I do take them in the car, there is this alleyway. I know some girls take them down to the park, or the beach, or something where there is no one around. I have done that before and got into trouble. So I take them down this alleyway where there are houses on both sides, you know what I mean?*

Rochelle, Street based sex worker, interviewed by Dona Macik for *A Qualitative Study of the Victorian Sex Industry*, 1995, pg 29

As discussed above, location of where street based sex workers do the service relates directly to safety and ability to stay in control during the service. Sex workers who take the client to remote or isolated locations are more at risk of violence. As such residential and commercial spaces that allow sex workers privacy but also proximity to other people are the most safe places to do the service. If the sex worker does not have access to their own space (such as a hotel or short stay room) then the next safest space may be located near residential areas and will have an impact on the residents themselves. As such safe houses with proximity to the street based working areas, and in built up locales such as mixed residential/commercial zoning or residential, are a safe option for street based sex workers and also lower the amenity impact on local residents.

## **Physical Assault**

Vigilante activity by local non-sex working residents against street based sex workers has been a side product of lack of political leadership on the issues and rights of street based sex workers in Australia prior to introduction of approved safe houses.

*Darley Street, in the 1980s was a thriving area of street based sex work. After the legal changes in 1979 this became a lively area of street based sex work. In Liverpool Street there were the women, and in Darley Street this was the area for transgender sex workers. Some transgender who has sex changes could pass as women and would work with the women, but otherwise they were here on Darley Street. Clients knew if they came here, they would see transgender sex workers. ... .. there wasn't just the stigma of being a transgender, or a sex worker, there was even more stigma for being near violent residents that did things like threw molotov cocktails at them. One sex worker was taken to the hospital for glass exploding and getting stuck in her leg in the early 1980's.*

*On the corner there was a resident that was also pressured by the moralistic majority to do something, started to spray sex workers with the hose. He also sprayed a couple of clients one night, and they leaped over the fence and bashed him up. The Police were called in and the old man died from a heart attack. Remember that the sex workers weren't breaking the law, they had every right to be there, and this man had been spraying them with water, however the newspapers headline said "Death of a crusader" meaning that the man was leading a movement of moral worth.*

Roberta Perkins, Oral History as told to students of UNSW, February 2006

What this example shows is that decriminalisation must come with political leadership that is prepared to champion the rights of street based sex workers. Protection under the law was not enough to protect the transgender street based sex workers of Darley

Submission in opposition to The Manukau City Council (Control of Street Prostitution) Bill  
& in support of the Rights of Street Based Sex Workers

**Scarlet Alliance, Australian Sex Workers Association**

Street, East Sydney, from violence perpetrated by local non-sex worker residents, and we suggest the case is the same in New Zealand. Individual sex workers become the target for community frustration unless political leaders are prepared to stand strong and vocalise solutions which include **both** street based sex workers **and** local residents working together to determine the geographic rights and amenity impacts that can be lived with by all. NSW and Victorian local councils have both had considerable, positive experiences in facilitating civil dialogue and outcome focused community based responses to street based sex work issues.

Submission in opposition to The Manukau City Council (Control of Street Prostitution) Bill  
& in support of the Rights of Street Based Sex Workers

**Scarlet Alliance, Australian Sex Workers Association**

## **Sexual Assault**

Research by SARC in 2002 found that of the Western Australia (WA) street based sex workers interviewed who had experienced sexual assault, **half** of them had experienced it at the hands of the police (Dowd, 2002). Unfortunately in a criminalised and police controlled sector of the street based sex industry such as is the case in Western Australia, police violence against sex workers is under reported. Also of concern is that police statistics and the SWOPWA statistics for 2002 did not correlate; the police had contact with **four times** the number of sex workers that SWOPWA did. This means that for the sex worker community, their main service provision was at the hands of the police, in a culture that included swapping sex for immunity, threats, violence, coercion and rape. At least one police officer has gone to jail for sexually assaulting street based sex workers in WA, and another man has gone to jail for rape and impersonating a police officer in an effort to gain free sex. In the recent research commissioned by the Prostitution Licensing Authority in Queensland (Woodward et al, *Selling Sex In Queensland 2003, 2004*) 27.3% of the street based sex workers interviewed had been sexually or physically assaulted by a police officer in the last 5 years, and 39.4% had been sexually propositioned by a police officer in the last 5 years. We advise that these terrible outcomes are the result of criminalisation and handing control of street based working areas to the police.

*Anecdotally, there were three incidents involving sex workers being assaulted by the police that I know of by word of mouth, which occurred at the beginning of the year. The reason I mention this is to point out that these people will not stand up and give negative feedback [on the laws] because they think that no-one cares, and if they speak out they believe they will get hurt.*

Community Sector Worker, interviewed by SWAG for *Research into the effects of the Prostitution Act 2000*, submitted to the West Australian Government in response to the Prostitution Control Bill 2003 Green Bill, February 2003

*I've never seen the medical profession take me seriously.. It's a bit like when a prostitute gets raped, you know, no one takes it seriously, that sort of thing, that's how I feel I get treated..*

Lee, Street based sex worker, interviewed by Dona Macik for *A Qualitative Study of the Victorian Sex Industry*, 1995, pg 27

## **Indigenous Street Based Sex Workers and “Sex For Favours”**

Scarlet Alliance warns against the superficial and sometimes racially motivated separation of indigenous and non-indigenous sex workers into different classes of street based activity. A recent trend in the Northern Territory has been to differentiate indigenous workers from their non-indigenous counterparts in other cities of Australia by characterising their street based sex work as “opportunistic” or sex for favours. Scarlet Alliance member SWOP NT can confirm that the indigenous sex workers on the streets in Darwin’s Parap suburb are an organised group of street based sex workers that need to be treated as street based sex workers and granted rights and recognition under the law for their work. Currently in this area, the street based sex working community consists of indigenous transgender sex workers and heterosexual sex workers.

*People there have really organised ways of sex working, always trying to operate in pairs and coming up with clever ways of remembering number plates. The sistergirls have even come up with their own separate language and words that aren’t recognisable by clients but are recognisable to each other and used to ensure safety and share information. This language, while developed by the sistergirls, has now been shared with the heterosexual female workers in the same area. The exchange may be for a combination of cash, and goods, however this is also standardised, and is not generally negotiated on a job by job basis. So unlike the notion of opportunistic sex, the clients in this area are also aware of the standardised ‘prices’ and know that they can’t necessarily barter or haggle randomly.*

Alina Thomas, Peer Educator, SWOP NT

All people engaging in sex work, no matter what the location or method of payment, deserve rights as workers and recognition as such. In particular communities, such as the Darwin example shows, practises may emerge that characterise the indigenous street based sector as different to, however no less deserving of appropriate responses as more mainstream forms of street based sex work.

## Health

Recent research commissioned by the Prostitution Licensing Authority found that street based sex workers in Queensland, while having a sometimes higher earning capacity than legal brothel workers, faced health issues that urgently needed to be addressed (Woodward et al, *Selling Sex In Queensland 2003,2004*, pg 55). The illegal status of street based sex workers in Queensland contributes to a lack of access to health services.

Elaine Dowd, while researching the topic of street based sex work in Western Australia, found that the laws in WA had a negative impact on the health of female sex workers. In particular, when comparing the police statistics and outreach statistics for SWOPWA, it appeared that SWOPWA only had contact with one quarter of the street based sex workers that had contact with the police. That police have the greatest contact with street based sex workers is of great concern, and is in opposition to the health policies that fund outreach and welfare agencies.

*The Prostitution Act 2000 has done nothing to alleviate the limited options of street based sex workers, instead it has further consolidated their socially and economically marginalised position, and has isolated them from other workers and health and support services. Even worse is the fact that now that street-based sex workers have been criminalised, this has resulted in many women with already limited options now having a criminal record. I am also concerned that the police have used their increased powers given to them in the Prostitution Act 2000 to keep surveillance on the area and target other issues, such as minor drug offences. I believe that this Act has converted the inner city area into a 'catchment' area.*

Community Sector Worker commenting on the negative impacts of the Prostitution Act 2000, interviewed by SWAG for *Research into the effects of the Prostitution Act 2000*, submitted to the West Australian Government in response to the Prostitution Control Bill 2003 Green Bill, February 2003

## **Policing Tactics**

Police in Western Australia and Queensland have the power to engage in entrapment for the purpose of gaining evidence of a crime in relation to street based sex work. In practise this means that police pose as clients and sex workers in attempt to trick a real sex worker or client into making incriminating statements such as talking about prices for a service. In Western Australia, police also pose as social workers (Dowd 2002) in order to obtain evidence. This has had detrimental impacts on the ability of real service providers to develop trust with street based sex workers.

As mentioned already, sexual assault of street based sex workers by police is a very real contemporary issue in WA, since the introduction of harsher street based sex industry laws there in 2000. The discovery of such police tactics may be partly due to the focus of having a separate health project focussed solely on street based sex workers.

*During my time as a street worker I was consistently the target of the police who were in control of street prostitution. I guess this was because I took the stance where I stood up for my rights and the rights of fellow street workers. This meant that I attracted more than my fair share [of] attention from the police such as them pulling up on the front verge of my property, putting their loudspeakers on and calling out my name over the loudspeakers, thus causing me to fell embarrassed, angry...*

Street based sex worker when asked on her relationship with the police, interviewed by SWAG for *Research into the effects of the Prostitution Act 2000*, submitted to the West Australian Government in response to the Prostitution Control Bill 2003 Green Bill, February 2003, pg 11

In St Kilda, Melbourne, street based sex workers experience a high degree of harassment from the police as well, as found in the 1995 study:

*They hassle the girls on the street all the time and charge us for it...I was sort of dodging them, I don't like them, they are just corrupt. Like when I was 13, I got pulled over for prostitution. I don't think I really knew what it was at the time. They took me back to the cop shop and the sergeant came out and said 'I should take you out to the cells and show you what a good time is all about.' I shit myself coz I thought....He*

Submission in opposition to The Manukau City Council (Control of Street Prostitution) Bill  
& in support of the Rights of Street Based Sex Workers

**Scarlet Alliance, Australian Sex Workers Association**

*had [pictures of] dicks pinned up on the pinup board. They are pretty corrupt, they rob you for your money, they have taken my money before. They have screwed it up and thrown, dropped it on the ground, and said 'Oh look what I've found.' So you have got no chance.*

Rachel, Street based sex worker, interviewed by Dona Macik for *A Qualitative Study of the Victorian Sex Industry*, 1995, pg 42

The above examples illustrate the inappropriateness of having police as a primary contact for street based sex workers. In this case the Victorian Police did not see fit to refer a 13 year old street based sex worker to welfare; rather they threatened her with rape in an office with pornographic pictures on the wall.

In Queensland it is known that there is a practise of collecting DNA of sex workers, even though the charge of street soliciting does not encompass the need or lawful collection of such evidence. On a visit to the 'watch house' on Roma street in Brisbane 2003, Scarlet Alliance members were told that sex workers knew that they would be held until they agreed in the 'watch house' if they refused to voluntarily give a DNA sample (personal communication 2003). This constitutes a breach of both civil liberties and the law, and is an example of policing being extended beyond the intention of legislation. No individual sex worker has made a complaint of such treatment to date, which in itself is an illustration of the vulnerability and marginalisation of street based sex workers that they are subject to such treatment and not empowered to expect a complaint will be taken seriously.

In Bankstown, NSW, Peer Educator Rachel Wotton noted the following negative outcomes of over policing:

- *Workers started to carry fewer condoms*
- *Hiding their safe sex and injecting equipment*
- *Jumping into cars straight away instead of talking to the client first through the window*
- *Taking the clients away from industrial area*
- *If found breaching bail conditions, locked up straight away*
- *Pleaded guilty just to get conditions removed results in other fines and a longer criminal record*

Wotton, R, *The Relationship Between Street Based Sex Workers and the Police in the Effectiveness of HIV Prevention Strategies* Presented at the XVth International HIV/AIDS Conference in Bangkok, Thailand, July 2004

These outcomes have been noted in other street based working areas in Australia, including Queensland and Western Australia. It is clear that police involvement in street based sex working communities has resulted in sexual assault, corruption and extreme use of the laws available to them. Police activity at no time has resulted in eradicating the street based sex industry in any place in Australia.

*A police car pulled up...The police officer approached us and asked her what she was doing here. She stated "Walking Home." He [the police officer] stated he intended to issue her with a move on notice...she said "You can't – I wasn't working." I also stated "she wasn't working".... The Officer grabbed the person we were speaking to by the arm and started pulling her over to the car in an aggressive manner...I said "there is no need to be violent" and was told to "stay out of it."..The police emptied out her bag. I witnessed the officers taking the persons photograph and at that stage she became very distressed...I asked what made them think she was working? The Officer replied "if she wasn't working, why did she have a bag full of condoms?"*

Community Sector Worker witnesses police intimidation of a street based sex worker in East Perth, Western Australia, interviewed by SWAG for *Research into the effects of the Prostitution Act 2000*, submitted to the West Australian Government in response to the Prostitution Control Bill 2003 Green Bill, February 2003, pg 6

As highlighted by Rachel Wotton on pg21 of this submission, the use of condoms as evidence has a negative health outcome of sex workers carrying less condoms. Use of this kind of circumstantial evidence overlooks that fact that it is actually not illegal to walk down the street carrying condoms, or illegal to talk to people in cars. Police harassment of street based sex workers takes many forms, and as such any criminalisation will just lead to increased and more overt harassment. There is no evidence in Australia that this harassment actually leads to a drop in street based sex work.

## Visibility

A theme of sex worker laws in Australia is 'out of sight, out of mind.' Even in the decriminalised areas of New South Wales, local authorities including Local Councils, Police, residents and business owners, do not want to *see* the industry. When it is pushed into darker, more dangerous and less visible areas, there has been significant 'success' claimed on behalf of such authorities (see CMC report, add quote). However, the membership of Scarlet Alliance reports that reducing the visibility of the street based sex industry has not had an impact on the actual numbers of street based sex workers, but it has had a negative impact on working practises.

Street Based Sex Workers have had the following to say:

*If we are moved on, we will go to the next street  
and the next until we get to a totally dark place  
that is completely unsafe*

Margaret Knight, Street Based Sex Worker, Interviewed by  
Ruth Callaghan for *The West Australian* 29 July 2000, pg 9

Roberta Perkins did a comparative look at the arrests in the first 10 years of the Vagrancy laws in NSW and found a significant drop in the 'soliciting' charges and an increase in the 'indecent behaviour' charges (Perkins). She concludes that the practises of public soliciting became more clandestine and hidden in response to the police attention, and that police had to turn to more extreme tactics including entrapment in order to arrest the sex workers.

This trend is mirrored in a similar comparison between 'soliciting' and 'offensive behaviour' charges in the 1960s in Sydney. While 'soliciting' charges over two year periods varied from 20 to 103, the 'offensive behaviour' charges were up as high as 40,515, the lowest being 20,580. The ratio between the charges varied from (roughly) the highest at 1:1000, and the lowest at 1:20 ('soliciting' : 'offensive behaviour').

This illustrates that even if the activity of soliciting is illegal in itself, it is not the act of soliciting that is policed when street based sex work is illegal. Generally in Australia the act of being *present* on the street is what the police will attempt to regulate, through laws other than those intended for the limitation of the act of sex work itself.

For example, in WA, 'soliciting' has been illegal since the original English influenced trend in the late 19<sup>th</sup> and early 20<sup>th</sup> Century. However under these laws the police were unable to eradicate street based sex work. Under the more contemporary and harsher laws of the Prostitution Act 2000 the police may give street sex workers a 'move on notice' if they simply *suspect* that there is the *intention* of soliciting. The regulation of this law in WA relies on the police making a moral judgement of the visual landscape and the way that individual people fit into it appropriately or not. At

a public meeting in 2003 a Police Sargent made the statement that police make that judgement based upon what a person is wearing (reference).

What this indicates, and is mirrored across other states and territories that remain illegal, is that laws against soliciting in and of itself are incredibly difficult to police. Sex workers will change their behaviour to reduce the chance of detection by moving to darker and more remote areas, and police change their behaviour and have to use more moralistic and judgement driven charges (such as determining a sex workers' status by what they are wearing, or posing as clients in order to lure them into illegal behaviour). As such, changes to the law to criminalise street based sex workers hand to the police the power to morally and visually judge the social fabric of a given street based setting, and to make arbitrary decisions such as identifying who they *suspect* of being a sex worker and who they don't.

Attempts by police to reduce visibility can have devastating outcomes for the street based sex workers involved. The following is an example from an East Sydney safe house on the corner of Bourke and William Street, before full decriminalisation in New South Wales.

*The **safe house** that they used to take their clients to was just over there. In the 1980s they would chat to the client in the car, and then say "**meet me over there**" and the client would park his car and meet them outside the house. A good safe tactic. It was a sex work environment, with a sitter, lots of other workers walking around, and had its benefits for some workers over getting into a car. There were showers etc.*

*However this particular safe house had an unfriendly neighbour. On one occasion, when there was all this going on about residents being unhappy about street prostitution, the church leaders encouraging people to campaign, talking in their sermons about children on the street – which turned out to be either street based sex workers dressed in school uniforms or something the particular church leader made up. This particular safe house though had a nasty neighbour who was full of indignation, wrongly called it a brothel, and this was in the day when there was such a thing as the disorderly houses act which allowed police to close a house down if there was some sort of illegal or disreputable activity going on. It is an old English law that was relevant to the First Fleet and was repealed at long last in 1995. So*

*the police were sometimes pushed into action, and some unreasonable cops and unreasonable politicians, who had no qualms about using the very old law to prosecute and harass people around this area in the late 1980s. In this case it was an unreasonable resident who complained again and again about seeing the sex workers meet their clients outside the safe house and walk inside with them. The cops went around to Margaret, who ran the safe house, and said to her "Margaret, how bout you ask the sex workers to go up the back lane instead of through the front door then the old lady won't see it – out of sight, out of mind." Margaret didn't like this idea but decided that she had no choice. So she did the deal.*

*She passed the new rule onto the workers. What do you think happened?*

*The very first week of the new regime, one of the workers took a client down the back lane, he pulled out a knife and stabbed her in the stomach, and left her in the alley screaming. Margaret came out and called the ambulance and the women in question did survive, but was so traumatised she left sex work altogether, and without going into too much detail it had a terrible negative effect on her life and her ability to live her life. It was a terrible experience, and all because some old lady didn't want to see people walking in and out of the front gate.*

Roberta Perkins, Oral History as told to students of UNSW,  
February 2006

*I feel more independent working in the street, ...I like being independent...on my own basically...[I] call the shots, I always make that when I'm working on the street there are other workers, I don't usually work on my own... and I work in an area where other transgender people work...if there's only one of you, then you're vulnerable*

Lee, Street based sex worker, interviewed by Dona Macik for *A Qualitative Study of the Victorian Sex Industry*, pg 28

*I always work solely on my own. When I start work, I like to walk through all the other girls, saying hello, just to let them know that I'm there, so they've got an inkling where I am.*

Jocelyn, Street based sex worker, interviewed by Dona Macik for *A Qualitative Study of the Victorian Sex Industry*, pg 29

As illustrated in the above quotes, sex workers place a high degree of importance on safety and when unimpeded by the law will implement their own safety mechanisms. On the corner of William and Bourke Street, East Sydney, in the 1980's, sex workers chose to enter the 'illegal' safe house from the front, and utilised the visibility of this entrance to ensure safety. St Kilda based Melbourne street based workers Lee and Jocelyn use visibility to one another as a safety mechanism. When residents and local authorities campaign against such visibility, what they are actually doing is campaigning against the very tactics that make work safer for street based sex workers. Charlotte Woodward et al in the recently commissioned research for the Prostitution Licensing Authority came to similar conclusions:

*While concerns about the public nuisance associated with loitering and soliciting may be real, such concerns do not obviate the need to address the occupational health and safety needs of workers in the sex industry.*

Woodward et al, *Selling Sex In Queensland 2003, 2004*, pg 55

Street based sex work is not and cannot be an invisible industry, and the visual landscape of a street based working area will be populated with both street based sex workers and clients, regardless of the legality or illegality as deemed by the law. As

Submission in opposition to The Manukau City Council (Control of Street Prostitution) Bill  
& in support of the Rights of Street Based Sex Workers

**Scarlet Alliance, Australian Sex Workers Association**

such, it is up to laws and regulations to accommodate for that visibility by managing it as any public activity is managed, making space that accommodates street based sex work in appropriate areas and educating and building bridges with local residents to also accommodate their needs.

## **Conclusion and Recommendations**

Managing street based sex work through legislation which criminalises aspects of the activity has not been effective in Australia. Scarlet Alliance does not support the proposed Bill, as it will reduce the rights of sex workers and their clients to work in a safe, healthy environment, and will give powers to authorities that will increase corruption potential. Police are not suitable regulators of an industry made up predominantly of women. Street based sex work is better addressed through decriminalisation in combination with appropriate town planning and community service responses.

### **Scarlet Alliance recommendations**

1. That street sex work remain decriminalised in New Zealand
2. That local council, government and civil society, including street sex workers and their representative work together to develop appropriate responses to street sex work.
3. Appropriate responses to street sex work are those responses which respect the human rights, safety, health and dignity of street sex workers and their clients.
4. That the New Zealand government research and document the outcomes of decriminalisation in NSW as a starting point for community education and informed consultation processes on this issue.
5. That safe houses be established for street based sex working areas, in consultation with sex workers, sex worker organisations, local planners, residents and business owners.
6. That the New Zealand Government recognise it's responsibility to protect members of the New Zealand public, including street based sex workers and their clients from police corruption.

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## **Acronyms, Organisations and Terminology**

**Sistergirl:** Transgender or gay Indigenous and Torres Strait Islander peoples, including sex workers, refer to themselves with the term 'sistergirl.'

**Street Based Sex Work:** Public interaction and negotiation between a sex worker and a client in a physically open space; the sex worker generally located in a street environment, interacting with clients who are in their cars or pedestrians. After initial public interaction and negotiation the sex worker and client will go to another, more private, location where the sex worker will provide a specified sexual service for a agreed sum of money. This location varies, highly influenced by laws, policing and localised general practice, and includes but is not limited to: the clients car, a short stay hotel, the sex workers' home or private work place, the clients home, a 'safe house', a sex industry premises such as a private booth in a strip club, a brothel that allows street based workers' to use the rooms, a public toilet, or other such places in a street based environment including parks.

**AGSPAG** Attorney General Street Prostitution Advisory Group, formed in Victoria in 1999 and met for one year, releasing its report in 2000 ()

**SARC** Sexual Assault Referral Centre of Western Australia

**SSPAN** Sexual Service Providers Advocacy Network of Queensland

**SWAG** Sex Workers Action Group, Western Australia

**SWOPWA** Street Based Sex Workers Outreach Project of WA

**SWOP NSW** Sex Workers Outreach Project of New South Wales

**SWOP NT** Sex Workers Outreach Project of Northern Territory