

**HIV/AIDS Legal Centre Response to
Regulation of Brothels in NSW
October 2012**

ABOUT the HIV/AIDS LEGAL CENTRE

The HIV/AIDS Legal Centre (HALC) was established in 1992, evolving from the Australian Federation of AIDS Organisations (AFAO) and the then AIDS Council of NSW (ACON) Legal Working Party, and has since then been a Specialist Community Legal Centre (CLC) funded by State and Federal Governments.

The work of HALC is an essential part of creating the 'enabling environment': an environment best allowing HIV positive people to live well and free from fear and risk of harm due to their HIV status, and for engendering freedoms and empowerment among the community, including those at most risk of contracting HIV, to reduce the incidence of HIV infection. The 'enabling environment' approach is a critical part of the Federal and NSW State HIV strategies, which reflects best practice and a world leading response to the HIV epidemic since the 1980's.

HALC provides direct casework support and legal representation to clients with an HIV-related legal matter. In addition, HALC is funded to undertake Community Legal Education in areas of the law that affect people with HIV, and to contribute to law reform where appropriate. HALC is in a unique position to provide input into law reform, drawing on our direct knowledge and experience of providing legal advice and representation to individuals affected by such laws.

HALC provides legal advice, support and representation to disadvantaged and/or vulnerable people living with or affected by HIV, including those at risk of acquiring HIV such as sex workers and people who use drugs.

Regulation of the NSW Sex Industry

HALC welcomes the discussion paper on better regulation of the NSW Sex Industry, and the useful summary of the regulatory framework into one document. HALC fully supports and endorses the comprehensive joint submissions made by ACON and the Sex Workers Outreach Project (SWOP).

We add our voice to the strong support for the objectives under the heading 'Option 1 – Improve the current regulatory system' in the Paper. Whilst the current regulatory system is not perfect, it remains the most effective model when considered against the alternatives.

HALC supports further efforts to improve and continue to monitor compliance with guidelines within the existing system. In this regard, we support the reintroduction of the Sex Services Premises Working Group to oversee this process. We submit that steps should be taken to align home-based sex work with other home based employment, allowing councils to provide exempt or complying status to home based workers in residential areas. We further support an approach that maintains the outstanding public health outcomes achieved by sex workers in NSW.

Licensing and Registration

We would oppose any registration system on the basis that there can never be certainty over who would have access to the information, and the use or misuse that such information might be put to in the future.

If sex workers suffer discrimination as a result of their occupation becoming more widely known due to such a register being introduced, they have no legal recourse in NSW. In contrast to Queensland, Tasmania and the ACT, Anti-Discrimination legislation in NSW does not extend to discrimination against sex workers on the basis of their occupation. Yet sex workers face stigma and discrimination from the general community as a result of their chosen occupation.¹

Employers, providers of services (including medical and financial services), landlords and others can lawfully discriminate against people who are, or have been or are suspected to have been sex workers.

It is notable that despite there being strong legal protections in the area of disclosure of a person's HIV status, disclosures by health professionals and others still occurs on a far too frequent basis, with extremely detrimental outcomes to the individual. Unlike sex workers however, people with HIV are protected by Anti-Discrimination legislation, both at a State and Federal level.

Safeguarding Public Health

Any system that might impede or hinder the ability of sex workers to access appropriate medical care and testing would have a detrimental effect on the world leading public health outcomes described by Donovan² in sex workers in the NSW sex industry. Sex workers demonstrate lower levels of sexually transmitted infections and transmission rates of STIs/HIV than in comparable groups within the general community, and rates of condom use amongst sex workers stand at 99%.²

These impressive health outcomes are a legacy of the decriminalised model of sex work in NSW, and the work of peer support groups such as SWOP. The broad coverage and engagement with sex workers that SWOP is able to achieve is as a direct result of the decriminalisation model. This model is in distinct contrast to Victoria and Queensland's licensing models that result in a two-tier system of a licensed and unlicensed sex industry, where it is estimated that as much as 90% of the sex industry is unlicensed, and therefore unregulated and driven underground.³

A recent study assessed the impact of the law on the delivery of health promotion and found that brothel licensing results in the unlicensed sector being isolated from peer education and support.⁴

In conclusion, we submit that introducing a licensing/registration system will lead to two-tiers of sex industry regulation, resulting in reduction in accessibility to peer support outreach programs, and resulting in poorer public health outcomes and sex worker health and safety.

¹ Jeffreys, E., Matthews, K., & Thomas, A. (2010). HIV criminalisation and sex work in Australia. *Reproductive Health Matters*, 18(35), 129-136.

² Donovan, B et al *Improving the health of sex workers in NSW: Maintaining Success* NSW Public Health Bulletin Vol. 21, 2010.

³ A Schloenhardt & Human Trafficking Working Group, *Happy Birthday Brothels: Ten Years of Prostitution Regulation in Queensland*, (2009).

⁴ C Harcourt, J O'Connor, S Egger, *et. al.*, 'The decriminalisation of prostitution is associated with better coverage of health promotion programs for sex workers', *Australian and New Zealand Journal of Public Health*, vol 35 (5), (2010).