

9 May 2019

Licensing NT
Department of the Attorney-General and Justice
GPO Box 1154
Darwin NT 0801

By email to shaun.cox@nt.gov.au

Dear Madam or Sir,

Submission of the Northern Territory Women's Legal Services – Discussion Paper: Reforming Regulation of the Sex Industry in the Northern Territory

The three Northern Territory Women's Legal Services (**NTWLS**) welcome the opportunity to make a submission to Licensing NT's Discussion Paper: Reforming Regulation of the Sex Industry in the Northern Territory (**the Discussion Paper**). Our submission will be focused on our experience of and expertise in assisting women across the Northern Territory (**NT**), including Aboriginal and Torres Strait Islander women, and women from culturally and linguistically diverse backgrounds.

About NTWLS

The NTWLS comprise the three women's legal services in the NT; the Central Australian Women's Legal Service (**CAWLS**), the Katherine Women's Legal Service (**KWILS**), and the Top End Women's Legal Service (**TEWLS**). The NTWLS are part of a national network of community legal centres specialising in women's legal issues and focused on the advancement of women's rights. Our services provide free and confidential legal information, advice, representation and advocacy to women across the Central Australian, Barkly, Katherine and Top End regions. We primarily deliver services to women experiencing or at risk of experiencing domestic and family violence, with corresponding legal issues including family law, housing and tenancy, consumer law, credit and debt, sexual assault, discrimination, compensation for victims of crime, and child protection. Almost all women we assist experience financial disadvantage.

Our submission

I Preface

In any discussion of sex work and the sex industry, intense debate is often had in relation to the area's underpinnings. The NTWLS submit that while sex work is ostensibly the provision

of a service like any other, debates over the legitimacy of the industry have meant that the area is subject to discussions that, “mark it out as distinct from other service industries”.¹

It is important to preface any discussions of sex work with an acknowledgement that, historically, there has been a marked gender division between the majority of the providers and consumers of sexual services. Additionally, there has been a class division intersecting the gendered aspect of the industry, resulting in the providers of sex work (who are predominantly women) being entangled in a “complex web of power relations” affecting the totality of their lives, which is uncommon in any other industry.²

Debate in respect of the sex industry commonly fall within two competing understandings of the area, often referred to as the “neo-abolitionist” and “non-abolitionist” camps.³ The first, also known as the “Swedish model”, argues that sex work and prostitution is inherently oppressive and/or exploitative, and is quintessentially an expression of patriarchal power relations. This model argues that sex work is not a legitimate form of labour and should consequently be criminalised, where advocates typically refer to sex trafficking as an effect of decriminalised sex work. The second, and in NTWLS’ submission the preferred model, focusses upon the “work” aspect of the industry as akin to the selling of any other services, and seeks to reduce the harms historically associated with the sale of sexual services through appropriate legislation and/or regulation, coupled with the decriminalisation of the industry. It is this model that has been preferred by Australian legislators over the past few decades, where the current Northern Territory model can be seen as employing some of the concepts advocated by liberal feminists and sex workers themselves.

Whilst an acknowledgement of the underpinnings of sex industry discourse is critical, the NTWLS are conscious that legislators are less likely to be interested in theoretical concerns and more likely to be focused upon the practical realities of the industry. As noted in the Discussion Paper, submissions have been sought in order for government to consider if and how to reform the sex industry. It is the NTWLS’ submission that any reforms to the industry must capture the interrelated concepts of safeguarding the human rights of sex workers and creating an environment through which work place health and safety outcomes can be improved for all involved.

II Response to the Discussion Paper

The NTWLS acknowledge that women who work within the sex industry commonly fall through gaps; social, legislative and moral. These gaps have resulted from legislation and regulation, as well as continuing public perceptions and judgments of the industry,⁴ among others. In the NT, it is anecdotally evident that women are falling within the gaps created by the current legislation in respect of sex work. The Discussion Paper notes that there are currently no

¹ Johanna Schmidt, ‘The regulation of sex work in Aotearoa/New Zealand: An overview’ (2017) 31: 2 *Women’s Studies Journal*, 35.

² Ibid.

³ See generally Erin O’Brien, ‘Prostitution Ideology and Trafficking policy: The Impact of Political Approaches to Domestic Sex Work on Human Trafficking Policy in Australia and the United States’ (2015) 36:2 *Journal of Women, Politics and Policy*.

⁴ See generally Ada Conroy, ‘Women in the sex industry fall through the gaps’ (2016) Autumn/Winter 2016 *Advocate, Domestic Violence Resource Centre, Victoria*.

licensed escort agencies and any other business that provides sexual services operating in compliance with the *Prostitution Regulation Act 1992* (NT), where it is the community's understanding that the sex industry continues to operate within the NT.

Of particular interest and concern to the NTWLS is evidence that women in the sex industry are disproportionately affected by family violence.⁵ In Victoria, the Royal Commission into Family Violence found that while women in the sex industry experience high levels of family violence and other violence, they may be less likely to label these experiences as violence due to normalisation throughout their childhoods', previous relationships, and experiences within the sex industry itself.⁶ As noted in recent studies undertaken in respect of women in the sex industry, "the lack of data about women and their experience of violence may be attributed to both the stigma surrounding the industry and the lower priority placed on women in the sex industry".⁷

In advocating for reform to the sex industry in the NT, we submit that it will be of critical importance that these women receive a specialised response that understands any desensitization/normalisation of violence, educating and supporting women to accurately assess risk levels and options for assistance. The NTWLS note that peer-educator programs have previously been employed with success within the sex industry, where programs in the 1980s were instrumental in educating sex workers to adopt safer sex practices. Further, while this submission is in respect of reforms that could take place within the NT, the NTWLS would encourage the NT Government to engage in a national conversation in respect of sex workers gaining immediate access to unemployment benefits, similar to the Aotearoa/New Zealand model.

A An updated regulatory model for the NT – workplace health and safety

The NTWLS welcome discussion and subsequent action to update the current regulatory model for the sex industry in the NT. As noted above, we propose a liberal feminist view of the sex industry as a work industry, where models should consequently be focused upon work health and safety outcomes, as well as human rights protections.

The NTWLS submit that a decriminalised model would be the best practice regulatory model for the NT, where the model would ideally be based upon Aotearoa/New Zealand's legislative model, including limited registration requirements to ensure safety and best practice. While we acknowledge the calls by groups such as the Scarlet Alliance for decriminalisation to include no registration requirements, the NTWLS submits that limited registration is an appropriate and proportionate requirement, similar to registration requirements in other industries, such as legal and medical industries. Further, we note the recommendations of the recent review of the sex industry in New South Wales, which included the introduction of a licensing system to assist to resolve identified problems in the industry, including protecting sex workers from exploitation and danger and ensuring that only fit and proper persons control and operate brothels.

⁵ See State of Victoria, Royal Commission into Family Violence: Summary and recommendations, Parl Paper No 132 (2014-16).

⁶ Ibid, 253.

⁷ Above n 4.

The Aotearoa/New Zealand model is frequently cited as the model of regulation that provides the most morally neutral and consistent protection for sex workers,⁸ where registration extends to businesses and business operators and the legislation itself prohibits police from intervening in any sex work transactions, except in respect of other laws or crime that are not sex work specific, such as the reporting of an assault. The model encourages sex workers to operate within the model such that safety is a paramount consideration and has anecdotally resulted in better outcomes for sex workers who are not effectively forced to work in an illegal capacity.

In reference to the issue of solo-worker safety, the Aotearoa/New Zealand model provides that up to four sex workers may work together without requiring an Operator Certificate (a form of registration). Comparatively, the current NT legislation provides that sex workers may only work within an escort agency arrangement, with all other sex workers being required to operate “solo”, barred from working with other sex workers or other persons in support of their work. The current model has created a risk-heavy situation, where solo workers are barred from managing risk as a consequence of legislation. The NTWLS supports reform in respect of solo-workers, where appropriate reform would likely align with the Aotearoa/New Zealand model.

B Police involvement with the sex worker industry

The NTWLS submits that police should not be involved in any certification and/registration processes with the sex industry, where the effect of such a change would likely be that sex workers would feel more able to approach police for assistance.

Under the current NT model, sex workers who works through an escort agency are required to obtain a certificate in order to offer sexual services through the agency. While the current process is that the obligation to obtain the certificate lies with the escort agency, it remains the fact that a certificate is tied with registration for life, which is held by police. Per the Discussion Paper, the NT is the currently the only jurisdiction which required workers to register with police via the certification process.

In a discussion of the results of the Aotearoa/New Zealand model, the move to a decriminalised model with police involvement limited to normal interactions was noted as making it “easier” for sex workers to report instances of violence to and seek assistance from police.⁹ Noting the current situation in the NT where it is anecdotally evident that some sex workers are offering sexual services illegally, it is clear that risks of violence are exacerbated when sex workers feel unable to report incidents to police because their work is illegal. Further, the current requirements for sex workers in relevant instances to be included on a life-long register held by police has produced instances of this record being used against these sex workers.

Conclusion

In a review of the Aotearoa/New Zealand model, it was noted that –

⁸ Above n 1, 47.

⁹ Victor Minichiello, John Scott and Cameron Cox, ‘Reversing the agenda of sex work stigmatisation and criminalisation: Signs of a progressive society’ (2018) 21(5-6) *Sexualities*.

Although most sex workers interviewed for the review of Aotearoa/New Zealand laws still identified economic hardship or necessity as the main reason for entering the sex industry, the majority felt that they had legal rights under the new laws and that they were more able to exercise control over their interactions with clients and their employment conditions.... [Further], sex workers also feel more empowered in asserting their rights in interactions with clients because they are able to (or at least threaten to) report problematic clients to police.¹⁰

The NTWLS hope that in commencing this discourse in respect of the NT sex industry, similar outcomes can be attained by sex workers within the NT.

We appreciate the opportunity to make this submission and to support ongoing policy and legal development for women in the NT. Should you wish to discuss this submission further, please contact the Top End Women's Legal Service by phone on (08) 8982 3000 or email to admin@tewls.org.au.

Yours faithfully,

NORTHERN TERRITORY WOMEN'S LEGAL SERVICES



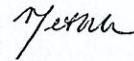
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¹⁰ Above n 1, 46.