



Submission to the Inquiry on Personal Choice and Community Safety

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2 BACKGROUND

Sex Work; Education, Advocacy and Rights (SWEAR) is Western Australia's peer sex worker organization. Formed in 2013 to provide peer support, peer education and advocate towards legal and social change that provides all sex workers with full access to their human rights.

SWEAR advocates for the full decriminalisation of sex work in WA. We recognise that decriminalisation is the evidence-based legal model that provides the best health and safety outcomes for sex workers. Decriminalisation is supported by sex workers worldwide and many national human rights and health organisations.

This submission is informed by a collection of real-life experiences gained through consultation within our membership. These experiences are informed by research and experiences gathered from sex workers across Australia, with lived experiences within WA's current legal system, as well as peer-led studies across the world.

2.1 OVERVIEW

The existing legal model in Western Australia of criminalisation of sex work as outlined in the *Prostitution Act 2000*, *The Criminal Code* and *The Police Act* is incongruent with allowing for an individuals' own personal freedom. This paternalistic policy of criminalisation forces individuals who work in the sex industry to put their own safety and wellbeing at risk in order to comply with the law.

Criminalisation is an ineffective model of protecting both sex workers and the community. This has been evidenced in many state, national and international studies. Criminalisation inhibits sex workers personal choice, forcing individuals to choose between working safely or working outside the law. This submission will detail the manner in which criminalisation of the sex industry impacts a sex workers personal choice.

SWEAR supports the removal of all criminal laws governing the West Australian sex industry. The complete decriminalisation of sex work is the evidence-based legal model that allows individuals to work in a way that suits their individual needs and make informed choices to ensure their personal safety and wellbeing. SWEAR supports the complete decriminalisation of the sex industry to allow all individuals free, unencumbered access to their legal rights, personal freedoms and human rights.



3 KEY POINTS

This section will explore how the existing laws impact personal choice and introduce significant barriers to providing sexual services safely. This list does not explore every flaw of a criminalised legislative model, it focuses on the laws that restrict personal choice and are ineffective at reducing harm. These points will outline how often the criminalisation of the sex industry creates harm through restricting personal choice.

3.1 RESTRICTED CHOICE TO ADVERTISE FOR SECURITY MEASURES

The current legal framework prevents an individual sole trader in the sex industry to hire security, receptionists or personal drivers, as outlined in the *Prostitution Act 2000*.¹ Part 2, Division 1 s. 9(b) This not only infringes on an individual's personal choice as to how they prefer to work but is incongruent with personal safety.

"I pay my taxes, yet unlike any other industry, I am unable to advertise for the assistance I require to protect my personal safety" – Perth, Sex Worker

"I wish I could share my place of work with another worker."

Section 190 of the WA Criminal Code² restricts being involved with prostitution and can be applied in multiple ways that impact on personal choice. Subsection 1(a) pressures sex workers to work in isolation and in unsecure venues. If sex workers choose to reduce personal harm and take protective measures they are automatically working outside the law.

3.2 LIVING OFF THE EARNINGS

As outlined in section 190(3) of the Criminal Code 'living off the earnings of prostitution' wholly or fully is a crime. This impacts sex workers, their families and loved ones, personal choice. Without this law sex worker's families would not be subject to prosecution for accepting the financial assistance offered.

"When my partner snapped their ACL she was off work for nine months. Thankfully I was able to ensure the bills, living costs and medical costs were (sic) covered. I didn't know that providing for my defacto partner, after 7 years together, would open her up to potential prosecution. She was not entitled to government assistance due to the income I earn, but it's illegal for me to provide for her – WHAT?" – Bunbury Sex worker

Furthermore, many sex workers choose not to disclose their occupation. This can be a means of protecting a loved, as under the wording of the law is often a means of ensuring that anyone the sex

¹[https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_40845.pdf/\\$FILE/Prostitution%20Act%202000%20-%20%5B02-b0-01%5D.pdf?OpenElement](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_40845.pdf/$FILE/Prostitution%20Act%202000%20-%20%5B02-b0-01%5D.pdf?OpenElement)

²[https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_37141.pdf/\\$FILE/Criminal%20Code%20Act%20Compilation%20Act%201913%20-%20%5B19-a0-00%5D.pdf?OpenElement](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_37141.pdf/$FILE/Criminal%20Code%20Act%20Compilation%20Act%201913%20-%20%5B19-a0-00%5D.pdf?OpenElement)



worker financially supports is not exposed to criminal proceedings. By choosing to protect their families and loved ones, sex workers are exposed to threats of 'outing' to their loved ones. It also restricts their access to police and support.

3.3 ACCESS TO THE REPORTING OF CRIMES

The current legislative approach to 'regulating' the sex industry does not allow sex workers to choose to work in a safe manner. Sex workers who chose to protect their personal safety are often exposing themselves, or others, to criminal prosecution.

When sex workers breach the governing laws of the sex industry, or are unsure if they have violated the laws, they are reluctant to report significant crimes. This includes sexual assault, physical assault, theft, threats and can prevent them from reporting other crimes that will draw police attention to their work, such as burglary unrelated to their home.

"My one exposure to the police was at [commercial sex premises] the officers made me, and the other workers, feel as if we were perpetrating a crime. I do not feel comfortable reporting a crime to the police, because I think I will be treated like a criminal" – Sex Worker, touring WA.

The Criminalisation of sex work directly impacts sex workers personal choice to report crimes. Furthermore, sex workers who have historically reported crimes have experienced a lack of clarity within the West Australian Police on the laws. It is this "grey area" that further causes confusion and restricts sex workers personal choice.

3.4 DISCRIMINATION AND PERSONAL HARM

West Australian sex workers are denied access to fair work, industrial regulations, occupational health and safety standards and in many cases health, public liability, life and income insurance. Sex workers also have limited, if any, access to anti-discrimination laws nor do they have any legal recourse to unfair or unjust treatment from service providers, such as; doctors, allied health staff, real estate professionals, banks or employment services. These restrictions are direct results of the criminalisation.

These restrictions to the legal, civil and human rights afforded to those not engaged in the sex industry often lead to sex workers being forced to suffer discrimination, bullying, stigmatising care or unfair work practices. Sex workers who do abide by the terms of service have no legal recourse for stigmatising care.

SWEAR members report;

- Suffering workplace bullying to ensure consistent, legal employment
- Being tested for HIV without consent on presentations at Emergency departments, despite not working in the sex industry for 2 years, nor reporting any high-risk behaviours
- Being denied sexual health testing because the professional didn't agree with their work
- Having a bank account closed due to a morality clause
- Not reporting inappropriate contact from an allied health professional for fear of being deemed "asking for it"
- Being denied access after disclosing their occupation



- Stalking (that they did not report to police) from the real estate agent that sold them their house after
- Being provided inaccurate and devastating legal advice for family court

3.5 WA'S CRIMINALISATION IS UNCLEAR AND INEFFECTIVE AT REDUCING PERSONAL HARM

Sex workers, allies and clients of the sex industry in WA are often unclear on the legislation in WA. The *"legal but criminalised grey area"* that is sporadically enforced, provides a significant lack of clarity amongst the general population, sex workers, health professionals, police and legal professionals alike. This lack of clarity provides perpetrators of violence and assault to justify the abuse with *"its illegal, report me and you will face charges"*. Despite the provision of sexual services being legal this is often unclear or unknown to the individual. This lack of clarity leads to a lower number of workers reporting assault.

4 RECOMMENDATIONS

SWEAR recommends the full decriminalisation of sex worker to ensure that sex workers personal choice is not restricted in a manner that causes harm.

Decriminalisation of sex work is the harm minimization approach to governing the sex industry. Using the harm minimisation principles when designing laws that impact personal choice ensure that these laws will not repeatedly, in multiple ways, create harm.

The World Health Organization guidelines state: "All countries should work toward decriminalisation of sex work and elimination of the unjust application of non-criminal laws and regulations against sex workers."

No version of legalization or criminalisation provides the necessary framework to allow sex workers to safely report instances of abuse, be protected against exploitation and maintain discretion. **Full decriminalisation allows personal autonomy and freedom of choice to work in the way that best suits individual needs.**

5 RESOURCES

6 LASH 2

Selvey, L., Hallett, J., Lobo, R., McCausland, K., Bates, J., & Donovan, B. (2017). Western Australian Law and sex Worker Health (LASH) Study. A summary report to the Western Australian Department of Health. Perth: School of Public Health, Curtin University [Available online: [http://ceriph.curtin.edu.au/local/docs/reports/Law-and-Sex-worker-Health-Study-Summary-Report-Aug-2017\(1\).pdf](http://ceriph.curtin.edu.au/local/docs/reports/Law-and-Sex-worker-Health-Study-Summary-Report-Aug-2017(1).pdf)]

7 The Sex Industry in Western Australia

Donovan, B., Harcourt, C., Egger, S., Schneider, K., O'Connor, J., Marshall, L., Chen, M.Y., & Fairley, C.K. (2010). *The Sex Industry in Western Australia: a Report to the Western Australian Government*. Sydney: National Centre in HIV Epidemiology and Clinical Research, University of New



South Wales. [Available online: https://kirby.unsw.edu.au/sites/default/files/kirby/report/SHP_WA-Sex-Industry-Report-2010.pdf]

8 ***New report shows compelling reasons to decriminalise sex work***

<https://theconversation.com/new-report-shows-compelling-reasons-to-decriminalise-sex-work-83955>

9 ***AMNESTY INTERNATIONAL POLICY ON STATE OBLIGATIONS TO RESPECT, PROTECT AND FULFIL THE HUMAN RIGHTS OF SEX WORKERS***

<https://www.amnesty.org/download/Documents/POL3040622016ENGLISH.PDF>

10 ***World Health Organisation Policy Brief***

http://apps.who.int/iris/bitstream/handle/10665/77744/WHO_HIV_2012.19_eng.pdf?sequence=1