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13 May, 2019

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

RE: Discussion Paper: Reforming Regulation of the Sex Industry in the Northern Territory

Dear NT Department of the Attorney-General and Justice

Thank-you for the opportunity to submit to this process. Respect Inc and DecrimQLD would like to congratulate the Northern Territory government for taking important steps to progress law reform for sex workers. Reform is urgently needed, the current system of regulation in the Northern Territory is not working. Please accept this joint submission from Respect Inc and DecrimQLD. Respect Inc and DecrimQLD also endorse the submissions made by SWOP NT, and Scarlet Alliance, Australian Sex Workers Association.

Respect Inc is the state-wide sex worker organisation in Queensland funded by Queensland Health to provide a comprehensive health promotion and peer education program for sex workers. Respect Inc has offices and sex worker drop-in spaces in Cairns, Brisbane, Townsville and the Gold Coast and provides regional outreach in other locations.

#DecrimQLD is a committee of sex workers who have joined with Respect Inc., to progress the removal of harmful and discriminatory sex work laws and achieve decriminalisation in Queensland.

This is an opportunity for the Northern Territory to demonstrate great leadership in adopting evidence based policy that will deliver a low cost, high compliance model of sex industry regulation that also delivers workplace health and safety outcomes for sex workers. Full decriminalisation will deliver this for the Northern Territory and make the jurisdiction a world leader in this regard.

Our submission outlines why watering down decriminalisation with an unnecessary registration or licensing model would be a serious mistake that will undermine the benefits of full decriminalisation.

Sincerely,

Kayla Rose  
Respect Inc Secretary  
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Janelle Fawkes  
#DecrimQLD Campaign Leader  
M: 0491 228 509

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## Executive Summary

The Northern Territory government must decide whether it intends to **decriminalise** sex work, as it has committed to, and in doing so remove exceptional legislation, OR whether it intends to **license** sex work or sex industry businesses, and thus replicate the mistakes made by governments in the 1990's who created new and expensive exceptional laws, agencies and regulation systems that have failed miserably, of which the Queensland model is a prime example.

The 2019 Reforming Regulation of the Sex Industry in the Northern Territory discussion paper conflates these two options. The discussion paper outlines an onerous set of exceptional laws, specialised regulation systems, registration and licensing and calls it decriminalisation. This implies that the NT government intends to take sex worker workplace rights and responsibilities backwards.

This submission outlines the reasons why full decriminalisation of sex work is necessary in the Northern Territory. It also details why the NT government should not include registration, licensing or certification, as they are unnecessary (as demonstrated by the outcomes in New South Wales), expensive, create non-compliance and will undermine the benefits of decriminalisation. This includes over-regulation including legislation that mandates condom use and testing – both of which are more effectively achieved through education, particularly peer education. We have addressed the issues raised in the discussion paper, starting from section 6 “Issues Facing the Northern Territory Sex Industry,” and answered the consultation questions in each section.

This review comes at an opportune time. Legislators in South Australia have been considering a full decriminalisation bill, and it is now also Queensland government policy. The Northern Territory has the chance to become a leader in this contemporary issue, and implement the best practice approach of full decriminalisation, the model supported by research and lived experience.

Northern Territory sex workers are the priority stakeholders in this law reform process, and Australian sex worker organisations are the experts in sex work policy, laws, regulation, compliance and implementation. Sex worker organisations in Australia wide are part of a strong national network that has considered (over three decades) the impacts of different models of sex work legislation, research on those impacts, and the lived experiences of sex workers, to develop policy positions on this issue. Sex worker organisations are well placed to provide sophisticated technical advice to government agencies about policy, compliance and implementation. A partnership approach with SWOP NT (with appropriate levels of funding to enable a territory wide program of activities) and Scarlet Alliance will be crucial to support the implementation of full decriminalisation and will bring invaluable knowledge to the development of workplace health and safety guidelines and other instruments that support effective implementation of this model of regulation.

Brothel, massage parlours, escort agencies, street based, independent/private sex work are all models of sex industry business that are equally safe. It is restrictive laws that create barriers to sex worker safety: not the business model itself. Sex workers work across these different business models throughout their career and in some cases multiple within a week. Factors that influence this choice includes work hours, location, services they prefer to offer, transport and the ‘cut’ or level of pay. Full decriminalisation will allow the Northern Territory Government to ensure sex workers have access to safety at work, regardless of where they work. Decriminalisation must account for and encompass the full diversity of sex industry business models for maximum compliance.

Finally, Respect Inc and DecrimQLD support the Northern Territory government moving forward with full decriminalisation which repeals exceptional laws specific to the sex industry allowing existing laws to cover this full range of sex industry business models.

**Recommendations:**

**Recommendation 1:** Respect Inc and DecrimQLD recommend the Northern Territory government fully decriminalise the sex industry in the Northern Territory.

**Recommendation 2:** Respect Inc and DecrimQLD recommend the Northern Territory government not include licensing, registration or certification of sex workers, sex industry businesses or sex industry business staff.

**Recommendation 3:** Respect Inc and DecrimQLD recommend against the use of the term “Solo Sex Workers”. It is misleading. More accurate terms are “Independent” or “Private” sex workers.

**Recommendation 4:** Respect Inc and DecrimQLD recommend independent and private sex workers be allowed to work together.

**Recommendation 5:** Respect Inc and DecrimQLD recommend independent and private sex workers should be permitted to work with other sex workers, and with auxiliary sub-contractors.

**Recommendation 6:** Respect Inc and DecrimQLD recommend against a certification or registration system for independent and private sex workers.

**Recommendation 7:** Respect Inc and DecrimQLD recommend against individual sex worker registration, on the basis of low compliance and human rights concerns.

**Recommendation 8:** Respect Inc and DecrimQLD recommend the removal of the registration or certification process that requires some sex workers to be registered with police in the Northern Territory.

**Recommendation 9:** Respect Inc and DecrimQLD recommend that all certification or registration records relating to individual sex workers be systematically removed from police records ensuring any linking or cross referencing to individuals records are deleted. A process for expungement of previous sex work charges will also be required.

**Recommendation 10:** Respect Inc and DecrimQLD recommend against registration/certification of sex workers with either a government body or police in the legislative changes resulting from this process. To adopt this approach would be to adopt a model that is outdated and has failed in other jurisdictions.

**Recommendation 11:** Respect Inc and DecrimQLD recommend a full decriminalisation model which repeals exceptional laws specific to the sex industry allowing existing laws to cover a range of sex industry business models including brothels and massage parlours.

**Recommendation 12:** Respect Inc and DecrimQLD recommend against the terminology “one person brothels.” The term “independent sex workers” or “private sex workers” is more appropriate. Independent and private sex workers working in residential areas are not commercial, because the land use of the dwelling has an impact that is residential in nature, not commercial.

**Recommendation 13:** Respect Inc and DecrimQLD recommend independent and private sex workers to be noted not as commercial, but as home occupations and home-based contracting.

**Recommendation 14:** Respect Inc and DecrimQLD recommend against limiting sex work activity to an 18+ only precinct.

**Recommendation 15:** Respect Inc and DecrimQLD recommend against police regulation of condom use.

**Recommendation 16:** Respect Inc and DecrimQLD recommend against mandated condom use.

**Recommendation 17:** Respect Inc and DecrimQLD recommend against mandatory testing of sex workers.

**Recommendation 18:** Respect Inc and DecrimQLD recommend the NT government resource SWOP NT to deliver a comprehensive territory-wide peer education and outreach program for sex workers. A well-resourced sex worker organisation and access to reliable sex worker specific resources are essential to effective health promotion and public health outcomes.

**Recommendation 19:** Respect Inc and DecrimQLD recommend brothels and massage parlours be permitted in all Zone C and Mixed Use areas.

**Recommendation 20:** Respect Inc and DecrimQLD recommend, initially thorough, and then regular skills building, sensitivity training and education for all public servants and contractors involved in planning approval processes, for them to fully understand their role within the decriminalisation framework.

**Recommendation 21:** Respect Inc and DecrimQLD recommend that sex workers, represented by SWOP NT, be involved in sensitivity training and education of staff, experts and elected councillors responsible for the implementation of the NT Planning Scheme.

**Recommendation 22:** Respect Inc and DecrimQLD recommend against independent sex workers being treated as “One Person Brothels.”

**Recommendation 23:** Respect Inc and DecrimQLD recommend that street based sex work be fully decriminalised.

**Recommendation 24 :** Respect Inc and DecrimQLD recommend the NT government amend the Anti-discrimination Act to include the following protections for sex workers, as an important element of ensuring the benefits of decriminalisation can be fully realised for sex workers in the Northern Territory.

*Recommendation [5]: The Act must list ‘accommodation status’ as a protected attribute. ‘Accommodation status’ must be included with other areas of the definition “Place of home, work, practice, or labour”*

*Recommendation 6: “Sex work” must be listed as a protected attribute under the Act. Sex work must be defined as “sex work is the sale/exchange of consensual adult sexual services”*  
*Recommendation 7: “Sex worker” must be listed as an attribute for protection under the Act. Sex worker must be defined as “a person who provided the sale/exchange of consensual adult sexual services”.<sup>1</sup>*

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<sup>1</sup> Sex Worker Outreach Program (SWOP NT). 2017. “Sex Worker Reference Group (SWRG) Collective Submission in response to the Northern Territory Government Discussion Paper”, in response to the Modernisation of the Anti-Discrimination Act, September 2017  
<https://www.ntahc.org.au/programs/sex-worker-outreach-program-swop-nt/parliamentary-submissions>

## Comment on sections 3.1.1 and 6.1.3

### 6.1.1 New South Wales

Respect Inc and DecrimQLD assert that NSW is not a deregulated model, but is decriminalisation, which means the sex industry is regulated appropriately by existing bodies such as Occupational Health and Safety agencies, industrial relations law, Public Health agencies, Planning Boards and others. Notably the police are not involved in regulation.

Please see Appendix 1: “NSW did not adopt a licensing model. Licensing was rejected by the NSW Parliament”.

### 6.1.3 Numbers of sex workers

Respect Inc and DecrimQLD agree with the conclusions of research in NSW and New Zealand; decriminalisation does not increase the size of the sex industry. Additionally, research shows decriminalisation is not associated with more men paying for sex.<sup>2</sup>

## 6.1.4 The Model for the Northern Territory

**What would a decriminalised model look like in the NT?**

**Are there learnings from other jurisdictions that have successfully decriminalised sex work that can be translated to the NT?**

**Does the current regulatory model, providing for the licensing of escort agencies, offer sufficient protection of a sex workers rights, including work health and safety, and more broadly public health?**

**Would a decriminalised model improve worker safety, rights and public health?**

### Respect Inc and DecrimQLD response to 6.1.4

**Recommendation 1: Respect Inc and DecrimQLD recommend the Northern Territory government fully decriminalise the sex industry in the Northern Territory.**

In practice, full decriminalisation in the Northern Territory would repeal current exceptional legislation and police powers specific to sex work, sex workers, the sex industry and sex worker clients including the Prostitution Regulation Act 1992. On repeal of these laws, the pre-existing laws that regulate other businesses would then cover sex industry businesses. In this way decriminalisation does not require the creation of new laws but acts to ensure the sex industry is regulated by existing laws. In addition the same rights available to workers in other industries will be available to sex workers.

Full decriminalisation would mean existing regulatory bodies and laws would cover the sex industry and protect (and improve) the rights of sex workers. including:

- Safe Australia - NT WorkSafe
- Work Health and Safety (National Uniform Legislation) Act and Regulations, 2011
- The Fair Work Act and Regulations, 2009
- Return to Work Act and Regulations
- Environmental Health
- NT Planning Scheme
- Chamber of Commerce
- Northern Territory Anti-Discrimination Commission
- Northern Territory, Department of Trade, Business and Innovation

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<sup>2</sup> Rissel, C., Donovan, B., Yeung, A. et al. 2017. “Decriminalization of Sex Work Is Not Associated with More Men Paying for Sex: Results from the Second Australian Study of Health and Relationships”, *Sexuality Research and Social Policy*, 2017 14: 81. <https://doi.org/10.1007/s13178-016-0225-1> <https://link.springer.com/article/10.1007/s13178-016-0225-1>

### Full decriminalisation will deliver a model that:

- is low cost;
- delivers high compliance;
- removes police from a regulatory role;
- reduces barriers to sex workers reporting crimes;
- improves public health outcomes;
- enables sex workers to access industrial and labour rights, and
- reduces stigma and discrimination against sex workers.

### Decriminalisation and the evidence

International evidence proves that full decriminalisation is a best practice approach to sex industry regulation<sup>3</sup>. Major international labour and human rights organisations support the full decriminalisation of sex work<sup>4</sup>.

Full decriminalisation of the sex industry is the only legal framework that upholds sex worker's human rights and labour rights, resulting in the best health outcomes. This is endorsed by the **World Health Organisation, UNAIDS, UNDP, Human Rights Watch, The World Bank, The Lancet, The Global Alliance Against Trafficking Women and Amnesty International**. Decriminalisation has the largest and most credible evidence base of any model of sex industry law. It is the only way to address the discrimination that sex workers experience and provide improved workplace health and safety conditions.

Decriminalisation is the *removal* of exceptional laws that single out sex workers or the sex industry for special regulation, to allow *existing* workplace rights, public health, and planning law to appropriately regulate sex work. When the exceptional laws (or laws specific to the sex industry) are repealed, and criminalisation is removed, the laws that cover other businesses and workers will also protect and regulate the sex industry and sex workers. For example, NT WorkSafe will have a role in regulating workplace health and safety in sex industry businesses and a set of guidelines for sex industry businesses will need to be developed in consultation with SWOPNT, NT Unions and the Scarlet Alliance, Australian Sex Workers Association as technical advisors.

Decriminalisation is not 'de-regulation' or 'no regulation.' Decriminalisation is in fact the act of allowing the sex industry to be regulated by the comprehensive system of pre-existing regulations that oversee other commercial activities, workplaces, public health issues, local planning and anti-discrimination.

The outcomes in New South Wales demonstrate that it is not necessary to single out sex industry businesses for registration in order to regulate the sex industry. Rather those businesses are answerable to the same government agencies, laws and regulations that govern the activities of other small businesses.

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<sup>3</sup> Decker, Michele R, Crago, Anna-Louise, Chu, Sandra, K. H., Sherman, Susan. G., Seshu, Meena, S., Buthelezi., Kholi, Dhaliwal, Mandeep & Beyrer, Chris. 2014. "Human rights violations against sex workers: Burden and effect on HIV", *The Lancet*, HIV and sex workers. [https://doi:10.1016/S0140-6736\(14\)60800-X](https://doi:10.1016/S0140-6736(14)60800-X)  
Beyrer, Chris, Crago, Anna-Louise, Bekker, Linda Gail, Butler, Jenny, Shannon, Kate, Kerrigan, Deanna, Decker, Michele. 2015. "An action agenda for HIV and sex workers", *The Lancet*, vol. 385, no. 9964, pp. 287–301. [https://doi:10.1016/S0140-6736\(14\)60933-8](https://doi:10.1016/S0140-6736(14)60933-8)

<sup>4</sup> Amnesty International (2016) *Amnesty International policy on state obligations to respect, protect and fulfil the human rights of sex workers* (No. 30/4062/2016). <https://www.amnesty.org/en/documents/pol30/4062/2016/en/>  
International Labour Organization, 2014, "Leaving No One Behind: Reaching Key Populations through workplace action on HIV and AIDS". [http://www.ilo.org/aids/Publications/WCMS\\_249782/lang--en/index.htm](http://www.ilo.org/aids/Publications/WCMS_249782/lang--en/index.htm)

A report commissioned by the NSW Government in 2012 concluded:

*“Recommendation 1: The NSW Government’s legislative reforms of 1979 and 1995 should be endorsed. These reforms that decriminalised adult sex work have improved human rights; removed police corruption; netted savings for the criminal justice system; and enhanced the surveillance, health promotion, and safety of the NSW sex industry.”<sup>5</sup>*

## **Decriminalisation is a substantially different approach than Licensing**

### **Decriminalisation:**

- Regulated by Planning panels, OHS laws, ATO, Planning and Amenity impact policy
- Does not increase the size of the industry<sup>6</sup>
- Recommended by Amnesty International, World Health Organisation, the UN
- Preferred by sex workers all over the world
- Proven by research published in the The Lancet series on HIV and sex work to be the most influential contributing factor to sex worker health <sup>7</sup>
- Is safer for sex workers
- Improves the likelihood of sex workers reporting crimes to the police<sup>8</sup>

### **Licensing<sup>9</sup>:**

- creates a two tiered industry, excessive laws & regulations, is almost impossible for independent and private sex workers to work within the laws
- Police remain the regulators of the non-compliant sector
- Proven to be bad for sex worker health
- Expensive
- Criminalises upwards of 80% of sex workers
- Size of the industry stays the same but most work outside of the legal sector
- Sex workers unable to report crimes

Any form of exceptional registration or licensing for the sex industry will hamper access to the above agencies, legislation, protections, rights and responsibilities that that provide rights to any other worker in the Northern Territory enjoy.

### **Why the Northern Territory model should not include registration or licensing:**

A full and workable decriminalisation model should not include registration or licensing of sex workers or sex industry businesses, or exceptional police or regulatory powers. This submission warns against the Northern Territory government introducing a partial decriminalisation model that includes registration or licensing.

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<sup>5</sup> Donovan, B., Harcourt, C., Egger, S., Watchirs Smith, L., Schneider, K., Kaldor, J.M., Chen, M.Y., Fairley, C.K., Tabrizi, S. 2012. The Sex Industry in New South Wales: a Report to the NSW Ministry of Health. Sydney: Kirby Institute, University of New South Wales

<sup>6</sup> Prostitution Law Review Committee, & New Zealand Government. 2008. Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003. Wellington, N.Z: Ministry of Justice. P 29-40

<sup>7</sup> Decker, Michele R, Crago, Anna-Louise, Chu, Sandra, K. H., Sherman, Susan. G., Seshu, Meena, S., Buthelezi., Kholi, Dhaliwal, Mandeep & Beyrer, Chris. 2014. “Human rights violations against sex workers: Burden and effect on HIV”, The Lancet, HIV and sex workers. [https://doi:10.1016/S0140-6736\(14\)60800-X](https://doi:10.1016/S0140-6736(14)60800-X)

<sup>8</sup> Abel, G. M. 2014. A decade of decriminalization: Sex work “down under” but not underground. Criminology & Criminal Justice, 14(5), 580–592. <https://doi.org/10.1177/1748895814523024>

<sup>9</sup> Scarlet Alliance, Australian Sex Workers Association and Respect Inc. 2018 “Sex work laws and workplace health and safety symposium report”, Brisbane Parliament House, 14th November, 2018, hosted by Peter Russo, Member for Toohey. <https://respectqld.org.au/wp-content/uploads/Decrim/Sex-work-laws-and-workplace-health-and-safety-symposium-Report.pdf>

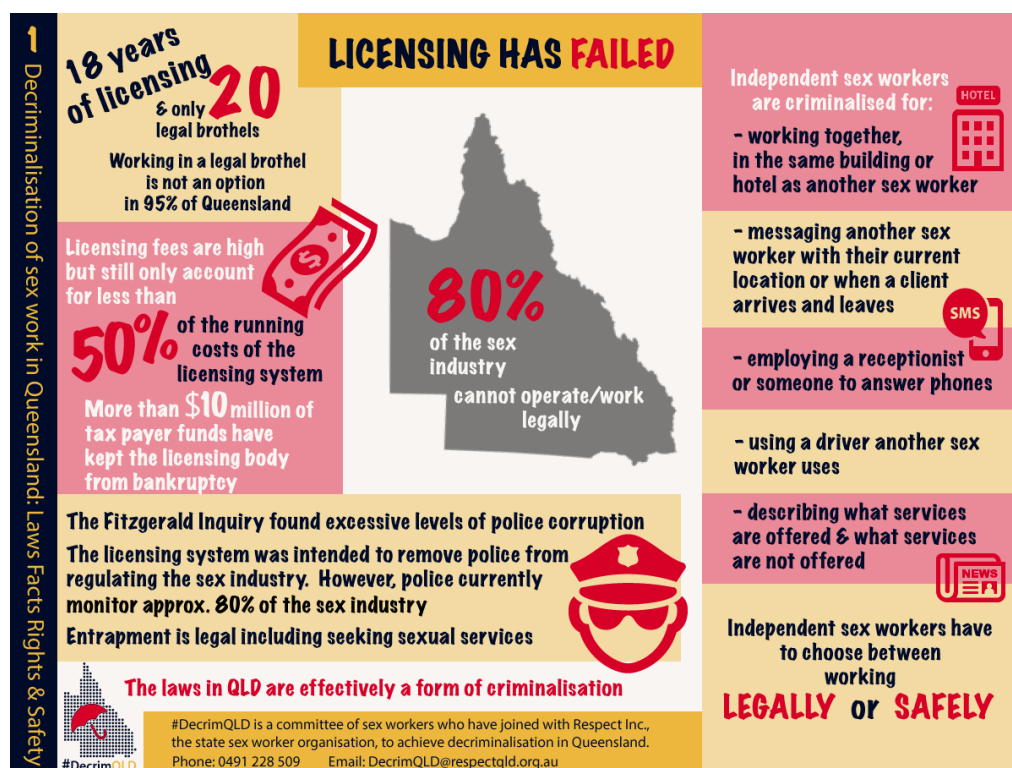
Extensive research supports this including the recently published *Associations between sex work laws and sex workers' health: A systematic review and meta-analysis of quantitative and qualitative studies*, an extensive review of sex work research between 1990-2018 that found:

*The public health evidence clearly shows the harms associated with all forms of sex work criminalisation, including regulatory systems, which effectively leave the most marginalised, and typically the majority of, sex workers outside of the law. These legislative models deprioritise sex workers' safety, health, and rights and hinder access to due process of law.<sup>10</sup>*

### Evidence from Queensland recommends against the licensing of brothels and registration

Based on the evidence from Queensland, the method of licensing and registration referred to in the discussion paper would create expensive and unworkable regulations in the Northern Territory. In the Northern Territory where escort agencies require a form of licensing there are no escort agencies currently licensed. At least 80% of sex work in Queensland occurs outside the regulatory model, after almost twenty years of the brothel (and owners and managers) licensing system and there are only 20 licensed brothels within the entire state. This is because licensing systems create a two tiered industry whereby only a very small percentage can meet the requirements to license and the rest of the industry has no option but to operate illegally. This model takes the opposite approach to maximising compliance - it creates a section of the industry that can never comply and is therefore criminalised. The model includes high political risk as illegal brothels are used as a political football in the media and at election time. The Northern Territory can avoid this pitfall by fully decriminalising the sex industry - a model with much higher levels of compliance.

Figure 1: Licensing has failed (in Queensland)<sup>11</sup>



<sup>10</sup> Lucy Platt, Pippa Grenfell, Rebecca Meiksin, Jocelyn Elmes, Susan G. Sherman, Teela Sanders, Peninah Mwangi, Anna-Louise Crago. 2018. "Associations between sex work laws and sex workers' health: A systematic review and Meta-analysis of quantitative and qualitative studies". PLOS Medicine, <https://doi.org/10.1371/journal.pmed.1002680>

<sup>11</sup> DecrimQLD 2018/19 resources available at: <https://respectqld.org.au/decriminalise-sex-work/resources/>



## International evidence recommends against the licensing of brothels and registration

A sex work and law report commissioned by UNDP Asia-Pacific, UNFPA Asia Pacific Regional Office, UNAIDS and Asia-Pacific Network of Sex Workers (APNSW) found that:

### ***“Conclusion (iii) Licensing and registration models have not been effective***

*Licensing or registration of the sex industry has been of limited benefit in terms of public health and human rights outcomes for sex workers. Several jurisdictions have introduced licensing or registration of brothels, businesses where sex work occurs, or individual sex workers (e.g., Indonesia, Taiwan and several states and territories of Australia). Licensing or registration systems are usually accompanied by criminal penalties for sex industry businesses and individual sex workers who operate outside of the legal framework. Licensing or registration models may provide some health benefits to the small part of the sex industry that is regulated, but do not improve health outcomes for the broader population of sex workers. ...Typically, in jurisdictions that have introduced licensing or registration systems the vast majority of sex workers operate outside of the system. This approach compounds the marginalization of most sex workers. Human rights violations may result from licensing models that require compulsory testing and registration of sex workers with government authorities.”<sup>12</sup>*

Licensing and registration systems fail because they are unable to regulate businesses that fall outside of their prescribed model, and police are responsible for the large sections of sex work that are excluded by the system. In this way police are always maintained as the regulators of the section of the sex industry that cannot comply. For a regulatory model to be workable it needs to be flexible enough to cover the full range of sex industry businesses that exist. Experience in Queensland has shown that granting licenses to single specific types of sex industry businesses (ie full service brothels) does nothing to improve workplace health and safety for most workers who fall outside of the licensed system.

In comparison a full decriminalisation model would deliver a regulatory model that encompasses and promotes compliance for the full diversity of the sex industry in the Northern Territory:

- Massage parlours
- Escort agencies
- Brothels
- Co-ops of private workers
- BDSM parlours
- Cam and online sex work
- Sex workers in shared and rental accommodation
- Escorting sex workers that visit clients at their home or in hotels
- Part time sex workers
- Street based sex workers

**Recommendation 2: Respect Inc and DecrimQLD recommend the Northern Territory government not include licensing, registration or certification of sex workers, sex industry businesses or sex industry business staff.**

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<sup>12</sup> Godwin, J. 2012. Sex work and the law in Asia and the Pacific: Laws, HIV and human rights in the context of sex work. Bangkok: UNDP Asia-Pacific, UNFPA Asia Pacific Regional Office, UNAIDS and Asia-Pacific Network of Sex Workers (APNSW).

## 6.2 Safety of Solo Sex Workers

### 6.2.1

Should solo workers be able to work with other solo workers, or employ a driver or security personnel?

Should solo workers be able to offer and deliver their services from their personal residential address?

How could this be regulated?

What other protections and rights should be considered for solo workers?

### Respect Inc and DecrimQLD response to 6.2

**Recommendation 3: Respect Inc and DecrimQLD recommend against the use of the term “Solo Sex Workers”. It is misleading. More accurate terms are “Independent” and “Private” sex workers.**

Independent and private sex workers, if fully decriminalised, would be regulated by The NT Planning Scheme and the ATO. These bodies already regulate individual workers who work from home or for themselves in small businesses. There are independent and private sex workers who may choose, where permitted by the NT Planning Scheme, and regulated by the ATO, to work with other sex workers as sub-contractors, for safety or for company, or to share overheads regularly or irregularly. These sex workers are independent from each other, but working together.

**Recommendation 4: Respect Inc and DecrimQLD recommend independent and private sex workers be allowed to work together.**

Independent/private sex workers working from home should be regulated by existing sections of the NT Planning Scheme 7.10.7 (Home Occupation) and 7.10.8 (Home Based Contracting). The planning scheme allows for activity that “is established and operated in a manner that does not detract from the amenity of the locality”.

Independent and private sex worker business models offer the client privacy, confidentiality and discretion. Sex work businesses from home are predictably low amenity impact, and neighbours are unaware of the activity. This is in part because sex worker clients do not want to draw attention to themselves either.

Research in NSW by Eva Cox at the University of Technology Sydney found that neighbours did not know when they had sex workers living near them:

*“Firstly, in all the blocks in Woollahra and Marrickville, the respondents had quite a limited knowledge of home businesses operating in the area....*

*A consistent – and important factor to note – is that no respondent identified home based sex workers currently living and working in the area, not even in those areas where home based sex workers were known to operate. The most that can be said is that one respondent in Paddington was able to identify a previous home based sex worker who had since left the area, and another resident was able to identify a brothel that had closed down.*

*An interesting point arising out of the Marrickville research was that one in five respondents said that they liked the idea of neighbours working from home as it meant they could keep an eye on the street and/or their home.*

*The last thing to note about the awareness of home businesses is the responses to the question on when home based businesses should need to receive or seek council approval. The majority of respondents did not think that it was always necessary for home businesses to seek council approval, with most respondents suggesting that approval should be required where the home business caused general disturbance, noise or traffic problems.”<sup>13</sup>*

**Recommendation 5: Respect Inc and DecrimQLD recommend independent and private sex workers should be permitted to work with other sex workers, and with auxiliary sub-contractors.**

Independent and private sex workers should be able to work in the same ways as other home-based or small-businesses in the Northern Territory. The NT Planning Scheme and the ATO allow for independent sex workers to work with other independent sex workers. Like other small business, sex workers should be able to employ a driver, receptionist, cleaner, accountant or security personnel.

**Recommendation 6: Respect Inc and DecrimQLD recommend against a certification or registration system for independent and private sex workers.**

The current system of police registration of sex workers in the Northern Territory has been noted in the discussion paper as a stigmatising barrier to sex workers later in life.

Registration is not an effective form of regulation. Sex workers do not register willingly, and many avoid registration. Sex workers avoid registration because it can have very real negative impacts on their work and personal lives. Sex workers have experienced black mail, been excluded from future work and have lost custody of children as a result of registration combined by high levels of discrimination. Other jurisdictions in Australia have found that registration for independent and private sex workers is ineffective. For example it was tried in the ACT for more than a decade, however the uptake was so low it was a failure and eventually repealed. In Victoria there is a system of registration for independent and private sex workers, which has not been supported or engaged in by the sex worker community. Replicating these failures must be avoided by the NT Government. Currently Western Australia, South Australia, New South Wales, Tasmania, ACT, Queensland and Northern Territory do *not* have a registration system for independent sex workers.

Independent sex workers use an ABN for small business purposes, regulated by the ATO. An independent sex worker expecting to earn above \$75,000 in a financial year is also required to register for G.S.T with the ATO.

## **6.3 Individual sex worker registration**

**Recommendation 7: Respect Inc and DecrimQLD recommend against individual worker registration, on the basis of low compliance and human rights concerns (as outlined below)**

### **6.3.1**

**Should workers have to register with Police to engage in sexual services?**

**Should registration information be destroyed once the sex worker leaves the industry?**

#### **Respect Inc and DecrimQLD response to 6.3**

The current requirement for sex workers working for a Northern Territory escort agency to register with police is draconian legislation that is not matched to current approaches of protecting workers human and civil rights and must be repealed.

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<sup>13</sup> 2003. “UTS Students’ Research on Home Occupations,” UTS Student Project Under Supervision of Eva Cox, Nov 2003 [http://www.scarletalliance.org.au/library/cox\\_03](http://www.scarletalliance.org.au/library/cox_03)

For over a century systems that require licensing or registration of sex workers have consistently failed – most jurisdictions that once had individual sex worker registration systems have abandoned them. In 2018, the Australian Capital Territory amended its legislation to remove the registration/certification of individual sex workers. Only 14 sex workers had registered since the laws were created in 1994 - demonstrating the failure of registration/certification approach. Police registration of individual sex workers in Western Australia was abandoned in 2000. Whenever this approach has been implemented most sex workers remain unlicensed or unregistered, criminal codes remain in force, leaving police as the regulators of the non-compliant sex workers.

We note there are references within the discussion paper to continuing some form of licensing, registration or certification. It should be recognised NSW research on this topic found:

*“Licensing systems are all expensive and difficult to administer, and they always generate an unlicensed underclass. That underclass is wary of and avoids surveillance systems and public health services: the current systems in Queensland and Victoria confirm this fact. Thus, licensing is a threat to public health.”<sup>14</sup>*

Royal Commissions into police corruption (Wood and Fitzgerald) have found police involvement in the regulation of the sex industry is linked to police corruption. Police corruption was one of the main reasons for the decriminalisation of the sex industry in New South Wales.

The current Northern Territory registration/certification system is extreme in that it requires excessive levels of information about the individual sex worker and is a life-long system of registration. It is a system for the surveillance of sex workers by police, over and above what is acceptable for other members of the community and workers within other industries raising both privacy and human rights concerns. There is no value to the individual sex worker from a registration or certification process, in fact it has been damaging for some sex workers. There are examples of this record being subpoenaed by courts or in family law disputes and generally used as evidence resulting in stigma or discrimination against the individual who worked as a sex worker. These have been reported to NT government agencies on multiple occasions.<sup>15</sup>

To ensure current and previous sex workers in the Northern Territory are protected from future and further stigma and discrimination a process for removal/deletion of all previous records of individual sex worker registration/certification will need to be developed, and implemented, as part of changes to the Northern Territory laws. Expungement of convictions for sex work will also be necessary.

**Recommendation 8: Respect Inc and DecrimQLD recommend the removal of the registration or certification process that requires some sex workers to be registered with police in the Northern Territory.**

**Recommendation 9: Recommendation 9: Respect Inc and DecrimQLD recommend that all certification or registration records relating to individual sex workers be systematically removed from police records ensuring any linking or cross referencing to individuals records are deleted. A process for expungement of previous sex work charges will also be required.**

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<sup>14</sup> Donovan, B., Harcourt, C., Egger, S., Watchirs Smith, L., Schneider, K., Kaldor, J.M., Chen, M.Y., Fairley, C.K., Tabrizi, S., 2012. The Sex Industry in New South Wales: A Report to the NSW Ministry of Health. Sydney: Kirby Institute, University of New South Wales. <https://www.acon.org.au/wp-content/uploads/2015/04/NSW-Sex-Industry-Report-CSRH-2012.pdf>

<sup>15</sup> Scarlet Alliance. 2005. Submission on the Northern Territory Prostitution Regulation Act. <http://www.scarletalliance.org.au/library/nt0305>

**Recommendation 10: Respect Inc and DecrimQLD recommend against registration/certification of sex workers with either a government body or police in the legislative changes resulting from this process. To adopt this approach would be to adopt a model that is outdated and has failed in other jurisdictions.**

## **6.4.1 Illegal Brothels**

‘Illegal brothels’ in the Northern Territory are commercial operations that are currently unable to achieve legal status due to the fact that all brothels are currently criminalised.

The full decriminalisation of sex work is the only workable solution to ensuring that all brothels are able to take advantage of the rights and responsibilities that accompany fair regulation. It is the Northern Territory laws themselves that have created illegal brothels. In reality brothels will exist in a range of forms, regardless of the legislation. Full decriminalisation brings all of these premises into existing regulation, thus reducing barriers and resulting in high compliance.

### **6.4.4**

**Should brothels be decriminalised in the Northern Territory?**

**What model of regulation would be most appropriate for the Northern Territory?**

**Should brothels operate like any other business under existing laws?**

#### **Respect Inc and DecrimQLD response to 6.4.4**

Please refer to our responses to section 6.1.4 on pages 5-9 where we explain how a full decriminalisation model works including how sex industry businesses including brothels would be regulated. In those sections we recommend the full decriminalisation of the sex industry in the Northern Territory. This would result in brothels being decriminalised along with other sex industry business models including escort agencies, massage parlours and small co-ops of sex workers.

*Decriminalisation is the removal of exceptional laws that single out sex workers or sex industry businesses for special regulation, to allow existing workplace rights, public health, and planning law to appropriately regulate sex work. When the exceptional laws (or laws specific to the sex industry) are repealed, and criminalisation is removed, the laws that cover other businesses will also protect and regulate sex industry businesses and sex workers. For example, NT WorkSafe will have a role in regulating workplace health and safety in sex industry businesses and a set of guidelines for sex industry businesses will need to be developed in consultation with SWOPNT, NT Unions and the Scarlet Alliance, Australian Sex Workers Association as technical advisors.*

Any model of regulation that does not seek to include within the compliant sector the full range of sex industry business models will result in a criminalised sector.

#### **Massage Parlours**

Massage parlours are a form of sex industry business where the client is primarily seeking relaxation, and paying extra for sexual services that are on offer. They are a good work option because they grant the sex worker control over the types and styles of sexual services they offer.

**Recommendation 11: Respect Inc and DecrimQLD recommend a full decriminalisation model which repeals exceptional laws specific to the sex industry allowing existing laws to cover a range of sex industry business models including brothels and massage parlours.**

### **“Solo worker operator brothels”**

Should one person brothels be permitted in the Northern Territory?

**Recommendation 12: Respect Inc and DecrimQLD recommend against the terminology “one person brothels.” The term “independent sex workers/private sex workers” is more appropriate. Independent and private sex workers working in residential areas are not commercial, because the land use of the dwelling has an impact that is residential in nature, not commercial.**

**Recommendation 13: Respect Inc and DecrimQLD recommend independent and private sex workers to be noted not as commercial, but as home occupations and home-based contracting.**

We note that the NT Planning Scheme and Area Plans are related to the size and density of development, already accommodate mixed use in Zoned C land, and already recognise home occupation and home based contracting, as long as the activity does not detract from the existing character of the area. If decriminalised, independent and private sex workers would be recognised in the NT Planning Scheme policies - Darwin Inner Suburbs and Mid Suburbs Area Plans, because they are home occupations, not commercial endeavours.

### **Brothel regulation, not licensing**

We note that some industries and businesses are regulated by a licensing or registration process in the Northern Territory. However this model, when applied to sex work, has demonstrated it is ineffective and has adverse public health outcomes. It is not recommended for the sex industry and in this submission we explain the failure of licensing in Queensland as one of many examples of its failure.

Brothels in the Northern Territory should be regulated under existing laws, not special licensing laws.

Evidence from NSW shows that brothel licensing is likely to have an adverse effect on public health programs:

*“The legal context appeared to affect the conduct of health promotion programs targeting the sex industry. Brothel licensing and police-controlled illegal brothels can result in the unlicensed sector being isolated from peer-education and support.”<sup>16</sup>*

Research has shown that decriminalisation delivers improved working conditions for the sex workers with 70% more likely to report crimes to the police<sup>17</sup>, and that police and the justice system respond more effectively and more fairly when crimes are reported.<sup>18</sup>

### **6.4.4 Continued**

**Should consideration be given to 18+ only ‘precincts’?**

**Recommendation 14: Respect Inc and DecrimQLD recommend against limiting sex work activity to an 18+ only precinct.**

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<sup>16</sup> Harcourt, Christine, O’Connor, Jody, Egger, Sandra, Fairley, Christopher, K., Wand, Handan, Chen, Marcus, Y., Marshall, Lewis, Kaldor, John, M. & Donovan, B. 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, vol. 34, no. 5, pp. 482–486. <https://doi:10.1111/j.1753-6405.2010.00594.x>

<sup>17</sup> New Zealand Government. (2008). *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003*, Ministry of Justice, Wellington, p. 57.

<sup>18</sup> Abel, G. M. (2014). “A decade of decriminalization: Sex work ‘down under’ but not underground.” *Criminology & Criminal Justice* 14 (5): 580–92. <https://doi.org/10.1177/1748895814523024>.

It is a safety risk to sex workers to limit sex work activity to certain precincts or areas. For sex workers who work at night, this risk is greater.

In other states and territories there have been trials of limiting sex work into industrial zones. In the ACT this has not worked for independent and private sex workers, who prefer to work from residential areas.

Sex workers in the Northern Territory will choose the location of their work activity based on privacy, confidentiality, safety and ease of access for clients. Clients when seeing an independent/private sex worker are expecting low-key settings that are not recognisable from street-level as sex work locations. Privacy is an essential part of what independent sex workers are offering to clients. As such, clients will continue to seek private, low-key, residential settings regardless of the kinds of limitations new regulations put into force.

The policing of a segregated workforce is unworkable. It is against the spirit of the discussion paper to have a regulatory system that allows sex work in only a specified zone or area. The approach would mean that a vast majority sex workers would be working outside a regulatory framework. There is no evidence to support value from the segregation of sex work activity to '18+ precinct areas'. To create such barriers is in opposition to the decriminalisation of sex work, which seeks to permit all sex workers the rights and responsibilities of regulation.

## 7.1 What would a new Act look like?

### Respect Inc and DecrimQLD response to section 7.1.3, related to sexual health and public health outcomes.

#### **Recommendation 15: Respect Inc and DecrimQLD recommend against police regulation of condom use**

It is peer education, delivered by sex worker organisations and by sex workers, that supports the uptake of condom use by sex workers. This has been proven by decades of surveillance data on sex workers and STI rates, and is noted in the Eight National HIV Strategy:

*Continued health promotion and prevention efforts of peer-based sex worker organisations have sustained the low prevalence of HIV among sex workers.*

And reiterated in the Fourth National STI Strategy:

*Strong and sustained health promotion programs among sex workers have led to rates of STI in this priority population among the lowest in the world.<sup>19</sup>*

Police action is not necessary to maintain good decision making for sex workers when it comes to STI prevention. In fact police activity in this area would likely jeopardise years of good practice by sex workers. Police are not equipped to police condom use. Police are not skilled at the regulation of sexual health. The field is too nuanced and already highly sophisticated. The blunt action of police in regards to condom use carries more risk than reward.

#### **Recommendation 16: Respect Inc and DecrimQLD recommend against mandated condom use.**

Condom use is already high among sex workers in the Northern Territory, as proven by STI surveillance rates. Sex workers are better skilled at using condoms than any other population group in Australia.

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<sup>19</sup> Commonwealth Department of Health, Eighth National HIV Strategy, 2018  
<http://www.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1>

We know that in Australia sex workers willingly use condoms for penetrative sex, to protect from infections. We also know that there are sexual activities that are low risk (ie oral sex) that sex workers will make informed decisions about. Condom use might be used for higher risk aspects of oral sex (ie to cover the head of the penis) but not used for low risk activities (ie licking the shaft of the penis). Regardless of the details, the epidemiology shows that sex workers are able to make good decisions about prevention of sexually transmissible infections.

Making any aspect of sex work 'mandatory' within legislation would result in a role for police in regulating that activity. Police regulation of sex work is both a waste of police resources and endangers sex workers. Police regulation of sex work invites police corruption, abuse of power, and prevents sex workers from being able to contact police in the event of an assault or other crime.

The mandated use of condoms would fail to take into account the fact that sex workers in the Northern Territory already engage in safer sex practices, act as the safer sex educators (of their clients) and are experts at identifying and managing risks. Using the criminal law to make condom use mandatory takes away individuals' agency over their sexual decision making and is out of step with public health approaches. It is also unnecessary as rates of sexually transmissible infections amongst sex workers are very low - indicating legislating this activity is not warranted.

There is overwhelming evidence and it is the experience of Australia's successful response to HIV an sexually transmissible infection prevention that it is **education not criminalisation or legislation** that results in the uptake of condom use and safer sex practices by sex workers.

Sex worker peer educators, where resourcing is provided, deliver safer sex information into the workplaces of sex workers. Scarlet Alliance provides training and skills recognition for sex worker peer educators, the workforce of sex worker organisations.

The Diploma in Community Development matched with a comprehensive training package ensures the high quality of peer educators working within sex worker organisations. Through this nationally recognised training, peer educators are able to provide sex workers with voluntary access to skills sharing, networking and up to date occupational health and safety advice.

### **Recommendation 17: Respect Inc and DecrimQLD recommend against Mandatory Testing of Sex Workers**

The mandatory testing of sex workers is costly, unworkable, unreliable and inefficient. Additionally, it creates barriers to sex workers access to quality sexual health care and testing. Wherever testing for brothel workers is mandatory, it has placed unnecessary strain on the health system.

Mandatory testing forces the most sexually healthy section of society into routine and rostered testing, and prevents sex workers from choosing when, how and what they would like tested. Research in 2012 concluded:

*It is apparent that mandatory testing of HIV and STIs among sex workers in Australia has proven to be a barrier to otherwise successful HIV and STI peer education, prevention and free and anonymous testing and treatment. The outcomes of mandatory testing are counterproductive to reducing HIV and STI rates, do not reach the intended target group, are costly and inefficient, and mandatory testing has proven to be a very difficult policy to repeal once in place.*



*A sex worker's decision to seek STI and HIV testing should be based on one's individual practice (as is the case for non-sex workers), rather than mandated at law.*

*Epidemiological evidence shows that mandatory testing is unnecessary. Sex workers already engage in safer sex practices, act as safer sex educators of our clients, peers and communities, and are experts at identifying, assessing and managing different degrees of risk.*<sup>20</sup>

The other argument against mandatory testing is that it creates a false sense of security among clients, misleading clients to believe that sex without a condom is acceptable, because of regular testing. Regular testing is an aspect of good sexual health, however it does not prevent the transmission of STIs. There is no evidence base to mandatory testing, from a public health point of view, in the workplace, or for individual sex workers.

*"Compulsory or coerced testing practices are also reported in China, India, and Viet Nam. Such practices violate human rights to autonomy and privacy, expose sex workers to risk of discrimination and violence, compound stigma and divert resources from effective HIV prevention and care interventions. Voluntary counselling and testing, and peer education to promote sexual health are more effective approaches."*<sup>21</sup>

**Recommendation 18: Respect Inc and DecrimQLD recommend the NT government resource SWOP NT to deliver a comprehensive territory-wide peer education and outreach program for sex workers. A well-resourced sex worker organisation and access to reliable sex worker specific resources are essential to effective health promotion and public health outcomes.**

We urge increased funding and resourcing for SWOP NT. A well-resourced sex worker organisation is pivotal to the implementation of safe work practices in sex industry workplaces. Law reform alone cannot address this. SWOP NT should be resourced to be a hub of information, networking, skills building, access to safer sex supplies, advice and support for sex workers throughout the Northern Territory. SWOP NT will bring invaluable knowledge to the development of workplace health and safety guidelines and other instruments that support effective implementation of decriminalisation. This will ensure the full implementation of decriminalisation as intended by the government.

## 7.1.8 Zoning Considerations

**Are there locations where brothels should not be permitted to be established?**

**Recommendation 19: Respect Inc and DecrimQLD recommend brothels and massage parlours be permitted in all Zone C and Mixed Use areas.**

Brothels are a commercial activity. They should be permitted in all Zone C areas, depending on the other land use in the area. Any exceptional laws that create a barrier to the regulation of brothel locations by the NT Planning Scheme would result in brothels in Zone C areas being unable to be covered by regulations. Effectively they would be working outside the law. If zoning is inappropriately limiting for brothels, it creates unsafe working conditions for sex workers.

Sophia Chin, in her thesis for Bachelor of Planning at UNSW 2017, found the following:

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<sup>20</sup> Elena Jeffreys, Janelle Fawkes, Zahra Stardust. 2012. "Mandatory Testing for HIV and Sexually Transmissible Infections among Sex Workers in Australia: A Barrier to HIV and STI Prevention", World Journal Of AIDS, 2012, 2, pp 203-211. doi:10.4236/wja.2012.23026 [https://www.afao.org.au/wp-content/uploads/2017/06/Mandatory\\_Testing\\_for\\_HIV\\_and\\_STIs\\_among\\_Sex\\_Workers\\_-\\_A\\_Barrier\\_to\\_Prevention.pdf](https://www.afao.org.au/wp-content/uploads/2017/06/Mandatory_Testing_for_HIV_and_STIs_among_Sex_Workers_-_A_Barrier_to_Prevention.pdf)

<sup>21</sup> Godwin, J. (2012) Sex work and the law in Asia and the Pacific: Laws, HIV and human rights in the context of sex work. Bangkok: UNDP Asia-Pacific, UNFPA Asia Pacific Regional Office, UNAIDS and Asia-Pacific Network of Sex Workers (APNSW).

*The best interests for local communities are to be considered by planners assessing (Development Applications) DAs for brothels.*

*....Despite moral and ethical concerns, the land use of brothels will inevitably exist as there is demand for commercial sex within society.*

*Pre- lodgment meetings for brothel applications are suggested with the provision of language translators for non-English speaking applicants to ensure communication is effective for all residents and brothel owners/operators.*

*Planners should consider ethical and moral considerations of the community to ensure the planning of brothels is sensitive to the specific place. It is essential that valid planning grounds are thoroughly investigated to provide an appropriate recommendation for a proposed brothel.*<sup>22</sup>

There is no need for brothels to be especially regulated when it comes to zoning. The NT Planning Scheme, and Inner and Mid Suburbs Area Plans, already have taken into consideration the size, height and density of businesses in Zone C and Mixed Use areas. Local Councils are a stakeholder and have an opportunity to give comment as part of routine Northern Territory planning processes.

In a model of full decriminalisation, the NT Planning Scheme and Department of Infrastructure, Planning and Logistics will supersede and oversee the processes regulating commercial-scale sex industry businesses. Part of their role will be to ensure that discrimination and vexatious complaints about sex work do not become a block to the implementation of full decriminalisation. Commercial-scale sex work, other than escort agencies, has been illegal in the Northern Territory and the moral element of anti-sex work sentiment will not disappear when the laws change. There is a need for education of relevant public servants to protect against discrimination.

**Recommendation 20: Respect Inc and DecrimQLD recommend, initially thorough, and then regular skills building, sensitivity training and education for all public servants and contractors involved in planning approval processes, for them to fully understand their role within the decriminalisation framework.**

Department of Infrastructure, Planning and Logistics staff, Town Planners, experts who sub-contract to Local Councils for advice, staff involved in on-site inspections, Local Council staff involved in interviewing applicants, and participants on relevant Planning Panels should all be trained and better equipped to be involved in implementing decriminalisation.

In NSW and New Zealand, Local Council staff and elected councillors have sometimes viewed themselves as having a role in **actively blocking, opposing or denying** brothels applications, sex workers generally, street based sex workers, and other sex work activity. The Land and Environment Court in NSW, and the NZ Parliament, have found that such discrimination is in opposition to the intention of full decriminalisation. The full decriminalisation of sex work is a whole of government approach. As such it requires local councils and elected councillors to understand that their role is to *facilitate, educate, become familiar with, and welcome* sex work activity that is applying to be compliant within planning law.

Local Councils are a stakeholder and play an advisory and referral role in any new business in their area. They represent the interests of the people within their Council, and often sub-contract for advice from experts in Town Planning. Councils are advised about new business' planning applications, and give comment. The NT Government must provide leadership that clearly signals to

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<sup>22</sup> Sophia Chin, 2007, "Sex In The Suburbs", Thesis for Bachelor Of Planning Faculty Of Built Environment University Of New South Wales  
[https://www.be.unsw.edu.au/sites/default/files/upload/pdf/schools\\_and\\_engagement/resources/notes/5A2\\_16.pdf](https://www.be.unsw.edu.au/sites/default/files/upload/pdf/schools_and_engagement/resources/notes/5A2_16.pdf)

Local Councils that the new laws are intended to *include* sex work activity into existing regulation, not to *exclude by denying permission to operate*.

**Recommendation 21: Respect Inc and DecrimQLD recommend that sex workers, represented by SWOP NT, be involved in sensitivity training and education of staff, experts and elected councillors responsible for the implementation of the NT Planning Scheme.**

The implementation of full decriminalisation will require effort to be put into training and educating public servants and elected officials. These individuals must be thoroughly educated in the public health, public amenity and human rights benefits of full decriminalisation, in order to understand their role as a *support mechanism* for decriminalisation, *not a block*. Participation by these individuals in training and education is essential for the Northern Territory to realise the benefits of decriminalisation of sex work, and avoid the discriminatory application of planning laws.

**Recommendation 22: Respect Inc and DecrimQLD recommend against independent and private sex workers being treated as “One Person Brothels.”**

Brothels are a commercial activity, independent and private sex workers are not. Independent sex workers are private home businesses in residential areas, often working from hotels, traveling as escorts to a location where a client is, and do not have an amenity impact associated with commercial activity.

Academic Penny Croft argues:

*“..sex workers and service providers, and council records of complaint [prove] that... home occupations (sex services) can operate lawfully with minimal amenity impacts, and that this type of business can provide a positive work environment.”<sup>23</sup>*

The NT Planning Scheme and Inner and Mid Suburb Area Plans are concerned with the street level atmosphere, appearance and character of an area, not the nature of activity happening within an area. For example a make-up artist doing work for weddings from a residential area would not be considered a commercial activity requiring zoning. Similarly sex workers also do not. To impose such zoning requirements on independent and private sex workers would only result in the majority of sex work activity taking place outside the regulations, thus creating a barrier to the rights and responsibilities that the discussion paper is trying to achieve for NT. Inappropriate zoning would have a negative impact on sex worker safety.

New Zealand has decriminalised multiple independent and private sex workers (not more than 4) working from a single location.

Currently Local Councils, the Department of Infrastructure, Planning and Logistics and the NT Planning Scheme does not deploy specialised resources to regulate the location of make-up artists, lawyers, journalists or other workers who engage in a lot of one-on-one activity with their clients. Similarly it would be inappropriate for sex work to be singled out in the planning processes in the NT. To do so would create onerous red-tape for sex workers, resulting in low or no compliance.

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<sup>23</sup> Penny Croft and Jason Prior, 2012, “Home Occupation or Brothel? Selling Sex from Home in New South Wales”, Urban and Policy Research Institute, Vol 30, 2012, Issue 2. <https://doi.org/10.1080/08111146.2012.679923>

## Street based sex work

### **Recommendation 23: Respect Inc and DecrimQLD recommend that street based sex work be fully decriminalised.**

Street based sex work, like other forms of street-present activity, should be allowed, and not prosecuted by the police. Evidence from New Zealand shows that when decriminalised, street based sex workers are more able to work alongside other activities in the community, and access police when they need to. The decriminalisation of street based sex work in New Zealand was accompanied by comprehensive research on the sector, and found:

*The NZPC in 2010 said there were an estimated 400 street-based sex workers nationwide, though any estimate needs to be treated with caution due to the often temporary and sporadic nature of work. More recently, it has reported no apparent increase in the number of street-based sex workers (and sex workers in general) within Christchurch, Wellington and Auckland. [48] Research indicates that these sex workers are predominantly female (although there are significant numbers of transgender people), and are predominantly Māori or Pasifika. [49] The Committee and the CSOM believed that the number of street-based sex workers has remained stable since the [change in the laws]. [50]*<sup>24</sup>

Related research commissioned by the New Zealand Government found similar outcomes:

*The street sector in Christchurch has changed little since decriminalisation. The street sector in both Christchurch and Wellington has been stable in the 18 month time period of the research.*<sup>25</sup>

So it can be concluded that a similar approach in the Northern Territory would not result in an increase in street based sex workers. The New Zealand Parliamentary report goes on to recommend against zoning street based sex work, based upon advice from New Zealand Police Force:

*The Police have said that prohibiting street prostitution in a particular area is likely to move sex workers to another area. There is concern that as street prostitution is prohibited in specific areas, sex workers may be forced to relocate to inherently more dangerous areas, placing additional strain on Police resources.*

Street based sex workers in New Zealand have expressed that they are more likely now to contact police in the event of a crime:

*Yeah, confident, I've got a lot more confidence, and I know that I can ring them to say, "Oh this has happened, and blah blah blah." I haven't had to do that, but I just know that I can. Cause that's the law, that's the law change. That it's legal now to be able to work, prostitution, and to do, you know. And so I was like, yeah, I just know that it's legal now. Whereas before it was all hush hush, you couldn't go to the Police, cause what would you say? "Oh I went to do this sex job, but this person, they didn't pay me." Sally, Street, Female, Christchurch<sup>26</sup>*

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<sup>24</sup> New Zealand Government, 2010. "Prostitution Law Reform in New Zealand," New Zealand Parliament <https://www.parliament.nz/mi/pb/research-papers/document/00PLSocRP12051/prostitution-law-reform-in-new-zealand/>

<sup>25</sup> Abel, Fitzgerald, Brunton. 2007. "The Impact of the Prostitution Reform Act on the Health and Safety Practices of Sex Workers", Research Report to the Prostitution Law Review Committee, University of Otago, November 2007. <https://www.otago.ac.nz/christchurch/otago018607.pdf>

The decriminalisation of street based sex work will create safer working conditions for the small percentage of workers at any time who choose to work in street based settings. This is important, as they deserve to benefit from full decriminalisation and be covered by available protections, just as much as any other location or model of sex industry business. There remains no evidence to suggest criminalisation of street based sex work delivers any value to street based sex workers or prevents the activity occurring.

### **Are there any other proposals the Government should consider to improve the safety and wellbeing of workers?**

Full decriminalisation will deliver outcomes for all workers in the sex industry.

There are countless examples in Australia's history of paternalistic or moralistic laws introduced with the stated intention of protecting the interests of sex workers, which in practice result in the criminalisation of sex workers, sex workers children, partners or family members or which actually reduce sex worker safety.

In jurisdictions where sex work is criminalised or licensed, sex workers are forced to break the law in order to protect our privacy, health, safety, human rights and industrial rights. In Queensland sex workers are forced to choose between working legally OR safely as laws criminalise sex workers implementing important safety strategies. This is why it is so important to fully decriminalise sex work in the Northern Territory and avoid over-regulation.

It is also the case that many policies and laws introduced under the guise of protecting against trafficking have resulted in the targeting, deportation, arrest and harassment of migrant and Asian sex workers throughout the world. Raids on massage parlours in the Northern Territory have also not resulted in identifying trafficking but have resulted in the deportation of employees, sex workers or otherwise. The Global Alliance Against Traffic in Women (GAATW) recommends decriminalisation of sex work as it 'would lead to fewer opportunities for exploitative working conditions, including human trafficking.'<sup>27</sup> In a 2006 study, Flanagan found that in NSW 'the government reports that migrant women working in the sex industry enjoy safer working conditions and increased access to health services'. Findings of a research study which compare the circumstances of Chinese and Thai sex workers in Australia in 1993 and 2003, before and after the sex industry was decriminalised in New South Wales support this.<sup>28</sup>

### **Anti-discrimination protection for sex workers**

Anti-discrimination protection for sex workers is essential to support the implementation of a decriminalised sex industry in the Northern Territory. Whilst legislative changes will support cultural change to reduce the level of stigma against sex workers, anti-discrimination protection works to send a strong message to the community that discrimination against sex workers will not be tolerated and provides a mechanism for sex workers to address systemic discrimination.

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<sup>26</sup> Abel, Fitzgerald, Brunton. 2007. "The Impact of the Prostitution Reform Act on the Health and Safety Practices of Sex Workers", Research Report to the Prostitution Law Review Committee, University of Otago, November 2007. <https://www.otago.ac.nz/christchurch/otago018607.pdf>

<sup>27</sup> Global Alliance Against Traffic in Women (GAATW). 2018. "Sex Workers Organising for Change: Self-representation, community mobilisation and working conditions." <https://www.gaatw.org/publications/SWorganising/SWorganising-complete-web.pdf>

<sup>28</sup> C. Pell, J. Dabhadatta, C. Harcourt, K. Tribe, C. O'Connor. 2007. "Demographic, migration status, and work-related changes in Asian female sex workers surveyed in Sydney, 1993 and 2003", in Australian and New Zealand Journal of Public Health, Vol. 30, No. 2, pp 157 - 162. <https://doi.org/10.1111/j.1467-842X.2006.tb00110.x>

The SWOP NT and SWRG NT submission to the Modernisation of the Anti-discrimination Act speaks directly to many of these issues. The following recommendations should be adopted.<sup>29</sup>

**Recommendation 24 : Respect Inc and DecrimQLD recommend the NT government amend the Anti-discrimination Act to include the following protections for sex workers, as an important element of ensuring the benefits of decriminalisation can be fully realised for sex workers in the Northern Territory.**

*Recommendation [5]: The Act must list 'accommodation status' as a protected attribute. 'Accommodation status' must be included with other areas of the definition "Place of home, work, practice, or labour"*

*Recommendation 6: "Sex work" must be listed as a protected attribute under the Act. Sex work must be defined as "sex work is the sale/exchange of consensual adult sexual services"*

*Recommendation 7: "Sex worker" must be listed as an attribute for protection under the Act. Sex worker must be defined as "a person who provided the sale/exchange of consensual adult sexual services".<sup>30</sup>*

**Are there other legislative considerations that should be looked at if brothels were decriminalised?**

#### **Criminalisation of clients**

Evidence from France has found that the criminalisation of clients creates barriers to accessing health and justice for sex workers, and has markedly reduced the industrial rights of sex workers in that country.<sup>31</sup>

**Should workers in the sex industry be bound by different workplace health and safety laws to other employees and self-employed persons?**

Workers in the sex industry should be bound by the same workplace health and safety laws as other employees and self-employed person. Work-place level occupational health and safety should be supported by the same agencies that support other similar sized workplaces.

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<sup>29</sup> Sex Worker Outreach Program (SWOP NT). 2017. "Sex Worker Reference Group (SWRG) Collective Submission in response to the Northern Territory Government Discussion Paper", in response to the Modernisation of the Anti-Discrimination Act, September 2017

<https://www.ntahc.org.au/programs/sex-worker-outreach-program-swop-nt/parliamentary-submissions>

<sup>30</sup> Sex Worker Outreach Program (SWOP NT). 2017. "Sex Worker Reference Group (SWRG) Collective Submission in response to the Northern Territory Government Discussion Paper", in response to the Modernisation of the Anti-Discrimination Act, September 2017

<https://www.ntahc.org.au/programs/sex-worker-outreach-program-swop-nt/parliamentary-submissions>

<sup>31</sup> Medecins Du Monde, 2018, "Study On The Impact Of The Law From 13 April 2016 Against The "Prostitution System" In France", Paris.

<https://www.medecinsdumonde.org/en/actualites/publications/2018/04/12/study-impact-law-13-april-2016-against-prostitution-system-france>

## Appendix 1:

### NSW did not endorse adding licensing of brothels to the decriminalised model



Sex workers, sex worker organisations and many from the legal, human rights, industrial rights and health sectors recommend the **full decriminalisation** of sex work.

Unfortunately the NT discussion paper frames licensing and exceptional registration, as though they are decriminalisation. These approaches are not decriminalisation.

The paper also indicates that the Legislative Assembly of New South Wales Select Committee on the Regulation of Brothels (2015) supported the uptake of a licensing model. However, this is misleading as the Labor and independent members of the parliamentary committee did not support this recommendation.

*Labor MP Jo Haylen: "We had real concerns after listening to all the evidence it was very clear that a licensing regime would have sent elements of the industry underground and that would have undermined the great work that we've had*

*in New South Wales."*<sup>32</sup>

The NSW government itself, after consideration of the recommendations of the report, decided not to progress licensing, and in fact retained decriminalisation, based upon the available evidence. They found that a licensing model with exceptional police and other regulator powers would impede sex worker health, safety and workplace rights.

Further explanation of why licensing was rejected by the NSW Government, taken verbatim from the committee meeting:

*"The Members for Sydney, Summer Hill and Gosford maintain that the chapter advocates the case for a licensing regime without adequately addressing the benefits of the current framework of decriminalisation. These members are of the view that the report overstates the susceptibility of sex workers and brothels to criminal activity such as money laundering, sexual servitude and outlaw bkie gangs. These members are of the view that the report gives disproportionate weighting to the views of NSW Police (Deputy Commissioner Kaldas), to the exclusion of other organisations which balanced this view. These members are of the view that little concrete evidence is presented to support these claims and the experiences of sex workers are simplified to suggest overwhelming vulnerability. These members are of the view that the Committee received evidence of complex intersections of marginalisation, however, the report does not elucidate how licensing would stop an underground industry or protect sex workers".*<sup>33</sup>

<sup>32</sup> ABC News. 2019. "Brothel licensing scheme rejected by NSW Government", 11 May 2016

<https://www.abc.net.au/news/2016-05-11/brothel-licensing-scheme-rejected-by-nsw-government/7403288>

<sup>33</sup> Parliamentary Inquiry into the regulation of brothels, NSW, Final report

<https://www.parliament.nsw.gov.au/ladocs/inquiries/1703/Final%20Report%20-%20Inquiry%20into%20the%20Regulation%20of%20Brot.pdf>