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08 October 2019

To: the Legal Affairs and Community Safety Committee on the *Police Powers and Responsibilities and Other Legislation Amendment Bill 2019*.

Thank you for the opportunity to respond to the *Police Powers and Responsibilities and Other Legislation Amendment Bill 2019*.

Scarlet Alliance, Australian Sex Workers Association is the national peak body representing a membership of individual sex workers, and sex worker networks, groups, projects, collectives and organisations from around Australia since 1989. Through our objectives, policies and programs, Scarlet Alliance aims to achieve equality, social, legal, political, cultural and economic justice for past and present workers in the sex industry, in order for sex workers to be self-determining agents, building their own alliances and choosing where and how they work.

Scarlet Alliance is a leader when it comes to advocating for the health, safety and welfare of sex workers in Australia. Through our work and that of our membership we have the highest level of contact with sex workers in Australia of any agency, government or non-government. This ensures we are able to represent the issues affecting our members and sex workers Australia wide. Scarlet Alliance represents sex workers on a number of government and non-government committees and advisory mechanisms.

Please find our submission attached. If you have any questions relating to our submission please do not hesitate to contact, CEO Jules Kim at [ceo@scarletalliance.org.au](mailto:ceo@scarletalliance.org.au) or on 02 9517 2577.

Regards,

A handwritten signature in black ink, appearing to read "Jules Kim".

Jules Kim  
Chief Executive Officer  
Scarlet Alliance, Australian Sex Workers Association

### **Executive Summary**

While Scarlet Alliance supports the *Police Powers and Responsibilities and Other Legislation Amendment Bill 2019's* (hereafter referred to as *the Bill*) intent to improve efficiency of the Queensland Police Service (QPS) and the Prostitution Licensing Authority (PLA), many of the amendments proposed fail to protect sex workers rights and will have a negative impact on our health and safety.

Scarlet Alliance:

- does not support the expansion of police powers to anywhere sex work occurs.
- does not support arbitrarily expanding the role of the PLA.
- does not support *Section 61C* and *Section 61G* of *the Bill*.

*The Bill* fails to:

- provide sex workers protection from corruption.
- *The Bill* fails to consider or protect sex workers' right to privacy.

Scarlet Alliance asserts that:

- advertising penalties against sex workers must be removed.
- police entrapment of sex workers must be repealed.

As it stands, *the Bill* provides nothing in the way of positive rights for sex workers. Scarlet Alliance asserts that *the Bill* must prioritise amendments that also benefit sex workers. This Bill will provide an unparalleled opportunity to reduce counterproductive and wasteful policing practices targeting sex workers and increase sex workers access to justice. However, adequate consultation with sex workers is needed to ensure that proposed changes to the *Police Powers and Responsibility Act 2000* (Qld) and *the Prostitution Act 1999 (Act)* does not undermine sex workers safety and rights.

### **Scarlet Alliance does not support expansion of police powers to anywhere sex work occurs.**

*The Bill* proposes to amend the *Division 3 Powers of Entry of the Act* by inserting the new *section 61A entry of premises by authorised officer*. According to the explanatory memorandum, this amendment was intended to fix the problem of PLA officers being excluded from the 'authority to enter brothel premises, search and seize and require the production of documents where necessary'.<sup>1</sup> However, *section 61A* of *the Bill* expands the power of 'authorised officers' by granting them the power of entry to *any premise* that 'the authorised officer suspects on reasonable grounds are being used for prostitution'. This amendment significantly expands the powers of entry for 'authorised officers', including police officers, to enter premises beyond 'licensed brothels' to any premise that is suspected is 'being used for prostitution'.

This amendment is a major change to *the Act* and will have a significant impact on the way compliance checking and policing strategies targeting sex workers are conducted. Despite this, the Government has failed to adequately consult sex workers to ensure that due diligence has been exercised to identify whether the changes will achieve the intended outcomes, the broader and

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<sup>1</sup> Queensland Government. (2019). *Police Powers and Responsibilities and Other Legislation Amendment Bill 2019 — Explanatory Note*. Retrieved from <https://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2019/5619T1504.pdf>.

unintended risks the changes present, and the costs of the changes. As highlighted by DecrimQld and Respect Inc's submission to this inquiry, *section 61A of the Bill* is out of step with the original intent of *the Bill* which was described by Minister Mark Ryan to 'authorise the Prostitution Licensing Authority to enter, search, seize and require the production of documents *at a licensed brothel*'.

### ***Scarlet Alliance does not support arbitrarily expanding the role of the PLA***

The PLA is specifically tasked with the role of ensuring that 'licensed brothels and prostitution advertising are regulated in accordance with statutory requirements and in the community interest'.<sup>2</sup> Independent sex work is legal in Queensland. Currently the PLA are not involved in the compliance checking of independent sex workers. *Section 61A of the Bill* expands the PLA's role to any premise where an 'authorised officer suspects on reasonable grounds are being used for prostitution'. This is a major expansion to the existing role of the PLA that will have a significant impact on sex workers. The explanatory memorandum fails to recognise the expansion of the PLA's role in regulating the sex industry or provide an explanation for the expansion. Additionally, there has been no due diligence in consulting sex workers to investigate whether the changes will achieve the intended outcomes, whether it will present unintended consequences or risks to sex workers and the costs of such an expansion.

### ***The Bill fails to provide sex workers protection from corruption***

The findings of the *Report of the Commission of Inquiry Pursuant to Orders in Council*, also known as *the Fitzgerald Report*, detailed systemic police corruption in relation to the Queensland sex industry.<sup>3</sup> The Fitzgerald Report found 'no coherent reason to keep a specialised police force in relation to sex work, with the report stating that regulation would be better handled by civil authority'.<sup>4</sup>

One of the major drivers for decriminalisation in NSW was the findings of the Wood Royal Commission showing 'a clear nexus between police corruption [in the NSW Police Force] and the operation of brothels'<sup>5</sup>. In 2016, *the NSW Government Response to the Legislative Assembly Inquiry into the Regulation of Brothels* (hereafter referred to as *the NSW Government Response into the Regulation of Brothels*) established that the sex industry does not require police to be the main regulators of the sex industry to ensure the comprehensive regulation of the sex industry.<sup>6</sup> In fact, *the NSW Government Response into the Regulation of Brothels* indicated that introducing a licensing component and greater police involvement in the regulation of sex work 'risks creating similar outcomes to re-criminalising sex work'<sup>7</sup>, such as increased police corruption and reduced access to legal, health and support services for sex workers.

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<sup>2</sup> Queensland Government. (Last updated 04/09/2019). Prostitution Licensing Authority. Retrieved from <http://www.pla.qld.gov.au>

<sup>3</sup> Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct. (1989). *Report of a Commission of Inquiry Pursuant to Orders in Council (Fitzgerald report)*: Queensland Government Printer Brisbane.

<sup>4</sup> Jeffreys, E., O'Brien, E., & Fawkes, J. (2019). The case for decriminalisation: Sex work and the law in Queensland.

<sup>5</sup> New South Wales Government. (1997). Royal Commission into the NSW Police Service: Final Report – Corruption, 13.

<sup>6</sup> Minister for Innovation and Better Regulation. (2016). *NSW Government Response to the Legislative Assembly Inquiry into the Regulation of Brothels*. Sydney: Parliament of NSW Retrieved from <https://www.parliament.nsw.gov.au/committees/listofcommittees/Pages/committee-details.aspx?pk=185#tab-governmentresponses>.

<sup>7</sup> *Ibid.* Pg 3.

*The Fitzgerald Report*, the Wood Royal Commission, and *the NSW Government Response to the Regulation of Brothel* emphasizes the need to reduce direct police involvement in regulating the sex industry. When police are the main regulators of the sex industry, sex workers fear that reporting crime to the police will result in greater scrutiny and surveillance of our compliance with sex industry laws and risk of being charged. When police are not the main regulators of the sex industry, existing laws that criminalise exploitative workplace practices, violence, human trafficking, robbery, fraud, sexual assault, harassment will continue to apply to the sex industry and the police have the same power to investigate crime as they do in any other industry. When police are removed from the regulation of the sex industry, sex workers are more likely to report crime to the police and access justice.

For these reasons, Scarlet Alliance does not support the expansion of police powers to apply to 'authorised officers'. There is no guarantee that the expansion of police powers to apply to 'authorised officers' will reduce police involvement in the regulation of the sex industry. Rather, the amendments proposed in *the Bill* will grant greater powers for a wider range of 'authorised officers' to enter our workplaces, seize our property and conduct covert operations without our consent or knowledge and sex workers are not provided with any additional protections against corruption.

***Scarlet Alliance does not support the introduction of new offences that reduce sex workers right to refuse arbitrary surveillance, confiscation of property and arrest.***

Currently under *the Act* there are a number of restricted instances where a person can be penalised for not providing information or assistance when requested by the Authority in the course of their work. For example, *the Act* makes it an offence for a person to fail to provide information upon request to the Authority when conducting a 'disciplinary inquiry'.<sup>8</sup> *The Bill* introduces a new offence which makes it an offence to fail to provide 'any documents' or assistance requested by the 'authorised officer'<sup>9</sup>, expanding the original offence stated in *the Act* to any instance where an individual fails to provide information and assistance requested by an 'authorised officer'.

The Bill also introduces *section 61G obstructing authorised officer* which makes it an offence to 'obstruct an authorised officer exercising an enforcement power, or someone helping an authorised officer exercising an enforcement power'.<sup>10</sup> These offences threaten anyone who fails to provide information or assistance or who may appear to be obstructing an 'authorised officer' with criminal penalties. On the other hand, there are no provisions included in *the Bill* that protect sex workers against police corruption or unfair police or 'authorised officer' practices.

***The Bill fails to consider or protect sex workers' right to privacy.***

*The Bill* expands the power of 'authorised officers' to 'inspect, examine, record, photograph or film anything in or on the premises'. This new provision is an expansion of the existing section in *the Act* which grants the police the power 'to inspect, photograph or copy anything require to be kept under this Act'.<sup>11</sup> As highlighted in the DecrimQld and Respect Inc submission into this inquiry 'as it is us as sex workers who are at location where sex work is taking place, this would include photographing and filming us'. Providing 'authorised officers' unrestricted powers to 'photograph or film' sex workers is a massive breach of our privacy with no guarantees or safeguards in place to prevent that this evidence from being released publicly, such as to the media. There have been prior instances

<sup>8</sup> *Prostitution Act 1999 (Qld), Section 28D.*

<sup>9</sup> *Police Powers and Responsibilities Amendment Bill 2019 (Qld), Section 61E(3).*

<sup>10</sup> *Ibid. Section 61G.*

<sup>11</sup> *Prostitution Act 1999 (Qld), Section 60 (1a).*

where police in Queensland have released poorly de-identified footage of sex workers during raids to media outlets. This amendment indicates that the impact on sex workers was given little consideration when proposing many of the major changes proposed in the Bill.

***Scarlet Alliance asserts that advertising penalties against sex workers must be repealed.***

Sex workers in Queensland have been campaigning for years for advertising regulations to be reformed. The Queensland Police (QPS) and the PLA are responsible for the regulation of sex worker advertising. *The Act* makes it a criminal offence for sex workers to explicitly describe the services we offer when advertising.<sup>12</sup> *The Act* also makes it an offence to violate any of the standards listed in the *Guidelines About the Approved Form for Advertisements for Prostitution* (hereafter referred to as ‘the Guidelines’) and publish an advertisement on radio, television, on film or video recording.

The current regulations single out sex workers for unnecessary advertising restrictions. When sex workers advertise services, it provides us with an important opportunity to clearly outline the services we provide. Advertising provides sex workers with our first line of safety and screening for client. This initial line of screening is often followed by the screening of clients that takes place when we negotiate our services directly with the client. The arbitrary restrictions on what sex workers can publish on our advertisements reduces our ability to utilise the advertising process to screen clients and enhance our safety.

As highlighted in the DecrimQLD and Respect Inc joint submission into this inquiry, breaches to advertising restrictions are used to ‘trigger a range of (petty) charges against sex workers’. These charges are often laid on top of each other, leaving sex workers with large fines up to \$6,000.

*The Bill* proposes to reduce breaches of licensing conditions by brothel operators to be made a simple offence rather than an indictable offence. The explanatory memorandum indicates that the reduction in penalty is appropriate due to the ‘generally administrative and low-level nature’ of the offence. Similarly, breaches to sex industry advertisement regulation by sex workers is low level and accordingly should not result in a charge against the sex worker. A significant number of advertisements appear online on national and international websites over which the Queensland government has little or no control over. Sex work advertisement restrictions places sex workers at risk of criminalisation, penalisation, and stigma and discrimination and increases safety risks for sex workers with no real benefit to sex workers or the community.

Scarlet Alliance asserts that *Subdivision 2 of the Act* should also be repealed. The removal of advertising offences and the associated penalties is in line with the proposed changes that intend to relax penalties against ‘low level’ offences and will ensure that independent sex workers can equally benefit. In its place, Scarlet Alliance asserts that sex industry advertisements are regulated by standard advertising regulations.

***Scarlet Alliance asserts that police entrapment laws must be repealed.***

*Section 75 of the Act* exempts police from ‘soliciting offences’ if the soliciting is conducted ‘under an authority given under the *Police Powers and Responsibility Act 2000*’. The Queensland police are known for responding to sex worker advertisements, pretending to be clients, to gather information with the intent of fishing for breaches to sex industry regulations. DecrimQLD and Respect have indicated that police use these entrapment laws to:

- “use the lure of payment to pressure sex workers to agree to perform a doubles booking.

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<sup>12</sup> *Prostitution Act 1999* (Qld), Section 93(1)

- make a fake booking with a sex worker to monitor how the sex worker travels to the booking, and then arrest their driver if the driver is unlicensed or is also known to drive other sex workers.
- call sex workers on the phone, posing as clients, asking for unprotected sexual services such as any sex without a condom.
- contact sex workers pressuring sex workers to state they have received assistance in developing or placing their advertisement, particularly if English is not their first language.
- call sex workers to find out if the sex worker is using a receptionist to assist in the running of their business.
- call or visit sex workers to ask for services that the sex worker does not offer, and then attempt to convince the sex worker to refer them to another worker that does offer the service.
- call the sex worker or visit the sex worker at the place of work while posing as a client to then ask if they have a friend or anyone else on the premises who is available for a booking.”

Police entrapment of sex workers fosters deep mistrust between the sex worker community and the police, significantly reducing sex workers access to justice. Police entrapment also has the effect of creating distrust between sex workers and other support services as we cannot be sure that other services are not working with the police to further entrap us.

Sex workers in Queensland are largely entrapped for implementing safety strategies. For example, working with other sex workers without an employment relationship and employing support staff are basic, practical strategies sex workers utilise to increase our safety. However, this strategy is criminalised under *the Act*. The police entrapment of sex workers for sex industry offences are not in the public interest. In line with intent of *the Bill* to appropriately penalise ‘low level’ breaches to *the Act* and reduce waste of Queensland Police resources, Scarlet Alliance assert that police entrapment powers are repealed from the *Police Powers and Responsibilities Act 2000* (Qld).

It is also worth noting that repealing police entrapment laws does not change the current criminalisation of many aspects of sex work, such as working with another worker or hiring staff. However repealing police entrapment will foster a better relationship between sex workers and reduce barriers for sex workers to access justice.

***Sex workers need full decriminalisation of sex work.***

Sex workers in Queensland are calling for the full decriminalisation of sex work. Decriminalisation is the removal of criminal laws specific to the sex industry, including those in *the Act*. By repealing the laws which single out and criminalise aspects of sex work, sex workers are able to access the rights and protections afforded to other employees, contractors and small business owners in the Queensland. Rather than resulting in de-regulation or ‘no regulation’, the full decriminalisation of sex work ensures that sex industry businesses are regulated in the same way as other businesses, subject to existing regulatory mechanisms such as planning regulations, industrial protections and workplace health and safety guidelines. When sex work is decriminalised, the sex industry is subject to a whole-of-government regulation including WHS, council, business, industrial, taxation, migration, planning, health and criminal laws and regulations. Decriminalisation will mean sex workers can report crime to the police without fear of prosecution as police are not the primary regulator of the sex industry. A decriminalised system amplifies opportunities for outreach,

magnifies capacities for peer education, supports sex worker self-determination, maximises compliance, increases transparency and minimises discrimination.

There is an accumulating body of evidence globally and locally supporting the full decriminalisation of sex work as it ensures sex workers access to our human rights.<sup>13</sup> In NSW, decriminalisation has brought improved work safety, high rates of safer sex practice and low rates of sexually transmitted infections with no evidence of organised crime.<sup>14,15,16,17,18</sup> The Lancet Series on HIV and sex workers showed that decriminalisation of sex work would have the greatest effect on the course of HIV epidemics across all settings, averting 33–46% of HIV infections in the next decade.<sup>19</sup> Decriminalisation would reduce mistreatment of sex workers and increase their access to human rights, including health care.<sup>20</sup>

Decriminalisation is supported by United Nations, UNAIDS, UNFPA, UNDP, Amnesty International, International Labor Office (ILO), World Health Organisation, Lancet Medical Journal, Global Alliance Against Trafficking in Women, Global Network of Sex Work Projects, Asia Pacific Network of Sex Workers, and within Australia's National BBV and STI Strategies.

### **Recommendation**

Scarlet Alliance:

- does not support the expansion of police powers to anywhere sex work occurs;
- does not support arbitrarily expanding the role of the PLA;
- does not support *Section 61C* and *Section 61G of the Bill*;
- asserts that sex workers are provided with protection from corruption;
- asserts that sex workers' right to privacy is protected;
- asserts that advertising penalties against sex workers are repealed;
- asserts that police entrapment of sex workers must be repealed; and
- supports the full decriminalisation of sex work.

<sup>13</sup> Amnesty International. (2016). *Amnesty International policy on State obligations to respect, protect and fulfil the human rights of sex workers*. Retrieved from UK:

<https://www.amnesty.org/en/documents/pol30/4062/2016/en/>

<sup>14</sup> Donovan, B., Harcourt, C., Egger, S., Smith, L. W., Schneider, K., Wand, H., . . . Tabrizi, S. (2012). *The sex industry in New South Wales: a report to the NSW Ministry of Health*. Retrieved from Kirby Institute, Sydney: [https://kirby.unsw.edu.au/sites/default/files/kirby/report/SHP\\_NSW-Sex-Industry-Report-2012.pdf](https://kirby.unsw.edu.au/sites/default/files/kirby/report/SHP_NSW-Sex-Industry-Report-2012.pdf). Pg 8.

<sup>15</sup> Ibid. Pg vi.

<sup>16</sup> Department of Health. (2018a). *Eighth National HIV Strategy 2018-2022*.

[http://www.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1/\\$File/HIV-Eight-Nat-Strategy-2018-22.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1/$File/HIV-Eight-Nat-Strategy-2018-22.pdf). Pg 14.

<sup>17</sup> Department of Health. (2018b). *Fourth National Sexually Transmissible Infections Strategy 2018-2022*

[http://www.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1/\\$File/STI-Fourth-Nat-Strategy-2018-22.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1/$File/STI-Fourth-Nat-Strategy-2018-22.pdf). Pg 14.

<sup>18</sup> Minister for Innovation and Better Regulation. (2016). *NSW Government Response to the Legislative Assembly Inquiry into the Regulation of Brothels*. Sydney: Parliament of NSW Retrieved from <https://www.parliament.nsw.gov.au/committees/listofcommittees/Pages/committee-details.aspx?pk=185#tab-governmentresponses>.

<sup>19</sup> Shannon, K., Strathdee, S. A., Goldenberg, S. M., Duff, P., Mwangi, P., Rusakova, M., . . . Pickles, M. R. (2015). Global epidemiology of HIV among female sex workers: influence of structural determinants. *The Lancet*, 385(9962), 55-71.

<sup>20</sup> Amnesty International. (2016). *Amnesty International policy on State obligations to respect, protect and fulfil the human rights of sex workers*. Retrieved from UK:

<https://www.amnesty.org/en/documents/pol30/4062/2016/en/>