

## Issues paper 4.4 - Should the meaning of consent in sexual offences arising in the context of commercial sexual services agreements be clarified?

In WA, sex work is governed by the Prostitution Act. This Act makes most sex work related activities illegal, although it not illegal for an adult without prescribed convictions to engage in sexual activity for money.

Despite the various legislative prohibitions related to sex work, people still engage in sexual activities for money. While the general consent provisions apply to such activities, data indicates that people working in the sex industry experience high levels of sexual violence. It has been suggested that this may be a result of the commercial nature of the activity, with people engaging in sex work seen as commodities rather than people, and some clients wrongly believing that 'they have the power to do whatever they like with the women during the bookings given they paid for it'.

One way to address this issue would be for the *Code* to make it clear how the consent provisions operate when there is an agreement for commercial sexual services. Such an approach has been taken in New Zealand, where section 17 of the *Prostitution Reform Act 2003* (NZ) states:

- Despite anything in a contract for the provision of commercial sexual services, a person may, at any time, refuse to provide, or to continue to provide, a commercial sexual service to any other person.
- The fact that a person has entered into a contract to provide commercial sexual services does not of itself constitute consent for the purposes of the criminal law if they do not consent, or withdraws their consent, to providing a commercial sexual service.

A provision of this nature would offer protection to people who work in the sex industry, by making it clear that the communicative model of consent equally applies to them. It reflects that they have a right to sexual autonomy and bodily integrity, and should be free to determine what sexual activities they do and do not participate in. Under this model, clients have an obligation to ensure, as they do for any sexual activity in which they engage, that all participants are consenting to the relevant sexual activities. If they fail to do so they risk being charged with an offence.

It may, however, be inappropriate for the *Code* to address only selected matters relating to sex work, given that it is more broadly regulated by the Prostitution Act. It may be preferable for this issue to be addressed in the context of a broader review of laws about sex work, which could also consider any legal consequences that may flow where a sex worker breaches a commercial agreement.

### **Should the *Code* contain a provision similar to that in section 17 of the *Prostitution Reform Act 2003* (NZ)?**

#### **Why or why not?**

A full discussion of this issue is in Discussion paper volume 1 paras 4.56-4.59.