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## Submission to the Inquiry into Wage Theft in Western Australia

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### **Wage Theft within the West Australian Sex Industry**

#### *Background:*

Magenta is Western Australia's sex worker support project, providing health, advocacy and education services to people working in the WA sex industry. The project's background includes sexual health, human and civil rights, and face to face contact with WA sex workers. This submission is informed by the lived experience of Magenta's stakeholders who live and work within many iterations of the WA adult industry, and by the experiences of Magenta's staff.

This submission responds to points 1. 2. 3. 5. And 6. of the Inquiry's Terms of Reference both individually and collectively throughout the submission. Magenta notes that this list is not exhaustive, and that workers in the adult industry other than sex workers themselves may experience wage thefts at alarming rates, particularly receptionists; who have in the past made a number of complaints to Magenta relating to wage theft. However it is outside the scope of this submission to review wage theft as it relates to every other sex industry worker.

Magenta promotes full decriminalisation of the sex industry as best practice for promoting safety within the sex industry, and for reducing harm to sex workers. This submission as it relates to stolen wages promotes that decriminalisation of the sex industry is the first and most important step in reducing the harm inflicted on sex workers by wage theft. Any other effort to reduce instances of wage theft amongst sex workers or to reduce the impacts of these on sex workers lives, is ineffective in the face of improper sex industry regulation.

In turn, we ask that the Inquiry joins us in endorsing the decriminalisation of sex work in Western Australia as the best practise model for the protection of sex workers workplace rights.

The primary author of this document is Lena Van Hale, Manager of Magenta. If the Committee or any of its representatives wishes to discuss this submission, I can be contacted by email at [Lena.VanHale@magenta.org.au](mailto:Lena.VanHale@magenta.org.au), or by phone on 0431 835 756. If the Inquiry would permit my attendance, I would be grateful for an opportunity to present Magenta's information to the Inquiry in person.

#### *Overview:*

While the provision of sexual services itself is legal in Western Australia, the sex industry falls under a criminalised model which prohibits many common practises associated with sex work, such as employing security, or working in a group. In addition to removal of sex workers' reasonable health and safety precautions, the regulation of the WA sex industry under criminal laws also excludes sex workers from society's broader industrial and civil laws designed to prevent exploitation of workers in any workplace.

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Magenta promotes the removal of criminal laws governing the WA sex industry, in favour of the full decriminalisation of sex work. This is distinct from legalisation, under which the sex industry remains governed under criminal law and regulated inappropriately. Decriminalisation refers to a legislative model using appropriate labour and industrial rights frameworks to create equitable and safe workplaces, and enables the enactment of industry regulations enjoyed by all other legal industries.

### Primary Concerns from Sex Workers who Experience Wage Theft

#### *1. Whether there is evidence of wage theft occurring in Western Australia, and the various forms wage theft may take*

Wage theft as it relates to people within the sex industry takes varied and complicated forms. In the formation of this submission, Magenta received many reports from workers about a high number of different forms of wage theft, beyond the scope of this submission to list in full. The four most common concerns Magenta received relating to wage theft are listed below.

#### **Arbitrary “fines” made against sex workers’ earnings for petty policy infringements by owner/operators of sex industry premises**

As the WA sex industry is not regulated under industrial law, workplace policies are self-determined by owners/operators of sex industry premises, and are not subject to review by any regulatory body. These are often applied arbitrarily and impromptu, as an instant disciplinary action in workplace disputes, or as a retaliatory measure against workplace organising. Some of these “fines” reported in WA include: showing up minutes late to shifts, wearing lingerie that doesn’t match the establishment’s décor, sex workers putting their shoes on furniture, sex workers calling in sick to shifts, and of particular concern to Magenta - for refusing the advances of known violent clients.

#### **Owners/Operators of sex industry premises changing payment policies maliciously or arbitrarily**

Magenta frequently receives complaints from Perth sex workers regarding management changing the cut they were supposed to receive from a booking, or the cut they are supposed to pay a driver or other 3<sup>rd</sup> party, while the sex worker is actually in the room with the client. This results in the worker losing the payment for which they consented to sex, or having to pay exorbitant fees to third parties they hadn’t agreed on, with disturbing implications for the nature of their actual consent to sex. This practise is common in larger sex work premises, and represents a clear tactic of wage theft employed by management who have rewritten the rules while their employees’ backs are literally turned.

#### **Wage Theft Committed by Clients**

Wage theft from sex worker clients may take the form of demanding refunds for services they’ve received, by simply underpaying the worker, or by attempting to take their money back after they’ve received a service through violence, intimidation, or by appealing to a 3<sup>rd</sup> party such as the sex workers’ manager, or the police. A sex worker’s management may be ‘talked into’ siding with the client for a number of reasons, including a lack of recourse available for violence or intimidation, or for simply valuing the return business of the customer.

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Magenta is concerned that the police are not sufficiently supported by the present legal framework to respond to these situations. Where a sex worker has been underpaid, sex workers have no point of recourse under the present framework. Interactions with police around this issue often focus unnecessarily on the topic of sexual consent, without recognising a sex workers labour, and sex workers are generally told no crime has been committed when a client has underpaid them.

### **Wage Theft facilitated by Police**

Magenta receives occasional reports of callouts like those detailed above, where police have sided with the client. Sex workers have reported being pressured by police to give their income back to clients who have already received a complete service from them. Because sex work is not clearly defined as work under civil laws, any negotiation about services provided is not always seen as legally binding. As sex workers generally charge for their time and not for specific services, clients are sometimes empowered to demand extra services or refunds for arbitrary or unfair reasons. Common examples of this include clients who have been unable to commence or complete sex due to heavy intoxication or physical infirmity, clients who have not allowed the worker to complete the service, and clients who are physically or mentally unfit to complete the booking. While the client has still taken up their allocated time in all these examples, sometimes the police will take their side when they complain about not being able to reach climax, or not enjoying the company of the worker. Magenta notes that interactions of this form do not represent the majority sex industry engagements with police, but do attract a lot of concern from sex workers. These interactions proliferate throughout sex worker communities quickly, and vastly erode sex workers' readiness to report thefts and other crimes.

## *2. What are the reasons wage theft is occurring, including whether it has become the business model for some organisations.*

As this submission discusses below, in each of the above cases the primary reason for the wage thefts occurring is that the practises named above are broadly legal under an unregulated system. Under a decriminalised system, sex workers can report wage theft to the police, and report unhealthy management practises to appropriate regulatory bodies, as evidenced by experiences of sex workers in New South Wales and New Zealand.

As well as a simple economic incentive, a secondary reason is the pervasive stigma against sex workers that flourishes in a criminalised society. In cases of sex worker clients demanding refunds or underpaying sex workers, this appears to occur as a result of these clients living out their general disrespect of sex industry workers, and occasionally from police, local councils or other entities not recognising sex worker's labour as legitimate.

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### *3. What is the impact of wage theft on workers, businesses which are compliant with employment laws, and the Western Australian community and economy.*

It is beyond the scope of this written submission to discuss all the impacts of wage theft on sex industry workers individually, but there are two impacts of wage theft in particular that concern Magenta:

#### **Sex workers who experience economic coercion, loss of income, or wage theft, make riskier choices.**

It has been demonstrated in numerous studies that a sex worker's income security is one of the biggest protective factors in their ability to make safe choices about their sexual health and self-protection, including their ability to refuse violent clients or unprotected services.<sup>1 8</sup> Sex workers who experience loss of income through these means are more vulnerable to adverse sexual health outcomes and are more susceptible to violence<sup>8</sup>. This equation is simple for marginalised sex workers who rely on sex work for basic survival. When they can't otherwise afford basic necessities they might be pressured to accept clients they had previously banned, accept bookings that involve unsafe sexual practises, and through these means might be exposed to violence, or disease. These factors may also erode the form of work sex work that workers use to protect themselves<sup>2</sup>; because advertising on upmarket escort websites is prohibitively expensive for some workers, wage theft has forced them to work under less-safe working conditions than they are used to, such as street based sex work, or being forced to return to less satisfying management.

This presents a clear concern for the personal safety of sex workers who experience wage theft, as well as a clear conflict with public health initiatives<sup>8</sup>, and positions wage theft and economic coercion as a barrier to effective HIV and STI prevention. Sex worker health and personal safety are considered vital aspects of Australia's world leading public health response, with Australian sex workers repeatedly achieving lower rates of STI notifications than the general population. Internationally, public health bodies such The Lancet<sup>11</sup> and The World Health Organisation<sup>13</sup> publically support decriminalisation of sex work as the best practise model for public health.

#### **Wage thefts negate a sex workers sexual consent**

In some of these cases, wage thefts amount to sexual assault. In the normal provision of their work, a sex worker's sexual consent is (in part) informed by receiving their negotiated fee for service. Obtaining sex through fraud or deception, under any other circumstance, is considered a sexual assault under our laws. However, as it applies to sex workers, we do not have sufficient legal frameworks in place to protect sex workers from this type of sexual assault, or for sex workers to seek redress. Magenta notes as the organisation in contact with the largest number of WA sex workers, that instances of wage theft experienced by the agency's sex worker clients are referred to

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<sup>1</sup> Selvey, L, Hallet, J, Lobo, R, McCausland, K, Bates, J, and Donovan, B. The Law and Sex Worker Health (LASH) Study: A Summary Report to the Western Australian Department of Health

<sup>2</sup> Le Bail, H, Giametta, C. What do Sex Workers Think About the French Prostitution Act?

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in the harshest terms. The experience of Magenta’s educators in providing support or intervention for workers who’ve experienced wage theft, is that effective support in those cases must be provided through the same lens as support provided for survivors of sexual assault (where no money was involved). These sex workers often present with the same level and forms of complex trauma, follow the same patterns of self-blame, and with the same feelings of gross violation. These instances of “rape by deception” have the same impact as sexual assault, while still remaining legally ambiguous with inadequate frameworks in place to access justice. Magenta notes that even when a worker has been robbed and assaulted violently, the exchange of money is frequently used to deny any crime has been committed.

### *5. Whether the current state and federal regulatory framework for dealing with wage theft is effective in combatting wage theft and supporting effected workers.*

#### **Criminalisation of the sex industry makes adversaries of the police, regardless of compliance or intent.**

Positioning police as the body charged with investigating and regulating sex workers labour rights, presents a difficult conundrum for any sex worker who may wish to lobby for better conditions, but don’t wish to be fired from their job. Police officers are the unofficial Human Resources department for the sex industry in this regard, creating an inappropriate relationship between police and the WA sex industry. The police are who sex workers must report crimes to, but they’re presently invested in prosecuting sex workers for non-compliance. **This creates an adversarial relationship regardless of whether sex workers are working legally or not.**<sup>1 2 3</sup> It is important to note that this point is supported by significant evidence specific to the Western Australian sex industry. The current legislation governing the sex industry in Western Australia has been shown repeatedly to be an impediment to sex worker health and safety.<sup>4 5 6</sup>

#### **Even where a crime is committed, sex workers may have little or no redress under the current laws.**

Evidence shows that 49% of WA sex workers are either uncomfortable, or are very uncomfortable, with reporting to police sexual assault, threats and other crimes against them. In the largest study ever conducted in the WA sex industry, 27% of all WA sex workers reported experiencing discrimination due to their work from police officers at least once.<sup>1</sup> This did not vary by gender, or country of birth.

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<sup>3</sup> Benoit, C., Smith, M., Jansson, M., Magnus, S., Ouellet, N., Atchison, C., . . . Shaver, F. (2016). Lack of confidence in Police creates a “Blue Ceiling” for sex workers’ safety. *Canadian Public Policy*, 42(5), 456-468.

<sup>4</sup> Donovan, B., Harcourt, C., Egger, S., Schneider, K., O’Connor, J., Marshall, L., . . . Fairley, C. (2010). *The sex industry in Western Australia: a report to the Western Australian Government*.

<sup>5</sup> El-Hayek, C., van Gemert, C., Bowring, A., Feigin, A., & Stoové, M. (2011). *Review of clinical and health promotion services for sex workers in Western Australia: Prepared for the Western Australian Department of Health*.

<sup>6</sup> Sloss, C. M., & Harper, G. W. (2010). Legal service needs and utilization of women who trade sex. *Sexuality Research & Social Policy*, 7, 229-241.

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In the formation of this submission, Magenta received a number of reports of wage theft from sex workers, including thefts coupled with violent assaults, and in most cases the agency encouraged sex workers to consider making a police report. In all cases, they either already had, or had already experienced discrimination from police when reporting wage thefts. Some of these reports are paraphrased below:

*“There’s no point, I only have his phone number and I don’t know if I have his real name”*

*“He still paid me half so they told me no crime was committed”*

*“I’ve been through this before.... I would be a walking joke”*

*“I couldn’t get them to take my report”*

*“They said ‘What do you want me to do about it?’”*

### **Sex industry offences are not applied uniformly and definitions remain unclear for sex workers trying to work within the limited legal framework that presently exists in WA.**

Sex workers often perceive they will not be believed when reporting crimes, or that officers may not understand that they are in fact working within the law. Within a decriminalised, best practise model of sex industry legislation, police would be seen as an inappropriate regulator for workplaces in the first place. Under a criminalised system, the police are charged with enforcing sex work regulations beyond those found in criminal law, such as occupational health and safety protocols. As the body usually specialised in the investigation of crimes, the police are not appropriate and generally unwilling in the investigation of industrial cases such as wage disputes, workplace bullying, unfair dismissals, and wage thefts. These are not functions that police are neither trained in nor willing to provide to sex workers, and would be inappropriate for any other regulated industry.

As shown above the legal frameworks governing the sex industry do not prevent wage theft against sex workers, and presently outlaw the application of many common health and safety precautions. Under WA’s model, sex workers who choose to report wage theft are put at odds with criminal justice frameworks, exacerbating discrimination against them when reporting crimes. **Eliminating the ability of any person to report crimes is an egregious failure of criminal law.**

## **Decriminalising the Sex Industry in Western Australia**

6. *Whether new laws should be introduced in Western Australia to address wage theft, and if so, whether wage theft should be a criminal offense.*
7. *Whether there are any other strategies that could be implemented by the Western Australian Government, or Industry Stakeholders to combat wage theft.*

**Above all else, the single most important step in reducing the instances and impacts of wage theft against sex workers, is to enact the full decriminalisation of the sex industry. This includes effective regulation under appropriate industrial and civil laws.**

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The previous sections explored examples of how wage theft, and the criminalisation of the WA sex industry, has negatively impacted on WA sex workers. In this section, the submission will explore how appropriately regulating the sex industry could reverse these impacts and provide sex workers in WA with safer, legal options for self-protection and redress. We refer to regulating the sex industry like any other as “decriminalising” the sex industry, which is quite different to the criminalised model or “partial legalisation” that Western Australia currently falls under. Under decriminalisation, the points raised in the above submission are reversed. Sex workers are incentivised to choose the safest options for their work, their workplaces are incentivised to provide a safe environment and held accountable to doing so, and sex workers are able to report crimes to the police without fear of incrimination.

*Magenta notes that other models of sex work legislation exist, such as the criminalisation of sex workers’ advertising seen in the United States, and the criminalisation of sex industry clients commonly referred to as the “end demand” model, the Nordic model, or Swedish Model. Each of these models position sex workers and police as adversaries, and restrict sex workers’ access to labour rights and criminal justice frameworks in the same way, by offering no appropriate industrial regulations for the sex industry. It is beyond the scope of this submission to examine each model of sex industry legislation in the modern world individually, but each of these models inappropriately rely on criminal justice frameworks to enforce labour rights in the sex industry, and in doing so restrict sex workers’ safety, and increase both the instances and impacts of wage theft on workers..*

### Endorsement of Decriminalisation

A decriminalised sex industry removes police as regulators of the industry, repeals criminal laws governing the sex industry, and regulates businesses in the adult industry by standard industry codes enforced on any other industry. By repositioning police and sex workers as allies, sex workers have enhanced ability to report crimes<sup>Error! Bookmark not defined.</sup>, and both groups can work together in obtaining optimum health and safety protocols for sex workers. In Australia, decriminalisation has been demonstrated to lead to the best health outcomes in sex workers, including negligible rates of sexually transmitted infections, and blood borne viruses<sup>7</sup>. Decriminalisation has been shown consistently to remove barriers for HIV prevention, and enhance opportunities for health promotion amongst sex workers<sup>8</sup>. In New Zealand, sex workers who experience wage theft and employee violations have been able to seek redress against their workplaces<sup>9</sup> and clients<sup>10</sup>, demonstrating that the only country in the world where sex work has been decriminalised remains the only one where sex workers can effectively seek redress for wage thefts.

Magenta calls for an end to criminal laws governing the WA sex industry and the enactment of appropriate industrial and business regulations. Magenta calls on the Committee to join us in our endorsement of decriminalisation, as the safest legal model for sex workers and the public.

<sup>7</sup> Harcourt, C, and Donovan, B, ‘The Many Faces of Sex Work’, Sexually Transmitted Infections, 81, 2005, 201.

<sup>8</sup> Platt L, Grenfell P, Meiksin R, Elmes J, Sherman SG, Sanders T, et al. (2018) Associations between sex work laws and sex workers’ health: A systematic review and meta-analysis of quantitative and qualitative studies. PLoS Med 15(12): e1002680. <https://doi.org/10.1371/journal.pmed.1002680>

<sup>9</sup> Sex worker sues for sexual harassment.... and wins <https://www.hcamag.com/nz/specialisation/employment-law/sex-worker-sues-for-sexual-harassmentand-wins/140034>

<sup>10</sup> Police Help Short-changed sex worker [https://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=11292537](https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11292537)

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Partial decriminalisation of the sex industry does exist in Australia since 1995, when NSW began a long process to decriminalise their sex industry. New Zealand decriminalised their industry in 2003, and each of these jurisdictions now enjoy the best health outcomes for sex workers, with vastly improved relationships with police, and a higher willingness amongst sex workers to report crimes. In the previous two decades, many international bodies have expressed their support of decriminalisation such as The Lancet<sup>11</sup>, Amnesty International<sup>12</sup>, the World Health Organisation<sup>13</sup>, and the United Nations<sup>14</sup>. While a wealth of international evidence and support for decriminalisation exists, it is important to note that locally, Western Australia itself has conducted significant research on the sex industry within WA's own unique context, which echoes this international consensus. Quoted throughout this submission are findings from the Law and Sex Worker Health (LASH) Study conducted here in Western Australia by Curtin University in 2017, which represents one of the most thorough bodies of research into the sex industry ever conducted in Australia.<sup>1</sup>

Magenta echoes this recommendation laid out in the LASH report:

*“Sex work should be decriminalised in Western Australia*

*Our study demonstrated a number of ways that the criminalisation of sex work in Western Australia has a negative impact on the health, safety and well-being of sex workers. This includes criminalisation being used as an excuse for abuse by clients of sex workers; a reluctance of sex workers to go to the Police as victims of crime; the hidden nature of sex work in the context of private houses and massage parlours impeding access to services and health promotion; and the physical risk of street-based sex work. Decriminalisation also allows a highly visible focus on workplace health and safety in brothels and massage parlours. It is also an important step towards reducing stigma and discrimination experienced by sex workers. There is good evidence that decriminalising sex work does not result in an increase in the number of clients accessing sex work (Rissel et al., 2017), and the normalisation of this work is important in improving the health and well-being of sex workers.”*

Magenta endorses decriminalisation of sex work in Western Australia, both as WA's support service for sex workers and as the health organisation in WA in contact with the largest population of sex workers. Magenta asks that the Inquiry in turn also endorses the decriminalisation of sex work in Western Australia as the best practise model for sex industry legislation. As it relates to stolen wages of sex workers, decriminalisation of the sex industry is the first and most important step to take. Any other effort to reduce instances of wage theft amongst sex workers, or to reduce the impacts of these on sex workers lives, is ineffective in the face of improper sex industry regulation.

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<sup>11</sup> <https://www.thelancet.com/series/HIV-and-sex-workers?code=lancet-site>

<sup>12</sup> AMNESTY INTERNATIONAL POLICY ON STATE OBLIGATIONS TO RESPECT, PROTECT AND FULFIL THE HUMAN RIGHTS OF SEX WORKERS POL 30/4062/2016. Obtained Via: <https://www.amnesty.org/download/Documents/POL3040622016ENGLISH.PDF>

<sup>13</sup> [http://www.who.int/hiv/topics/sex\\_work/about/en/](http://www.who.int/hiv/topics/sex_work/about/en/)

<sup>14</sup> UNAIDS, UNFPA and UNDP, *Sex Work and the Law in Asia and the Pacific*, 2012, UNDP Thailand, accessed at <http://www.undp.org/content/dam/undp/library/hiv/aids/English/HIV-2012-SexWorkAndLaw.pdf>