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**Submission to the New South Wales Sentencing Council
Review of sentencing for murder and manslaughter**

The Sex Workers Outreach Project (SWOP) would like to thank the New South Wales (NSW) Sentencing Council for the invitation to participate in the Review of sentencing for murder and manslaughter. SWOP is a non-government organisation that exists to provide NSW sex workers with the same access to health, safety, human rights and workplace protections as other Australian workers. SWOP has the highest level of direct contact with sex workers of any agency, government or non-government, in Australia.

While we are primarily funded by NSW Health to sustain the low rates of sexually transmitted infections amongst sex workers; sustain the virtual elimination of HIV transmission within the sex industry; and reduce hepatitis infections in sex workers, we take a holistic view of health. Social justice and equity are identified as prerequisites for health in the Ottawa Charterⁱ and it is this that prompted our decision to submit to this particular inquiry.

- **Sentences imposed for homicides and how these sentencing decisions compare with sentencing decisions in other Australian states and territories**

Sex services premises in NSW were decriminalised in 1995. The removal of criminal penalties pertaining to the sex industry has largely served workplace health and safety well, improving the human rights of NSW sex workers, though stigma and discrimination against sex workers still persists. The past criminalisation of sex work also provides, in living memory for many NSW sex workers, a set of historical reasons for sex workers to doubt their fair access to justice.

As part of the direct support services SWOP provides to NSW sex workers, we regularly share media articles about legal cases pertaining to sex workers across Australia. The general comments these pieces attract from sex workers relate to the inadequacy of sentences for perpetrators, including short non-parole periods. Commentators often connect this to real or perceived stigma and discrimination against sex workers. For example, in the case of Adrian Ernest Bayley, who, between 2000 and 2001 committed sixteen rapes against five street-based sex workers in St. Kilda, Melbourne, there is a common perception that lenient sentencing relating to the offences against sex workers ensured Bayley remained at large to sexually assault and murder Jill Meagher. This connection was reinforced by the partner of the deceased, Tom Meagher, who said: "*I'm aware his previous victims in previous cases before Jill were sex workers, and I'll never be convinced that doesn't have something to do with the lenience of his sentence,*"ⁱⁱ

In May 2013, *Michael Joel Kay* choked a Sydney sex worker during a booking at a Kings Cross sex services premises. The "sex worker demanded he get dressed and leave, the documents state, but *Kay* allegedly grabbed her around the neck and started punching her."ⁱⁱⁱ *Kay* went on to rob the worker and set fire to the sex services premises ostensibly because "he felt he'd been ripped off."^{iv} "I fought for my life for seven, eight minutes in that room," Ms McGarry told the court late last year,^v indicating that her experience of this violent attack was one of attempted murder. In the

NSW District Court, Judge Zahra sentenced Kay to a maximum of two years and five months in gaol, with a non-parole period of one year and three months. As with most cases with sex worker complainants, it was widely reported across tabloid and non-tabloid media, and contributes to the perception that sentencing of perpetrators convicted of offences against sex workers is not commensurate with the crime(s).

Formal research would identify whether perpetrators convicted of committing crimes with sex worker victims have attracted commensurate sentences. It is SWOP's view that this is an area that warrants investigation in the course of this inquiry, particularly as the perception of injustice remains a barrier to NSW sex workers reporting crimes against them.

Recommendation 1: NSW Sentencing Council to undertake formal research to investigate whether all murder and manslaughter sentences are commensurate.

- **The principles that courts apply when sentencing for these offences, including the sentencing principles applied in cases involving domestic and family violence**

In the case of other crimes, like sexual assault; there has been a gradual shifting of attitudes relating to sex worker complainants. In the *NSW Sentencing Bench Book*, it states that manner of dress and sexual history of victim, are not mitigating factors at sentencing. Sex workers in particular are singled out: "Sex workers are as entitled to the protection of the law against sexual assault as other citizens. In such cases it is wrong to sentence on the basis that the psychological effect on the victim or the gravity of the offence will be less than that experienced by others"^{vi}. This is based on a 1993 judgement in the Court of Criminal Appeal in New South Wales by Justice Kirby.

In much more recent times (2016), our Victorian sex worker counterparts were successful in achieving a similar reform to the *Victorian Sentencing Manual* written and maintained by the Judicial College of Victoria. The manual had previously relied upon *AG v Harris 11/8/1981 CCA (VIC)* and *Hakopian 11/12/1991 CCA (VIC)*: "the prostitute's experience may tend to reduce the weight commonly given in rape cases to the 'reaction of revulsion' of the 'chaste woman'" quoted in "Victim is a Prostitute". The *Victorian Sentencing Manual* has now been updated to state: "The Court of Appeal has recognised that the mere fact a victim of a sexual offence was a sex worker will, of itself, have no effect on sentence."^{vii}

It is SWOP's view that there is some utility to having sentencing guidelines in relation to murder and manslaughter of sex workers, similar to those that apply when there are sex worker victims of sexual assault. We believe their very presence helps to reassure a group of marginalised people who have living memory of systematic discrimination that the judicial system serves justice equally. These guidelines also inform would-be offenders that there is no hierarchy of murder victims in NSW.

Recommendation 2: NSW Sentencing Bench Book should address sex worker victims of murder and manslaughter.

- **The impact of sentencing decisions**

While it may be beyond the scope of this inquiry, it is SWOP's view that NSW sex workers are hyper-aware of murder and manslaughter cases involving sex worker victims because of tabloid-style media reporting. With headlines screaming *Prostitute murderer jailed for 14 years*^{viii} and opening lines involving "a man who murdered a prostitute with a tomahawk" it is hard to shift public

perception about the relative vulnerability of sex workers, even when commensurate sentences are handed down.

Part of issue stems from many readers not reading beyond the headline; and those punchy headlines tend to be the piece of information that sticks with the reader. Rarely are readers given informed reporting that allows them to understand the judgement, and the judge's reasons for not imposing a maximum sentence. In the case referred to above, the NSW Supreme Court judgement included assessing whether the victim was murdered because she was a sex worker (deemed not to be the case); a standard 25% reduction to the non-parole period for the timely guilty plea; and a statement: "I regard the objective seriousness of the offence as being above the middle of the range."^{ix} All of this information would be helpful to readers interpreting the sentence described in the media piece.

It is SWOP's view that media guidelines would assist in this area, and would likely lessen the negative impact of sentencing decisions on NSW sex workers, and the commonly held perception that we have less access to justice.

Recommendation 3: NSW Sentencing Council to issue media guidelines for communicating murder and manslaughter judgements, including advising against undue focus on the occupation of the victim, and outlining more information about sentencing.

SWOP thanks the NSW Sentencing Council for the opportunity to submit to this important inquiry. We would be happy to attest further to any of the issues outlined in this submission by phone or email.

Yours Sincerely,



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Chief Executive Officer
Sex Workers Outreach Project Inc. (SWOP)

ⁱ World Health Organisation, *The Ottawa Charter for Health Promotion*, accessed online 19 February, 2019 at <https://www.who.int/healthpromotion/conferences/previous/ottawa/en/>.

ⁱⁱ ABC, *Jill Meagher's husband Tom Meagher says justice system failed her and Adrian Bayley's sentence is a disgrace*, published online 19 June 2013 at <http://www.abc.net.au/news/2013-06-19/tom-meagher-says-justice-system-failed-his-wife/4766620>

ⁱⁱⁱ Daily Telegraph, *Man allegedly set fire to Love Machine brothel after sex session with prostitute*, published online 21 March, 2015 at <https://www.dailytelegraph.com.au/news/nsw/man-allegedly-set-fire-to-love-machine-brothel-after-sex-session-with-prostitute/news-story/55730df1380f8c125d01329e8988a698>.

^{iv} Sydney Morning Herald, *Man jailed for attacking King Cross sex worker, setting fire to brothel*, published online 9 February, 2018 at <https://www.smh.com.au/national/nsw/man-jailed-for-attacking-king-cross-sex-worker-setting-fire-to-brothel-20180209-h0vtx7.html>.

^v Daily Mail Australia, *Unhappy brothel customer is jailed for attacking a sex worker and destroying property at The Famous Love Machine because he 'felt ripped off' by the service*, published 9 February, 2018 accessed online 05 March, 2019 at <https://www.dailymail.co.uk/news/article-5370385/Man-jailed-NSW-sex-worker-attack-Sydney-brothel.html>.

^{vi} Judicial Commission of New South Wales, *Sentencing Bench Book [20-775]*, accessed online 05 March, 2019 at https://www.judcom.nsw.gov.au/publications/benchbks/sentencing/sexual_assault.html.

^{vii} Judicial College of Victoria, *Victorian Sentencing Manual*, 31.6.2.12, accessed online 05 March, 2019 at <http://www.judicialcollege.vic.edu.au/eManuals/VSM/index.htm>.

^{viii} The Sydney Morning Herald, *Prostitute murderer jailed for 14 years*, March 26, 2013, accessed online 05 March, 2019 at <https://www.smh.com.au/national/nsw/prostitute-murderer-jailed-for-14-years-20130326-2gr89.html>.

^{ix} Supreme Court of NSW, *R v David John DUNN [2013] NSWSC 237* (26 March 2013) accessed online 05 March, 2019 at <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSC/2013/237.html>.