



Phone – 02 9690 0551  
Fax – 02 9690 1013  
Post – P. O. Box 2167,  
STRAWBERRY HILLS NSW 2012  
Street – Suite 9, 245 Chalmers Street,  
REDFERN NSW 2016  
Email – [info@scarletalliance.org.au](mailto:info@scarletalliance.org.au)  
Web – [www.scarletalliance.org.au](http://www.scarletalliance.org.au)

---

Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
Australia  
[legcon.sen@aph.gov.au](mailto:legcon.sen@aph.gov.au)

21 December 2012

Dear Committee Secretary,

Thank you for the opportunity to comment on the Exposure Draft Legislation of the *Human Rights and Anti-Discrimination Bill* 2012. However, our organisation cannot support the Bill in its current form as it fails to provide anti-discrimination protection for sex workers even though the committee has been presented with a significant body of evidence to support this important inclusion.

Scarlet Alliance, the Australian Sex Workers Association, is the peak national sex worker organisation in Australia. Formed in 1989, the organisation represents a membership of individual sex workers and sex worker organisations. Through our project work and the work of our membership we have very high access to sex industry workplaces in the major cities and many regional areas of Australia.

Scarlet Alliance has played a critical role in informing governments and the health sector, both in Australia and internationally, on issues affecting workers in the Australian sex industry.

Scarlet Alliance is represented on the Commonwealth Ministerial Advisory Committee on Blood Borne Viruses and Sexually Transmissible Infections, and the Blood Borne Virus and Sexually Transmissible Infections Sub-Committee (BBVSS) of the Australian Health Protection Principal Committee (AHPPC).

We are very concerned that the Exposure Draft misses the opportunity to create alignment across different areas of Government policy and approach. Most disappointing, is the failure of the Bill to extend anti-discrimination protection to sex workers as a priority population identified in the Australian Government National HIV and STI Strategies, for whom discrimination creates an unnecessary vulnerability. A human rights approach, as referred to in the National HIV Strategy, recognises the need to specifically provide this type of legal protection to sex workers.

Countless global and regional reports recommend anti-discrimination protection for priority populations as critical to a country's HIV response. The 2012 UN agencies *Sex Work and the Law in Asia and the Pacific* Report refers to extensive and consistent calls for countries to provide this protection including the 2006 *International Guidelines on HIV/AIDS and Human Rights*, that recommends enactment of anti-discrimination laws along with the UN Economic and Social Commission for Asia Pacific (ESCAP) *Resolution 66-10* (2010), that calls on Member States to ground

universal access in human rights and to address legal barriers to HIV responses, and *Resolution 67-9* (2011), which requires states to initiate reviews of national laws, policies and practices to enable the full achievement of universal access targets with a view to eliminating all forms of discrimination against key affected populations.

Scarlet Alliance recommends that the Exposure Bill is extended to include anti-discrimination protection for sex workers in Australia.

If you require further information in relation to this submission please contact Janelle Fawkes, Chief Executive Officer on 02 9690 0551.

Kind regards,

Janelle Fawkes, on behalf of  
Bernadette Sobon,  
President

## Contents

Recommendations .....	4
A lost historic opportunity .....	5
State anti-discrimination coverage for sex workers must be extended to federal coverage.....	6
The Australian Government and UN bodies recognise the importance of sex worker anti-discrimination protection .....	6
Sex workers experience systemic discrimination on the basis of occupation.....	7
Proposed options for improving the Bill .....	9
Option One: Protection on basis of profession, trade, occupation or calling .....	9
Option Two: A category of lawful sexual activity.....	9
Sexual orientation must include behaviour, identity and activity.....	11
Definitions of Sexual Orientation and Gender Identity are too narrow .....	11
Conclusion.....	12

## **Scarlet Alliance**

### ***Submission on the Human Rights and Anti-Discrimination Bill 2012***

#### **Recommendations**

1. As a matter of priority the Committee should amend the Bill to include a protected attribute of 'profession, trade, occupation or calling' extending anti-discrimination protection to sex workers.
2. As a second option, the Committee should at the very least include protection on the basis of 'lawful sexual activity' including sex workers. This is only a preferred option in the absence of protection as per Recommendation 1 as there are limitations associated with only protecting 'lawful' sexual activity in states where sex work is heavily licensed or criminalised.
3. The ground of 'sexual orientation' should explicitly include sexual activity, behaviour and identity.
4. Definitions of 'Sexual Orientation' and 'Gender Identity' should be broadened to be inclusive of people whose genders and sexualities fall outside heterosexual, bisexual, homosexual, lesbian, male or female.
5. The Committee should recognise that sex workers are a community recognised by the Australian Government and globally by the United Nations as affected by HIV, experiencing unacceptable levels of discrimination and denial of human rights and requiring legal protection as part of this process.
6. The Bill should reflect this historic opportunity to ensure that sex workers are protected from discrimination, utilise the unparalleled and unprecedented access to evidence, research and expert opinion that this consultation has provided, and position Australia as a world leader on human rights as it has been on HIV prevention, creating alignment between anti-discrimination laws and the Australian Government's response to HIV.

## Scarlet Alliance

### ***Submission on the Human Rights and Anti-Discrimination Bill 2012***

***It cannot be said enough: sex workers are people – they are your friends, your family members, they are wage earners, tax payers and parents – and they deserve the same human rights as everyone else.<sup>1</sup>***

### **A lost historic opportunity**

Scarlet Alliance, like other organisations, anticipated receiving this Exposure Draft consolidating Australia's anti-discrimination laws as an exciting and important step in the development of Australia's Human Rights Framework. The consolidation process provides a historic opportunity to ensure that sex workers are protected from discrimination, harassment and vilification in Australia.

The Discussion Paper released in September 2011 clearly sought guidance from community organisations and experts around Australia on the best ways to improve anti-discrimination protections in this country. The paper was broad-ranging in the feedback and proposals it invited, asking such questions as, 'How should sexual orientation and gender identity be defined?' 'Are the current protections against discrimination on the basis of these attributes appropriate?' 'Should the prohibition against harassment cover all protected attributes?' 'Should the consolidation bill apply to State and Territory Governments and instrumentalities?'

The Discussion Paper clearly sought guidance on how anti-discrimination law could be improved, what best practice anti-discrimination protection would look like, and new ideas and visions for better anti-discrimination framework.

The Executive Summary clearly states:

The consolidation of federal anti-discrimination laws provides an opportunity to consider the existing framework, and explore opportunities to improve the effectiveness of the legislation to address discrimination and provide equality of opportunity to participate and contribute to the social, economic and cultural life of our community.

It speaks on numerous occasions about 'enhancing protections'. Although it specifically states the intention to introduce new grounds of sexual orientation and gender identity (an election promise), it also asks 'whether other grounds of discrimination should be covered'.

**It is extremely disappointing to Scarlet Alliance, and no doubt, many other organisations who invested their time into providing comprehensive submissions, to discover that the Government now has no intention of expanding the reach of anti-discrimination legislation in this Bill and that the harmonisation process has been held over.**

Scarlet Alliance represents one of many communities who made submissions, despite being notoriously under-funded, under-staffed, under-resourced, and relying heavily on volunteer capacity. Scarlet Alliance offered its expertise, energy and time because discrimination has direct, negative effects upon the lives of our members and our community on a daily basis.

The Committee has had unparalleled and unprecedented access to research and initiatives from around the country to inform this process. Examples of protection were available from other states, which the Bill could have drawn from. Instead, this Bill fails the communities it had an opportunity to protect and support.

Most disappointing, is the failure of the Bill to extend anti-discrimination protection to sex workers as a priority population in Australia's response to HIV. This inclusion would have created alignment

---

<sup>1</sup> Ally Daniel, 'Shaking Up the Views of Sex Work: The Lived Experience of One Sex Worker', *Red Magazine*, 16.

between Government approaches. Consecutive Australia government National HIV and STI Strategies recognise sex workers as priority populations and communities for whom discrimination creates a unnecessary vulnerability. A human rights approach, as referred to in the National HIV Strategy, would recognise the need to provide this type of legal protection to sex workers.

The Human Rights Framework and Anti-Discrimination Consolidation provide the perfect opportunity to improve coverage of anti-discrimination law. It is an opportunity that may not arise again for decades to come.

We seriously question the purpose of the consultation and intentions behind the entire process if coverage of the Bill is not expanded.

This is a wasted opportunity not only to bring Australia in line with international human rights treaties but to be a world leader on human rights as it has been on HIV prevention and to create alignment between anti-discrimination laws and the Australian Government's response to HIV.

*'Why does the fact that we charge for sex feel so threatening, that people are happy to see our rights and freedom so curtailed?'*<sup>2</sup>

## **State anti-discrimination coverage for sex workers must be extended to federal coverage**

If the Committee is intending to embark on a national harmonisation process in future, it would need to recognise that sex workers have anti-discrimination protection across four states in Australia. The Australian Capital Territory provides protection on the basis of 'profession, trade, occupation or calling'. Queensland, Victoria and Tasmania all provide anti-discrimination protections for sex workers on the basis of 'lawful sexual activity'. More states are in the process of decriminalising or legalising sex work, with law reform being proposed in South Australia, Western Australia and Tasmania.

Scarlet Alliance has consistently argued that variations between jurisdictions create a greater need for blanket federal reform. We are aware that other organisations and committees have made this same recommendation. The introduction of a single Federal Act provides the much-needed opportunity to improve protections for sex workers.

*'Governments, the public sector and the private sector all discriminate against sex workers. This discrimination results in a general acceptance of social stigma against sex workers and internalised stigma among the sex worker community.'*<sup>3</sup>

## **The Australian Government and UN bodies recognise the importance of sex worker anti-discrimination protection**

Sex workers, as recognised by the Australian Government and globally as a community affected by HIV, experience unacceptable levels of discrimination and denial of human rights. Sex workers are listed as a priority population by the Commonwealth Department of Health and Ageing's *National*

---

<sup>2</sup> Oral Vox Pops, *Provision: Whore Stigma*, Issue 2, Scarlet Alliance, 2007, 7.

<sup>3</sup> Scarlet Alliance, *Submission to the National Consultation on Human Rights in Australia*, Sydney, 2009, accessed at [http://www.scarletalliance.org.au/library/humanrightsconsultation\\_09/](http://www.scarletalliance.org.au/library/humanrightsconsultation_09/) on 20 December 2012.

*STI Strategy 2010-2013 and the National HIV Strategy 2010-2013. The HIV Strategy states that 'Australia's approach to HIV/AIDS has demonstrated the protection of human rights to be compatible with and essential to the effective protection of public health.'*<sup>4</sup>

Concern for sex worker human rights has been raised in many human rights forums within Australia and internationally over many years. United Nations Secretary General Ban Ki-Moon states that 'In most countries, discrimination remains legal against women, men who have sex with men, sex workers, drug users, and ethnic minorities. This must change.'<sup>5</sup> Former Australian High Court judge the Hon. Michael Kirby AC CMG states that 'We will insist on human rights for all, including for sex workers. Nothing else is acceptable as a matter of true public morality.'<sup>6</sup> UNAIDS and the United Nations Population Fund state that it is essential for governments to create an enabling legal and policy environment which insists upon universal rights for sex workers and ensures our access to justice.<sup>7</sup> A new report by the UN Population Fund (UNFPA), UN Development Fund (UNDP) and UNAIDS on *Sex Work and the Law in Asia and the Pacific* recommends governments protect sex workers from discrimination.<sup>8</sup> These examples are just a small sample of a worldwide, organised, mobilised movement advocating for the recognition and protection of sex worker human rights.

Scarlet Alliance is disappointed that the Committee has not taken up this issue at all despite consistent and widespread recommendations for its inclusion and a large body of evidence to support including anti-discrimination protection for sex workers in the Bill.

*'I don't hide my job because of my feelings about my work – I hide it because of your feelings about my work. It is your ignorance and feelings that victimises, humiliates and degrades me. It is your feelings that make me ashamed of who I am and what I do. I can't hold my head up high and be proud of myself, until you allow me to do so.'*<sup>9</sup>

## **Sex workers experience systemic discrimination on the basis of occupation**

Sex workers' daily and ongoing experiences of discrimination, harassment and stigma signal the crucial need for legislative reform. In 1999 a National Survey was conducted by Scarlet Alliance and the Australian Federation of AIDS Organisations (AFAO) to identify discrimination in the employment conditions and personal lives of sex workers in Australia.<sup>10</sup> The subsequent report, *Unjust and Counter-Productive: The Failure of Governments to Protect Sex Workers From Discrimination*, found that sex workers experienced discrimination on the basis of their occupation in a number of areas:

- Access to goods and services, including credit cards, loans, insurance, superannuation;
- Discriminatory advertising policies, higher fees, special conditions, unapproved changes to pre-paid advertisements;
- Discrimination in housing and accommodation, difficulties in obtaining rent agreements, eviction, impertinent treatment, non-consensual disclosure of occupation to landlord;

<sup>4</sup> Australian Government Department of Health and Ageing, *Sixth National HIV Strategy 2010-2013*, Commonwealth of Australia, Canberra, 2010 at 6.4, emphasis added.

<sup>5</sup> UNAIDS, Joint United Nations Program on HIV/AIDS, *UNAIDS Guidance Note on HIV and Sex Work*, Geneva, 2009, 2.

<sup>6</sup> UNAIDS and UNFPA, *Building Partnerships on HIV and Sex Work: Report and Recommendations from the first Asia and the Pacific Regional Consultation on HIV and Sex Work*, 2011 at 14.

<sup>7</sup> Ibid at 13-15.

<sup>8</sup> UNAIDS, UNFPA, UNDP, *Sex Work and the Law in Asia and the Pacific*, 2012, UNDP Thailand, accessed at <http://www.snap-undp.org/elibrary/Publications/HIV-2012-SexWorkAndLaw.pdf> on 23 October 2012.

<sup>9</sup> Ally Daniel, 'Shaking Up the Views of Sex Work: The Lived Experience of One Sex Worker', *Red Magazine*, 16.

<sup>10</sup> Scarlet Alliance and the Australian Federation of AIDS Organisations, *Unjust and Counter-Productive: The Failure of Governments to Protect Sex Workers From Discrimination*, Sydney, 1999, 19, accessed at <http://www.scarletalliance.org.au/library/unjust-counterproductive> on 19 May 2011.

- Discrimination in seeking other employment, stigma affecting employers decisions to recruit or dismiss staff, particularly in occupations such as teaching or policing;
- Criminal record discrimination because the place or nature of sex work has been deemed illegal;
- Intersectional discrimination on the basis of HIV status and sex work, including criminalisation, poor treatment and harassment from health providers, prosecution and imprisonment;
- Harassment, vilification and social exclusion on the basis of sex work status, including severe ridicule and contempt, which is endorsed by media, policies and laws.

These issues were explained in depth in our submission to the Committee in January 2012.

*'[Discrimination] means not answering the question 'what do you do?' without considering that at best, I'll probably end up answering a bunch of naff questions to satisfy someone's curiosity, at worst, someone will cut off from me and do something hostile. Discrimination means applying for a job and leaving big chunks of things out, hoping the police check doesn't disqualify me. Discrimination means trying to rent a place, to work without being able to declare my income, give a job reference, or tell the landlord what I really intend to do there...'<sup>11</sup>*

---

<sup>11</sup> DD, 'Discrimination is an Odd Thing', *Provision: Whore Stigma*, Issue 2, Scarlet Alliance, 2007, 20.



## Proposed options for improving the Bill

Because the Committee has not picked up any of our recommendations over the entire Human Rights Framework submission process, including submissions to the Baseline Study in September 2011, Anti-Discrimination Consolidation in January 2012 and Human Rights Action Plan in February 2012, we are forced to offer you further alternative Options for how to improve the current Bill.

### Option One: Protection on basis of profession, trade, occupation or calling

*'I was shocked to find that my bail papers stated my profession as 'prostitute', despite me stating my profession to police as a 'student' and not having worked in the NT sex industry for several years! Upon demanding an explanation from police, I was told that I had held a police file since registering as an escort!'*<sup>12</sup>

The best practice approach for the Committee to take would be to amend the Bill to include a protected attribute of 'profession, trade, occupation or calling'. This wording would be consistent with the protections offered in the Australian Capital Territory under s7(m) of the *Discrimination Act* 1991.

Protecting sex workers under a category of 'profession, trade, occupation or calling' has some limitations – it does not include people who experience discrimination because of their involvement in alternative or stigmatised sexual communities, or people who trade sex in kind but do not identify as a sex worker. However, it is an appropriate category of protection for sex workers as it reflects that sex work is work.

When this protection was introduced in the ACT, parliamentary Hansard highlights discussion of the wide-ranging benefits such a category would bring. Politicians spoke of how this provision would affect people in a wealth of areas such as: politicians, journalists, trade unionists, those unable to move into other areas because of their previous occupation, or health professionals who have been denied employment due to prejudice about their HIV status.<sup>13</sup> Introducing a protected attribute of 'profession, trade, occupation or calling' would be consistent with other legislative approaches in Australia and an easy addition to the current Bill.

### Option Two: A category of lawful sexual activity

*'[T]he teacher/sex worker was uprooted from her job and home, forced to change her name and asked not to resume sex work – a process that I have no doubt would have caused her a lot of trauma. The 'counselling' she received and her subsequent ostracism from her job constitutes the very type of discrimination [the Queensland Anti-Discrimination Act] was meant to counter.'*<sup>14</sup>

If the Committee neglects to include a protected ground on the basis of 'profession, trade, occupation or calling', Scarlet Alliance submits that the Bill must at the very least include protection on the basis of 'lawful sexual activity.'

Sex workers currently have a limited form of anti-discrimination protection in three states of Australia on the grounds of 'lawful sexual activity'. In Queensland, 'lawful sexual activity' is defined

---

<sup>12</sup> Anonymous, 'My Wrath-Inducing Experience of Institutional Misogyny and Whore-Hatred', *Provision: The Whore Stigma*, Issue 2, Scarlet Alliance, 2007, 8.

<sup>13</sup> Debates of the Legislative Assembly for the Australian Capital Territory, Hansard, 15 December, 1993, 4597-4601,

<sup>14</sup> Ibid.

to mean a person's status as a lawfully employed sex worker, whether or not self-employed. In Victoria, the *Equal Opportunity Act 2010* defines 'lawful sexual activity' as 'engaging in, not engaging in or refusing to engage in a lawful sexual activity.' Similarly, the Tasmanian *Anti-Discrimination Act 1998* s16 (d) states sexual activity 'includes not engaging in, or refusing to engage in, sexual activity.' This is broad in scope as it potentially includes people who identify as asexual.

Protecting sex workers under a ground of 'lawful sexual activity' is limited. Because it only protects people working legally, in Queensland it does not cover street-based sex workers, private workers operating together or sex workers operating out of unlicensed agencies or brothels. In Tasmania, the continuing criminalisation of many aspects of sex work (for example, brothels) renders the use of a 'lawful' sexual activity category inadequate. In Victoria, while lawful sexual activity is a protected attribute, sex workers are specifically singled out as an *exception*, so it remains lawful to discriminate against people engaging in *commercial* lawful sexual activity when providing accommodation. Licensing frameworks create a 'criminal underclass' who are further marginalised and fall outside protection on the basis of 'lawful sexual activity'.

In the recent Queensland case of *GK v Dovedeen Pty Ltd and Anor*, the Queensland Civil and Administrative Tribunal held that a motel that refused accommodation to a sex worker who had used the accommodation to provide sex work had contravened the *Anti-Discrimination Act 1991* (ADA). QCAT found that the conduct constituted direct discrimination on the basis of 'lawful sexual activity.' This high-profile case sent a clear message that discrimination against sex workers is unacceptable. However, in response to this case, the Attorney General intervened to amend the *Anti-Discrimination Act* via the *Youth Justice (Boot Camp Orders) and Other Legislation Amendment Bill 2012*. The changes mean that accommodation providers can legally discriminate against sex workers in Queensland, and this discrimination is sanctioned by the Queensland Government. The scope of this discrimination is wide – 'treating the other person unfavourably in any way' will be permissible and legal. Under the Bill: discrimination is lawful where the accommodation provider *reasonably believes* the person is using *or intending to use* the accommodation *in connection with* sex work; a sex worker could be evicted from their rental property by a landlord without evidence, recourse, and even without doing sex work, and be left homeless; a person may be evicted or treated unfavourably for tending work emails or taking phone calls from their room, if those communications were connected with their work as a sex worker; a person could be evicted even where there was no sex work taking place, but the accommodation provider reasonably believed there was an intention to do so in future. These amendments mean it is lawful to discriminate against somebody because they are *intending* to do something *legal* in Queensland.

**These examples illustrate the clear need for anti-discrimination protection at a federal level to protect sex workers from ongoing, systemic and historic discrimination. If the Committee neglects to include a protected ground on the basis of 'profession, trade, occupation or calling', it must at the very least include protection on the basis of 'lawful sexual activity.'**

## Sexual orientation must include behaviour, identity and activity

*'I have participated in many movements – peace and non-violence, environmental issues, feminism, queer visibility. However, sex work has been the reason for my criminal record; this can affect travel between countries and my ability to work in different areas.'*<sup>15</sup>

Scarlet Alliance submits that the definition of sexual orientation should explicitly include sexual identity, activity and behaviour.

The definition of sexual orientation should include coverage of sex workers, who experience systemic discrimination, on the basis of our sexual activity and sex worker status. This is another potential way to provide anti-discrimination coverage for sex workers, although it would also be less effective than Option One: Protection on basis of profession, trade, occupation or calling.

The definition of sexual orientation does not need to be exhaustive. In some states in Australia, discrimination is prohibited on the basis of 'sexuality' rather than 'sexual orientation'. Although traditionally protections have been narrow in scope, some are broader than the federal Bill proposes (some including transsexuality, and others potentially asexuality) and there is opportunity here for the Committee to protect people from discrimination on the basis of something wider than homosexuality, bisexuality or heterosexuality.

Defining sexual orientation to explicitly include sexual identity, activity and behaviour is in line with other submissions.

## Definitions of Sexual Orientation and Gender Identity are too narrow

The current Bill in its Explanatory Notes prides itself on the inclusion of new categories of sexual orientation and gender identity. Scarlet Alliance welcomes the introduction of these categories as protected grounds but maintains that their definitions are incredibly narrow, exclusionary and insufficient. The definition of sexual orientation (towards persons of the same sex, opposite sex, or either sex) and terms such as 'same' and 'opposite' sex are based on a definition of gender identity that is outdated, problematic and inaccurate and relies on the incorrect assumption that there are only two sexes. Although the Explanatory Notes pride the Committee on refraining from using 'labels', in effect the Bill only protects people of specific orientations: homosexuality, lesbianism, heterosexuality and bisexuality. The Explanatory Notes say the definition is intended to cover *'each of these sexual orientations.'*

The Bill's current definition of gender identity (although it may include *some* trans\* and intersex people) will only cover people who identify as either male or female. The Explanatory Notes specifically state that it does not provide coverage for people who do not identify as either sex. In doing so, the Bill erases visibility of and neglects to protect the many individuals who live outside these categories, and forces people into gender binaries in a way that has historically been documented as violent. The federal Act has an opportunity to follow the approaches of other governments – in NSW the Registry of Births Deaths and Marriages recognises people who are neither male nor female as 'sex not specified'. The *Anti-Discrimination Amendment Bill 2012* currently before Tasmanian Parliament includes definitions of intersex that include people who are neither female nor male and a combination of female and male, and definitions of transgender that include people who do not identify, to whatever degree, with the gender identity assigned them at birth; and who at times, or permanently, have a gender identity which might be perceived as atypical for their birth gender.<sup>16</sup>

---

<sup>15</sup> Whoretic, cited in Alina Thomas, 'Up Close and Personal: Lesbian Sex Workers', *Provision: Defining Sex Worker Space*, Issue 1, Scarlet Alliance, 2006, 22 at 26.

<sup>16</sup> *Anti-Discrimination Amendment Bill, Tasmania N. 45 of 2012.*

Protections need to extend to those that do not identify as male, female or transgender. The Scarlet Alliance membership includes sex workers who have a range of gender identities that fall outside the categories covered by the Bill. The report of a Scarlet Alliance focus group on sex and gender diversity recognised the ‘huge diversity of people who are not cis-sexual or cis-gendered, and that these diverse bodies, identities, sexualities and experiences cannot be contained under the limiting terminology of male, female and transgendered.’<sup>17</sup> Sex workers may work in a different gender to the one they identify with outside of work. Sex workers have a variety of sexual orientations that are not limited to heterosexuality, homosexuality or bisexuality, as documented in work by Rachel Sharp and Frances Lovejoy in 1991<sup>18</sup> and Alina Thomas in 2006.<sup>19</sup>

The Discussion Paper clearly anticipated a broader approach, referring to ‘alternative’ ways to define sexual orientation that ‘would encompass the broad concept of person’s sexual attraction to, and sexual activity with’ a person ‘which may fall outside those terms’.

## Conclusion

*‘In most countries, discrimination remains legal against women, men who have sex with men, sex workers, drug users, and ethnic minorities. This must change. I call on all countries to live up to their commitments to enact or enforce legislation outlawing discrimination against people living with HIV and members of vulnerable groups... In countries without laws to protect sex workers, drug users, and men who have sex with men, only a fraction of the population has access to prevention. Conversely, in countries with legal protection and the protection of human rights for these people, many more have access to services. As a result, there are fewer infections, less demand for antiretroviral treatment, and fewer deaths. Not only is it unethical not to protect these groups: it makes no sense from a public health perspective. It hurts us all.’<sup>20</sup>*

The Committee has an unprecedented and exciting opportunity to make a difference for communities experiencing discrimination, harassment, vilification and stigma in Australia. Introducing a category of ‘profession, trade, occupation or calling’ as a ground of discrimination would be an uncomplicated addition to the Bill, with invaluable results for sex workers and other workers across the nation.

The Australian Government has been a world leader in HIV prevention due to a strong partnership approach with sex workers. This is the right time for the Australian Government to step up to increasing calls from United Nations bodies and affected communities, and provide formal anti-discrimination protection for sex workers.

---

<sup>17</sup> Scarlet Alliance, Focus Group on Sex and/or Gender Diversity, Sydney, 2010.

<sup>18</sup> ‘Sexual Orientation of Worker by Perceived Sex of Worker’, in Rachel Sharp and Frances Lovejoy, An Evaluation of HIV/AIDS Education for Workers and Managers in the Sex Industry, NSW Department of Health, 1992, Sydney, Table 3.1.

<sup>19</sup> Alina Thomas, ‘Up Close and Political: Lesbian Sex Workers’ Provision: Defining Sex Worker Space, Issue 1, Scarlet Alliance, 2006, 22.

<sup>20</sup> UNAIDS, Joint United Nations Program on HIV/AIDS, *UNAIDS Guidance Note on HIV and Sex Work*, Geneva, 2009, 2.