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Committee Secretary
Joint Standing Committee on Foreign Affairs, Defence and Trade
PO Box 6021
Parliament House
Canberra ACT 2600
jscfadt@aph.gov.au

Submission: Inquiry into establishing a Modern Slavery Act in Australia

Thank you for the opportunity to submit to this Inquiry into establishing a Modern Slavery Act in Australia.

Sex Workers Outreach Project (SWOP) was established in 1990, and is Australia's largest and longest established community-based sex worker organisation focused on HIV, STI and Hepatitis C prevention, education and health promotion for sex workers in New South Wales (NSW).

A key element in the success of SWOP's work is the building of strategic, collaborative and multidisciplinary working relationships with sex workers, and other key health, government and non-government organisations, advocating for a holistic approach to the health services provided to sex workers.

As a sex worker health organisation, SWOP's key concern in responding to this Inquiry is to protect the health of NSW sex workers, specifically in relation to key public health matters including HIV prevention.

With respect to the Inquiry's *Terms of Reference*:

- **The nature and extent of modern slavery (including slavery, forced labour and wage exploitation, involuntary servitude, debt bondage, human trafficking, forced marriage and other slavery-like exploitation) both in Australia and globally;**

As the key organisation outreaching to sex workers in NSW, SWOP has the highest level of direct contact with sex workers of any agency, government or non-government in Australia. Throughout our 27 years of operation, SWOP has consistently maintained high levels of access into sex industry workplaces across NSW. We operate three specific culturally and linguistically diverse (CALD) projects employing bilingual project workers, which has resulted in extremely high levels of engagement with CALD and migrant sex workers throughout NSW.

Last year SWOP has had significant interactions with more than 5,300 sex industry workers in NSW, including making 579 visits to sex services premises (SSPs). This includes 56 outreach visits to 27 different rural and regional areas, located in all parts of NSW. Of the SSPs we visited in 2015-16, 395 (68%) were partially or predominantly staffed by CALD sex workers, with the three key cultural identities being Chinese, Thai and Korean. As such SWOP remains the best placed NGO to have conversations with migrant sex workers across the state about their working conditions.

The key role of sex work organisations like our own in having access to key information is backed up by the evidence presented by Commander Glen McEwen OAM from the Australian Federal Police (AFP) in the recent NSW Inquiry into the Regulation of Brothels. Commander McEwen OAM stated:

“There are a number of ways, as you would appreciate, in relation to a policing organisation, and there are many ways that information is provided. In relation to human trafficking, the community has provided information. Of course, the NGOs are extremely critical in supporting our endeavours. It is vast. The majority would be referred by non-government organisations. Having been personally involved in investigating this 10 years ago, I recall that customers made complaints on behalf of potential victims and we made inquiries in response.”ⁱ

McEwen also pointed out in his testimony:

“Scarlet Alliance, Project Respect, Anti-Slavery Australia, et cetera — yes. My understanding is they are long and enduring relationships. Again, going back a decade those organisations were people I was dealing with. My understanding is we continue to have that. Obviously at times there are differing points of view, but enthusiastic discussions are quite useful and helpful so everyone puts their perspective and points of view across. My advice is it is extremely respectful and worthwhile.”ⁱⁱ

It is our view that in the NSW sex industry, there is very low prevalence of human trafficking. Migrant sex workers in NSW report that all other migrant sex workers they have met and worked with are willing participants within the sex industry. Migrant sex workers in NSW generally report that they do not meet other migrant sex workers who are not performing sex work willingly.

What SWOP does encounter from time to time on outreach into sex industry workplaces across the state is sex workers who are unhappy with their current work conditions, or who have seen after arrival in Australia that they could have better work conditions elsewhere. We are able to support these workers using our close relationships within the sector with organisations like Anti-Slavery Australia, and legal organisations including, but not limited to, the Inner City Legal Service and the *HIV/AIDS Legal Centre*. *We also work in partnership with NSW Police, and the Australian Federal Police when required to assist migrant sex workers.*

While sex trafficking is what makes the headlines, it is broadly the experience of our organisation that generally what we are talking about in NSW is labour exploitation occurring within the sex industry. What is occurring is not the sexual abuse of unwilling victims, rather the exploitation of their labour, which in our industry just happens to be sexual labour. Regardless, SWOP is fundamentally against the labour exploitation of sex workers, so much of our work in this area consists of us assisting sex workers to access mainstream services that already are set up to deal with labour exploitation, irrespective of industry. The benefit of using this existing model, is it ensures that migrant sex workers are not further stigmatised, rather they are treated the same way as Australian workers in any other industry.

SWOP’s belief that NSW is a low-prevalence country for sex-trafficking is supported by the recent NSW Inquiry into the Regulation of Brothels, which examined the six identified sex-trafficking investigations in NSW. Not one of these cases turned out to be sex-trafficking in so far as the law, media or general public are led to understand it. In his answers to questions taken on notice, McEwen explains:

“None of the six matters resulted in a conviction. In five of the matters, no human trafficking offence was identified or disclosed. The sixth matter was a foreign law enforcement request for assistance in relation to an international matter.”ⁱⁱⁱ

Despite this no-prevalence finding of human trafficking in the NSW sex industry, media in relation to reporting trafficking continues to cause distress, distrust and create inflammatory perceptions about migrant sex workers which continue to impact their lives.

The implications for Australia’s visa regime, and conformity with the *Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* regarding federal compensation for victims of modern slavery;

While from the findings of the recent NSW Inquiry into the Regulation of Brothels make it clear that sex trafficking is not a prevalent issue for NSW sex industry workers, SWOP is in support of federal compensation scheme for all trafficked persons. Initially suggested by the Human Rights Council's Special Rapporteur, Joy Ngozi Ezeilo, this idea has been championed by Fiona McLeod in a new report by the Law Council of Australia, and Anti-Slavery Australia, which “has laid out the compelling case for the immediate construction of a national compensation scheme for survivors of human trafficking, slavery and slavery-like practices.”^{iv}

The Report explains that some sex industry workers who might have experienced labour trafficking may not be eligible for state-based compensation schemes: *“in New South Wales, the victim must have been subject to an act of violence including having suffered an injury as a result; and victims will not be eligible if the act of violence occurred while the victim was engaged in behaviour constituting an offence”^v*. To this end SWOP supports the call by Anti-Slavery Australia and the Law Council of Australia, toward ensuring no victim of human trafficking falls through the cracks, by the establishment a federal compensation scheme.

The Palermo Protocol in principle means that if you transfer or harbour people for exploitation, you are a trafficker. While SWOP agrees with this in principle, we find it runs into trouble when it is used in conjunction with the Nordic Model. By deeming all sex work as exploitation, Nordic Model proponents employ the Palermo Protocol rationale to make an expansive definition that states all sex workers who are recruited by an employer on promise of payment whilst overseas are trafficked.

This simply isn’t true. Just like with other industries, sex workers are able to make informed and reasonable decisions to immigrate on the basis of better work opportunities, better rewards, and better work conditions. The key difference is consent. Trafficking and associated terms like debt bondage and modern slavery, have at their core, a lack of consent. Encouraging a sex worker to move to a different location where they can get greater compensation for their work is not trafficking.

The phenomenon of labour movement isn’t new, and it certainly isn’t limited to the sex industry. SWOP sees the NSW being seen as an attractive place for global sex workers to migrate to, or to work in temporarily, as testament to the work we have done in NSW to improve the legal framework, pay, workplace conditions and occupational health and safety of sex workers here.

To this end, it is SWOP’s view that it is vital that in any discussion of how we deal with modern slavery and the Palermo Protocol, that the Nordic model is explicitly ruled out.

Provisions in the United Kingdom’s legislation which have proven effective in addressing modern slavery, and whether similar or improved measures should be introduced in Australia;

In NSW, an enabling legal environment, namely decriminalisation, has largely removed the barriers to engagement for NSW sex workers, and has resulted in positive public health outcomes. The reality of being a migrant sex worker in NSW is best captured in The Kirby Institute’s report to government called *The Sex Industry in New South Wales: A Report to the NSW Ministry of Health*, which states: “migrant sex workers in Sydney have achieved similar excellent results of sexual health as their local counterparts.”^{vi} This Report goes on to say that “recent studies show Asian migrant sex workers now have far more autonomy, including student visas and residency status, and much better health outcomes”^{vii}.

The 2012 study declared the NSW sex industry “the healthiest sex industry ever documented” and advised the government to scrap the few remaining laws around the industry, stating: “reforms that decriminalised adult sex work have improved human rights, removed police corruption [and] netted savings for the criminal justice system... International authorities regard the NSW regulatory framework as best practice.”^{viii}

Local research shows us that in NSW female workers of Asian background, generally perceived as most vulnerable to a range of health and safety concerns, have since 1992, seen an increase in their English language skills, testing rates and service engagement, and a concomitant decline in STI prevalence rates such that it equals those of non-Asian workers.^{ix}

Maintaining these low rates of sexually transmitted infections (STIs) and working towards the goal of ending HIV seroconversions as set out in the NSW HIV Strategy 2016-2020, requires health promotion organisations like our own to have unfettered access to priority populations.

Intrusive workplace visits by police, immigration agents and council officers in the name of visa compliance, council regulation, and proper person checks, can have negative effects upon sex worker willingness to see these agencies as potential avenues for support when things go wrong. This is magnified for migrant sex workers who come from countries where sex work is criminalised.

We note that our English counterparts, the English Prostitutes Collective and their partner organisations, have this month released a joint statement about the actions of Police and UK Border Agency targeting migrant sex workers in October 2016 as a consequence of this UK legislation. They state:

“Historically such operations in the UK and elsewhere do not stop migrant people going into sex work nor do they support victims of slavery; indeed they force migrants further underground into more illicit means of working, increase dependency on third parties including coercive controllers make migrants more fearful of (and further alienate) the police, services and others support networks.”^x

Health promotion is hampered by legal and policy environments that drive migrant sex workers underground. If a migrant worker is scared of having a visit from the police or immigration, they are unlikely to open the door to anyone, including SWOP’s health promotion officers. To meet NSW Health’s ambitious timeline for ending HIV, it is vital that Australian anti-trafficking policy does not hamper health promotion, and the key work SWOP does with NSW sex workers preventing STIs and HIV.



Any other related matters.

SWOP would like to lend our organisational support to the submission of our peak body, Scarlet Alliance. While we are the experts on NSW sex workers, who have been lucky enough to work within the best practice legal framework of decriminalisation for the last twenty-two years, our peak body are the experts on sex workers across the whole of Australia.

While SWOP has strong reservations about the implications of the UK legislation here on sex worker health and safety in the decriminalised framework of NSW, in other parts of Australia where aspects of sex work are still criminalised, there is an even stronger case for being very cautious about implementing any legislation that may drive migrant sex workers underground. We acknowledge the particular expertise of Scarlet Alliance's Migration Project in this arena, and lend our support to their submission on these matters.

Should you require more information on potential implications of the proposed Modern Slavery act on the health and safety of workers in NSW sex industry, I can be contacted on

Regards,

Cameron Cox
SWOP Chief Executive Officer

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