



Web – www.scarletalliance.org.au

Committee Secretary
Parliamentary Joint Committee on Law Enforcement
PO Box 6100
Parliament House
Canberra ACT 2600

19 February 2016

RE: Inquiry into Human Trafficking

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. Scarlet Alliance and our member organisations and projects have the highest level of contact with sex workers in Australia of any agency, government or non-government. Through our project work and the work of our membership we have consistently maintained high levels of access to sex industry workplaces in the major cities and many regional areas of Australia. Scarlet Alliance and many of our member sex worker organisations and projects within Australia have CALD (culturally and linguistically diverse) projects employing bi-lingual project workers resulting in extremely high levels of engagement with CALD and migrant sex workers throughout Australia across a range of work place types. This includes the Scarlet Alliance Migration Project that is staffed and managed by migrant sex workers and was first funded in 2009. It is these experiences and via the Scarlet Alliance Migration Project Steering Committee, the direct input of migrant sex workers who have been impacted directly by anti-trafficking interventions, which informs our submission.

Australia has maintained a primarily criminal justice approach to trafficking with a focus on law enforcement, surveillance, and prosecution. There is a serious need to assess the current trafficking prevention framework and shift toward an evidence and rights-based approach, to restore balance toward prevention, the first pillar of the *National Action Plan to Combat Human Trafficking and Slavery*.¹

¹ Australian Government, *National Action Plan to Combat Human Trafficking and Slavery* 2015-19 (2014) 24.

Consistently government statistics support our organisation's and memberships' evidence that trafficking and exploitation is not the experience for most migrant sex workers in Australia.²

Australia's current criminal justice focussed approaches to trafficking don't work. We need to shift to a comprehensive multi-faceted and evidence-based prevention approach, which supports culturally and linguistically appropriate sex worker peer education, the decriminalisation of sex work, and the accessibility of civil remedies for those who experience labour exploitation.

If you require further information please contact our Migration Project Manager,

Regards,

Ryan Cole
President

² Australian Government, *Trafficking in Persons: The Australian Government Response*, 1 May 2009 – 30 June 2010, The Second Report of the Anti-People Trafficking Interdepartmental Committee, Commonwealth of Australia, Canberra, 2010, 25.

Contents

Executive Summary	4
Prevalence of Human Trafficking In Australia	7
Role and Effectiveness of Commonwealth Law Enforcement Agencies	9
Practical Measures and Policies	10
Organised Crime	13
Migration Visas	13
Effectiveness of Relevant Commonwealth Legislation and Policies	15
Other Related Issues.....	17
Conclusion.....	18
Recommendations	18

Executive Summary

Australia has maintained a primarily criminal justice approach to trafficking with a focus on policing and surveillance. Increasing regulation, policing and surveillance are not effective approaches to combating trafficking or exploitation for the small number of cases that have been identified. We need to shift to a comprehensive multi-faceted and evidence-based prevention approach, which supports culturally and linguistically appropriate sex worker peer education, in country partnerships with sex worker organisations at countries of origin, the decriminalisation of sex work, and the accessibility of civil remedies for those who have experience labour exploitation.

Prevalence of Human Trafficking In Australia

Trafficking is a relatively isolated phenomenon in the Australian sex industry. Despite intensive surveillance, heavy police investigation including several years of high levels of sex industry business raids, substantial investment in a criminal justice approach, and legislation that widened the type of offenses that are now covered by anti-trafficking laws, there have been only 17 cases successfully convicted under Australia's anti-trafficking legislation. These relate to charges obtained in 11 matters, 9 relating to the sex industry.³

Evidence from our membership, who are in regular contact with migrant sex workers in their workplaces, and from the Scarlet Alliance Migration Project Steering Committee, comprised of migrant sex workers of Chinese, Korean and Thai language backgrounds, affirms trafficking is a relatively isolated phenomenon in the Australian sex industry.⁴

Role and Effectiveness of Commonwealth Law Enforcement Agencies

Over-policing of sex industry businesses hinders the ability of outreach workers to access sex workers in their workplaces. Peer education and community outreach have been effective in mitigating social and cultural isolation and providing information, referrals, and support when needed, which reduces workers' vulnerability to exploitation.

The Department of Immigration and Border Protection (DIBP) has a network of officers that regularly conduct compliance checks with police, as part of regular compliance checking and based on reports from individuals/tips. All DIBP officers have been trained on, and are alert to, trafficking. Reports from our membership of sex workers, is that sex industry businesses are visited frequently by police and DIBP undertaking visa compliance checking under the pretext of anti-trafficking measures.

DIBP conducting visa compliance in the guise of anti trafficking interventions is inappropriate, and counterproductive, and police are not the appropriate body to conduct brothel compliance checking or act as regulators of sex industry businesses.

³ Australian Government, 'Trafficking in Persons: The Australian Government Response 1 July 2014 – 30 June 2015', The Seventh Report of the Anti-People Trafficking Interdepartmental Committee, Table 4, 28-29.

⁴ Scarlet Alliance, 'Submission to Joint Standing Committee on Foreign Affairs, Defence and Trade Inquiry into Slavery, Slavery-like conditions and People Trafficking', September 2012.

Practical Measures and Policies

Instead of introducing further criminal laws, the Government should increase avenues for statutory compensation to redress exploitative work conditions that do not require contribution to a criminal investigation and provide access to services for sex workers affected by trafficking-related crimes who do not wish to go to the police.

Workplace rights and safety are best supported through the decriminalisation of sex work. Positive health outcomes for migrant sex workers have been supported by decriminalisation in NSW, with consistent findings of research demonstrating low rates of STIs and high rates of condom use for migrant sex workers in NSW.

In the small number of identified trafficking cases in the sex industry, the victims have reported experiencing social and cultural isolation.⁵ Culturally and linguistically appropriate peer education and peer migrant sex worker projects like Scarlet Alliance Migration Project have demonstrated their effectiveness in addressing those gaps and providing information, referrals, and support when needed.

Organised Crime

Large scale organised crime and 'pimping' is not a characteristic of the sex industry in Australia.⁶ The Australian Crime Commission produces biennial reports that presents the current picture of the serious and organised crime and outlines the existing and emerging organised crime threats impacting the Australian community and national interests. Consistently the sex industry has not been identified as an area of current or emerging organised crime environment or threat in any of those reports.

Research and anecdotal evidence from the Scarlet Alliance member organisations, which actively interface with sex workers in their daily operations, and our membership of individual sex workers supports this.

Migration Visas

The notion that trafficking in the sex industry is facilitated by student visas has been spread by media, in sensationalised accounts claiming that trafficking victims are brought to Australia on student visas and instead work unlawfully in brothels. A review by the DIBP, prompted by sensationalised media, into student visas being used to facilitate trafficking and relocation of sex workers from overseas, found that this was not case.⁷

Legal visa options are limited for sex workers, particularly those from poorer countries. For this reason, sex workers may engage a third party to assist in complicated visa applications and may incur

⁵ Australian Government, *Trafficking in Persons: The Australian Government Response*, 1 July 2010– 30 June 2011, The Third Report of the Anti-People Trafficking Interdepartmental Committee, Commonwealth of Australia, Canberra, 78

⁶ B. Donovan, et al. *The Sex Industry in New South Wales: A Report to the NSW Ministry of Health* (2012) Kirby Institute, University of New South Wales, Sydney;
C Harcourt, 'Whose Morality? Brothel Planning Policy in South Sydney' (July 1999) *Social Alternatives* 3.

⁷ Chris Bowen, 'Visa Analysis Targets Sex Industry Links' (Media Release, 14 October 2011).

a debt in order to travel. The Australian migration system requires reform in order to allow for safe migration. At present, conditions for trafficking are created by Australia's discriminatory immigration policies, which favour specific 'skilled' migration from industrialised countries, disadvantage workers from low-income countries, and create a lack of opportunities for sex workers to migrate legally.

Effectiveness of Relevant Commonwealth Legislation and Policies

There already exist a wide range of laws that appropriately capture exploitative behaviours and trafficking, though the *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013* worked to lower the threshold for trafficking and related prosecutions, in order to capture a wider range of exploitative behaviours and achieve convictions more easily.

Support for trafficked people is currently conditional upon a sex workers' 'contribution to a criminal investigation'. This means that trafficked people can only access support if they agree to cooperate with police, are referred by police to the support program, and make a 'contribution' to a prosecution case. Making support conditional upon police assistance limits the willingness and ability of exploited people to access support and justice.

The goal of obtaining more successful prosecutions needs to be seriously re-examined. In a policy/legal framework in which sex workers face discriminatory visa requirements, do not have access to safe migration, do not have equitable access to industrial rights mechanisms, fear police because of regular raids, detention and harassment, and are isolated from health and support services, these laws do not assist actual victims of exploitation or trafficking. Support for workers who have been subject to exploitative work conditions must be accessible without the need for involvement in a trafficking prosecution.

Any approaches to combat trafficking must be rights based and support prevention of the circumstances that create vulnerabilities to trafficking such as access to safe migration, translated information and services. Preventative approaches that address the circumstances that create trafficking should be pursued over criminal justice approaches. Trafficking does not occur in isolation to labour exploitation. Preventing trafficking is also about ensuring labour standards and protection of workers rights. The conditions that lead to trafficking are exacerbated by a lack of workplace and migration rights, restrictive regulations, and legislative weaknesses; and furthered within a social context that promotes misinformation and discrimination. Supporting sex workers rights, health and safety and access to support, through the decriminalisation of sex work is the best approach to address trafficking risks in the sex industry.

Prevalence of Human Trafficking In Australia

Previous trafficking interventions and inquiries have been almost solely focused on the sex industry, disproportionate to the actual prevalence of trafficking in the sex industry in Australia. The government acknowledges that historically the focus of the AFP has been mostly on the sex industry; however in line with the evidence, and identified instances of actual cases of trafficking, there has been a gradual decline in Federal Police trafficking investigations in the sex industry. In 2015, 71% of new clients in the Support for Trafficked People Program experienced forms of exploitation *outside* of the sex industry.⁸ Though the AFP focus on the sex industry has decreased with a greater focus on trafficking in other industries, there still exists a disparity between the level of focus on the sex industry and the number of actual victims of exploitation in the sex industry, with a greater focus on trafficking in the sex industry disproportionate to any other industry or trafficking type.

General perceptions of trafficking that are exacerbated by unsupported statements by state and territory police and media sources continues to perpetuate this harmful stereotype at the detriment of actual trafficking interventions. The outcomes are damaging to migrant sex workers and result in continued stigmatisation, harassment, and discrimination; and perpetuate misunderstandings of the nature and prevalence of trafficking in the sex industry. Assertions made based on false assumptions, moral hysteria and guesswork have been dominant in previous government inquiries into trafficking. At the previous Parliamentary Joint Committee on Foreign Affairs, Defence and Trade Inquiry into Slavery, slavery-like conditions and people trafficking, the Chair questioned Scarlet Alliance's testimony, despite the fact it was supported by the government's own evidence and prosecution figures. He stated that "...We have heard evidence from a significant amount of parties that do not agree with your contention that sexual exploitation and slavery is a minimal part of the market (sex industry).....I do not think a significant number of witnesses who come before us have an axe to grind or are connected with things we would question, but they are giving contrary evidence."⁹

But real evidence from our membership, who are in regular contact with migrant sex workers in their workplaces, and from the Scarlet Alliance Migration Project Steering Committee, comprised of migrant sex workers of Chinese, Korean and Thai language backgrounds, affirms trafficking is a relatively isolated phenomenon in the Australian sex industry.¹⁰

This is supported by the fact that despite enormous surveillance, heavy police investigation including several years of high levels of sex industry business raids, substantial investment in a criminal justice approach, and legislation that widened the type of offenses that are now covered by anti-trafficking laws, there have been only 17 cases successfully convicted under Australia's anti-trafficking legislation.

⁸ Australian Government, 'Trafficking in Persons: The Australian Government Response 1 July 2014 – 30 June 2015', The Seventh Report of the Anti-People Trafficking Interdepartmental Committee, 33.

⁹ Parliamentary Joint Committee on Foreign Affairs, Defence and Trade, *Inquiry into Slavery, slavery-like conditions and people trafficking* (2013) Transcript of evidence: Tuesday 23 April 2013 [<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committees/commjnt/53c57f6d-b8a4-4bc4-bc61-761ea3070f8a/0000%22>] (accessed at 5/02/15)

¹⁰ Scarlet Alliance, 'Submission to Joint Standing Committee on Foreign Affairs, Defence and Trade Inquiry into Slavery, Slavery-like conditions and People Trafficking' (September 2012).

These relate to charges obtained in 11 matters, of which 9 relate to the sex industry.¹¹ Furthermore, in all the finalised trafficking cases that have involved migrant sex workers, not one sex worker had been deceived as to the fact they would be working as a sex worker in Australia. Some had previously worked as sex workers. Instead what these cases did involve were labour violations amounting to workplace exploitation and unfair debt.

It is not reasonable to assume that the small numbers of cases of trafficking in the sex industry are due to inadequate surveillance, prosecution, or laws. The absence widespread organised crime and trafficking in the sex industry in Australia is often incorrectly referred to as evidence of a large hidden problem. However, the sex industry is visible in operation, requiring advertising and a customer base in order to operate. The UNODC in their 2009 *Global Report on Trafficking in Persons* states:

“... most of the victims of forced labour often work in hidden locations, such as agricultural fields in rural areas, mining camps and garment factories or within the closed environment of a house in the case of domestic servitude. As a consequence, the detection of victims of trafficking for forced labour is less probable than the identification of victims of trafficking for forced prostitution.”

Frequently the prevalence of trafficking in the sex industry in Australia is inferred from inflated global statistics that are not relevant in the Australian context. The evidence base in Australia is vastly different to other nations. This is in part due to sex worker organisations, strong peer education, and the recognition of sex work as work within aspects of certain laws, policies and programs. Additionally the AIC warns, “extreme caution should be exercised in extrapolating from the under-reporting of domestic crimes to transnational crimes, as Australia enjoys the natural protection provided by being both an island and geographically remote....”¹² The Australian Federal Police also warn against extrapolating data or relying on anything other than facts when it comes to prevalence of human trafficking/sexual slavery.¹³

Sex workers, like other workers, migrate internationally to seek improved working conditions and income. Labour migration within Asia and the Pacific is common across a variety of professions and industries. However, the migrant sex workers most readily identified and targeted by government policy are those from Asian countries working in the sex industry, due to racial stereotypes and discriminatory and prohibitive immigration policies for people travelling from what are perceived as ‘developing’ countries. Extensive research conducted by and with migrant sex workers shows migrant sex workers, like other migrants in Australia are diverse, many having previously travelled and worked throughout the region.¹⁴

¹¹ Australian Government, ‘Trafficking in Persons: The Australian Government Response 1 July 2014 – 30 June 2015’, The Seventh Report of the Anti-People Trafficking Interdepartmental Committee, Table 4, 28-29.

¹² J. Putt, ‘Human Trafficking To Australia : A Research Challenge’ (2007) *Trends & Issues In Crime And Criminal Justice* 338.

¹³ Australian Federal Police, ‘Answers to Questions on Notice: Australian Federal Police’ submitted to the Regulation of Brothels Committee as part of the *Inquiry into the Regulation of Brothels in NSW*, 2.

¹⁴ Elena Jeffreys and Roberta Perkins, ‘Sex Work, Migration, HIV and Trafficking: Chinese and Other Migrant Sex Workers in Australia’ (2006) *Intersections: Gender and Sexuality in Asia and the Pacific* 26 [<http://intersections.anu.edu.au/issue26/jeffreys.htm> on 31 August 2011];

Role and Effectiveness of Commonwealth Law Enforcement Agencies

Australia has maintained a primarily criminal justice approach to trafficking with a focus on policing and surveillance, and our leaders have refused to shift to a comprehensive multi-faceted and evidence-based prevention approach. Increasing regulation, policing, and surveillance are not effective approaches to combating trafficking or exploitation for the small number of cases that have been identified. It has shown to increase stigma and discrimination against migrants and decrease their willingness to access support in the event of exploitation and trafficking.

Brothels and massage parlours in New South Wales are subject to high levels of compliance checking by NSW Police, Immigration, and AFP. Anecdotally, most Asian sex workers have been visited by police and/or immigration at their place of work, with workers at one Surry Hills brothel reporting they had been visited 10 times within a year. Regulatory tools that have been used to monitor, regulate, and license the sex industry in Victoria have disadvantaged sex workers, insufficiently protected the rights of marginalised groups and enabled the unfair treatment of sex workers by Victorian Police, Immigration, and the AFP. This has not resulted in safer or fairer workplaces; these bodies have not found evidence of human trafficking despite regular compliance checks of licensed brothels, and have managed only to deport migrant sex workers working of their own volition.¹⁵

The Department of Immigration and Border Protection (DIBP) has a network of officers that regularly conduct compliance checks with police, as part of regular compliance checking and based on reports from individuals/tips. All DIBP officers have been trained on, and are alert to, trafficking. Reports from our membership of sex workers, is that sex industry businesses are visited frequently by police and DIBP undertaking visa compliance checking under the pretext of anti-trafficking measures.

A review by the Department, prompted by sensationalised media, into student visas being used to facilitate trafficking and relocation of sex workers from overseas, found that this was not case.¹⁶

DIBP conducting visa compliance in the guise of anti trafficking interventions is inappropriate, and counterproductive, and police are not the appropriate body to conduct brothel compliance checking or act as regulators of sex industry businesses. Consistent and systemic evidence of corruption when police are the regulators of the sex industry, clearly demonstrates that they are inappropriate regulators for the sex industry. Increased policing and further criminalisation will severely affect sex

Di Surgey, *SIREN's Story: The Sexual health, Information, Resources and Education for Non-English speaking sex workers (SIREN) Project*, Prostitutes Collective of Victoria and Department of Human Services and Health, 1994;

Global Alliance Against Traffic in Women, Empower Foundation and Sex Workers Outreach Project, *Research Report: Thai Background Sex Workers in Sydney* (2000) Bangkok;

Roberta Perkins and Elena Jeffreys, 'Trafficking: Chinese and Other Migrant Sex Workers in Australia' (2011) *The Asia Pacific Journal of Anthropology* [<http://www.scarletalliance.org.au/library/chinesesexworkerposter0607>];

Pell et al., 'Demographic, Migration Status, and Work-Related Changes in Asian Female Sex Workers Surveyed in Sydney, 1993 and 2003' (2006) *Australian and New Zealand Journal of Public Health* 30:2, 157-162.

¹⁵ Maria Carnovale, 'Trading in Lives' *Police Life* Autumn 2015, 10-11.

¹⁶ Chris Bowen, 'Visa Analysis Targets Sex Industry Links' (Media Release, 14 October 2011).

workers' willingness to engage with police in the event of a crime. One of the major drivers for decriminalisation in NSW was the findings of the Wood Royal Commission showing 'a clear nexus between police corruption [in the NSW Police Force] and the operation of brothels.'¹⁷ In criminalised jurisdictions in Australia, Christine Harcourt et al. have found that individual sex workers' ability to seek information, support and health care is 'severely limited by the risk of prosecution.'¹⁸ In their study, Charlotte Woodward and Jane Fischer found that 'illegal sex workers were more likely to report being harassed (42% compared with 13% of legal sex workers)' by police, and that this harassment included verbal abuse, racial insults, stalking, phone calls and requests for sexual favours.¹⁹ This results in less reliable cases when labour exploitation or trafficking is discovered.

Current police responses harm sex workers, not traffickers, do not prevent trafficking and do nothing to help people who have been trafficked or experience labour exploitation. In August 2015, 19 massage parlours in the Northern Territory were raided by Australian Border Force and police with the stated operational objective of targeting "...business owners believed to be operating illegally and possibly exploiting young foreign workers and students ."²⁰ Police stated they were not targeting workers or clients, but looking for employers exploiting workers, however the outcome of the raids were that 3 migrant sex workers were placed in detention and subsequently deported.²¹ Police raids of sex industry businesses violate sex workers' human rights, and are bad practice. Monitoring sex industry businesses under the guise of trafficking prevention harms sex workers, and is the result of police acting on perceptions rather than responding to evidence. Violations of sex industry regulations should not be treated as trafficking offenses.

Over-policing of sex industry businesses also hinders the ability of outreach workers to access sex workers in their workplaces. Frequent visits from the police make workers mistrustful and afraid and they are less likely to allow outreach workers into their workplaces and/or engage with those outreach workers. Peer education and community outreach have been effective in mitigating social and cultural isolation and providing information, referrals, and support when needed, which reduces workers' vulnerability to exploitation.

Practical Measures And Policies

Instead of introducing further criminal laws, the Government should increase avenues for statutory compensation to redress exploitative work conditions that do not require contribution to a criminal investigation and provide access to services for sex workers affected by trafficking-related crimes who do not wish to go to the police. Migrant sex workers who experience poor working conditions often do

¹⁷ New South Wales Government, *Royal Commission into the NSW Police Service: Final Report – Corruption* (1997) 13.

¹⁸ Christine Harcourt et al., 'Sex Work and the Law', 123.

¹⁹ Charlotte Woodward and Jane Fischer, 'Regulating the world's oldest profession: Queensland's experience with a regulated sex industry' (2005) *Research for Sex Work* June, 17.

²⁰ J. Fawkes, 'Australian Border Force raids massage parlours' (31 August 2015) *Independent Australia*.

²¹ F. McCue, 'Raid brings massages to unhappy ending' (August 29, 2015) *NT News*.

not have access to industrial rights mechanisms for fear of prosecution or deportation. The Fair Work Ombudsman (FWO) generally is not concerned with the visa status of employees, and is only obliged to share information with DIBP that arises from the FWO's performance of its 457 visa monitoring role under the Migration Act, and is not obliged to report information arising from its primary role under the Fair Work Act. Natalie James explained during an FWO appearance before the Senate Education and Employment Committee's Inquiry into Australia's temporary visa system on 24 September 2015 that in practice "the FWO shares some information with DIBP, but exercises discretion as to what information it shares."

Migrant sex workers need equitable access to Australian justice mechanisms, arbitration processes and industrial rights protections, akin to Australian citizens, without fear of arrest or deportation.

Any approaches to trafficking must be rights based and support prevention of the circumstances that create vulnerabilities to trafficking such as access to safe migration, translated information and services. Preventative approaches that address the circumstances that create trafficking should be pursued over criminal justice approaches. The most successful approaches prioritise the needs, agency and self-determination of trafficking victims over criminal prosecutions and increased surveillance. They address labour exploitation through a focus on prevention, industrial rights, occupational health and safety, civil remedies, statutory compensation, and equitable access to visas, migration channels and support.

"The need for legislation, police and regulatory practices to support rather than impede health promotion extends to broader issues of workplace safety regarding violence, abuse and harassment. There is the risk that sex workers working outside the legal framework face greater barriers to reporting incidents of violence or abuse, or implementing safety strategies."²²

Workplace rights and safety are best supported through the decriminalisation of sex work. Positive health outcomes for migrant sex workers have been supported by decriminalisation in NSW, with consistent findings of research demonstrating low rates of STIs and high rates of condom use for migrant sex workers in NSW. This is supported by current epidemiology that shows similarly high rates of condom between migrant and non-migrant sex workers, and improved workplace health and safety. After decriminalisation in NSW Asian female sex workers in Sydney "continued to access sexual health services and reported increased use of condoms for vaginal, oral and anal sex. Importantly, condom use was more likely to be determined by the sex worker than by the client or brothel management."²³

Awareness raising campaigns that sensationalise trafficking and are not been evidence based, have diverted resources that could be used to actually support people who have experiences trafficking or labour exploitation. These public campaigns have done little more than increase stigma against migrant sex workers and spread misinformation. Awareness-raising must be accurately targeted, tailored appropriately and evidence based, not based on a misperception of trafficking prevalence and

²² L. Renshaw, J. Kim, J. Fawkes, and E. Jeffreys, 'Migrant sex workers in Australia' (2015) *AIC Reports Research and Public Policy Series* 131, 10.

²³ Pell et al., 'Demographic, Migration Status, and Work-Related Changes in Asian Female Sex Workers Surveyed in Sydney, 1993 and 2003' (2006) *Australian and New Zealand Journal of Public Health* 30:2, 161.

risk. Awareness-raising by bilingual peer educators as facilitated by the Migration Project is effective in disseminating accurate information relevant to the realities of migrant sex workers lives.

In the small number of identified trafficking cases in the sex industry, the victims have reported experiencing social and cultural isolation.²⁴ Culturally and linguistically appropriate peer education has demonstrated its effectiveness in addressing those gaps and providing information, referral and support when needed. Increased resourcing for sex worker peer organisations, particularly CALD and migrant sex worker projects, is essential to maintain and amplify the capacity of these organisations to ensure the working conditions of sex workers and reduce the vulnerability of migrant sex workers to trafficking. The benefit of including sex workers in anti-trafficking responses was documented through *The Lancet*'s analysis of trafficking, sex work and HIV:

“Experience shows that it is feasible to address both HIV and human trafficking positively in sex work settings **if prevention efforts are aligned with and committed to sex worker participation.**

The support and inclusion of sex worker communities as partners in human trafficking prevention fits well with HIV programme priorities and improves anti-trafficking outcomes.

The decriminalisation of sex work and its recognition as legitimate work would arguably set the stage for more comprehensive programmes to protect workers—whether migrant or local—support their human rights, and improve workplace safety.”²⁵

The support of peer migrant sex worker projects such as the Scarlet Alliance Migration Project is a cost-effective practical way for the government to support trafficking prevention efforts in Australia. Building on existing partnerships, community ties, and the expertise of migrant sex workers, the Migration Project facilitates a partnership between governments and affected migrant sex worker communities. A study of migrant sex workers in Australia highlighted “the value of peer-based approaches in accessing marginalised groups as a means of providing advice and support, and in guiding research and assisting in the gathering of data.”²⁶

Migrant sex workers are the experts on their lived experiences and provide invaluable contributions to projects and initiatives aimed at mitigating stigma and discrimination, reducing isolation, building community ties, and removing barriers for migrant sex workers to best-practice occupational health and safety. The Scarlet Alliance Migration Project has been lauded for its in-country partnership with Empower Thailand, the Thai sex worker organisation, in supporting sex workers access to information on migration, legal and workplace rights and responsibilities, and reducing their vulnerabilities to exploitation. Investment in peer migrant sex worker projects is essential to fully implement practical measures to reduce migrant sex worker vulnerability to trafficking.

²⁴ Australian Government, *Trafficking in Persons: The Australian Government Response*, 1 July 2010– 30 June 2011, The Third Report of the Anti-People Trafficking Interdepartmental Committee, Commonwealth of Australia, Canberra, 2011, 78

²⁵ Richard Steen et al. ‘Trafficking, sex work, and HIV: efforts to resolve conflicts’ (2014) *The Lancet* 385, 94-96.

²⁶ L. Renshaw, J. Kim, J. Fawkes, and E. Jeffreys, ‘Migrant sex workers in Australia’ (2015) *AIC Reports Research and Public Policy Series* 131, xii.

Organised Crime

Large scale organised crime and 'pimping' is not a characteristic of the sex industry in Australia.²⁷ Research and anecdotal evidence from the Scarlet Alliance member organisations, which actively interface with sex workers in their daily operations, and our membership of individual sex workers supports this assertion. Various government inquiries have also been unable to find the presence of organised crime in the sex industry; instances identified in the 1980's in the Wood Royal Commission and Fitzgerald Inquiry led to reforms, and subsequent investigations have been unable to find any evidence of organised crime in the sex industry.²⁸ The 2009 inaugural report of the Anti-People Trafficking Interdepartmental Committee stated that "groups detected in sex trafficking have been small, rather than large organised crime groups."

The Australian Crime Commission produces biennial reports that presents the current picture of the serious and organised crime and outlines the existing and emerging organised crime threats impacting the Australian community and national interests. Consistently the sex industry has not been identified as an area of current or emerging organised crime environment or threat in any of those reports.

Studies of migrant sex workers in Australia found that the majority enter Australia legally, with "only a small minority overstaying their visas."²⁹ These women were not smuggled in through large organised crime networks, few were on debt contracts, and most retained possession of their passports. Pell (2006) notes:

"Claims that the working conditions of Asian sex workers in Australia meet the definitions of 'trafficked persons', or 'sex slaves', are not supported by these data. Less than 5% of women in 2002/03 were bound by contracts and less than 8% had surrendered control of their passports."³⁰

Migration Visas

The notion that trafficking in the sex industry is facilitated by student visas has been spread by media, in sensationalised accounts claiming that trafficking victims are brought to Australia on student visas and instead work unlawfully in brothels.

²⁷ B. Donovan, et al. *The Sex Industry in New South Wales: A Report to the NSW Ministry of Health* (2012) Kirby Institute, University of New South Wales, Sydney;

C Harcourt, 'Whose Morality? Brothel Planning Policy in South Sydney', *Social Alternatives* No. 3, July 1999.

²⁸ State of Victoria, *Inquiry into Prostitution, Final Report* (1985) 59–60: to the extent permitted by the terms of reference, the inquiry was unable to find evidence of organised crime group control of prostitution in Victoria; Criminal Justice Commission, *Regulating Morality? An Inquiry into Prostitution in Queensland* (1991); Select Committee of the Legislative Assembly upon Prostitution, Parliament of New South Wales, *Report of the Select Committee of the Legislative Assembly upon Prostitution* (1986) 229–33: the inquiry found limited and declining involvement of organised crime groups in prostitution in New South Wales.

²⁹ P Pell et al., 'Demographic, Migration Status, and Work-Related Changes in Asian Female Sex Workers Surveyed in Sydney, 1993 and 2003' (2006) *Australian and New Zealand Journal of Public Health* 30:2, 157-162.

³⁰ Ibid, 162.

Statistics from the Department of Immigration show that, between 1997 and 2011, 858 current or former student visa holders worked in sex industry, and held student visa at time of sex working and just 37 (4%) were working in breach of their visa conditions.³¹ Between 1 Jan 1997 and 30 Dec 2012, 5378 Department clients were found working in Australian sex industry, the majority of which were working lawfully; of those, 21% held student visas.³² Student visa holders working in the sex industry represent less than 1% of all student visa holders.³³

Contrary to widespread media hype and conjecture about the abuse of student visas, the account of the experiences of this Scarlet Alliance Migration Project Steering Committee Member is far more commonplace;

“For me and my friend we wanted to learn English better and we hear they have good schools in Australia. It was not too far away like America or England so it seemed like a good choice. We research online to find a good school and we contact an agency to help us with paperwork. You have to pay the agency enrolment fee for the school and a fee for administration and paperwork. We had agreed upon a fixed price and they give you an invoice with everything detailed. They clearly explain what will happen which is what happened when we came to Australia. We go to school every day but we needed to find a job that can be flexible with our school hours and exam times. Another student at the school told us about her workplace and it sounded good so we started to work there. I liked it and stayed but my friend ended up getting another job at a restaurant so she left to work there. This is not an uncommon story for many of the students I have met. I have read many things talking about trafficking and abuse of student visas for sex work. It’s not like this. They don’t talk about any other work like this. People use agents all the time to travel overseas, especially if it’s not just for a holiday. On one hand they are promoting for international students and the quality of schools in Australia but they take our money and say we are sneaky criminals or victims!”

In 2012, the Senate Legal and Constitutional Affairs Committee held an inquiry into the extent to which trafficking is facilitated by Prospective Marriage Visas. The DIBP submitted to the Inquiry, stating that:

“A number of integrity measures exist both in the requirements for grant of a visa and in processing arrangements to minimise potential abuse. The Department also undertakes ongoing monitoring of risks affecting its programs. This monitoring can identify new risks and suggest additional risk treatments which may assist in managing known risks. Where fraud is detected after the visa grant, legislation allows for a visa to be cancelled where it is found that incorrect information or bogus documents were provided as part of the visa application. No Prospective Marriage visas granted after 1 July 2006 have been cancelled on these grounds.”³⁴

Legal visa options are limited for sex workers, particularly those from poorer countries. For this reason, sex workers may engage a third party to assist in complicated visa applications and may incur

³¹ Senate Estimates Back Pocket Brief Supplementary Budget Estimates Hearings October 2012 Issue: Sex Trafficking and the Student Visa program, 1.

³² Senate Estimates Back Pocket Brief Supplementary Budget Estimates Hearings October 2012 Issue: Sex Workers and the Student Visa program, 1.

³³ Ibid, 2.

³⁴ The Department of Immigration and Border Protection, submission to *Prospective Marriage Visa Program Inquiry* (2012) 24.

a debt in order to travel. Even when the terms are agreed upon with clear fixed parameters and adhered to by both parties, this can still be referred to as debt bondage, and is treated as a crime linked to trafficking, with severe penalties. Prosecution of this offence does not materially help sex workers in the situation who are still subject to the debt once returned to their home country with reduced opportunities to repay the debt. A simpler and more sustainable approach to ending reliance on debt contracts is to provide safe migration channels through reforms to the *Migration Act 1958*, in addition to Government investment in translation and peer education for migrant populations.

"I think things have changed a lot. In Thailand before there were agents that would give you an advance and organise where you would be working and everything and you would have to pay it back when you come to Australia and work. This is not happening like this for a long time. Even though many people were happy to work like this, now agency will not give you an advance. They will not find you work, they will not organise accommodation. I think they are too scared because people say this is like trafficking. This makes it very hard now."

- Scarlet Alliance Migration Project Steering Committee Member

The Australian migration system requires reform in order to allow for safe migration. At present, conditions for trafficking are created by Australia's discriminatory immigration policies, which favour specific 'skilled' migration from industrialised countries, disadvantage workers from low-income countries, and create a lack of opportunities for sex workers to migrate legally.

As noted in *The Lancet*, "restrictive immigration laws couples with punitive or exploitative law-enforcement practices increase migrant sex workers' vulnerability."³⁵ Scarlet Alliance has found that migrant sex workers are almost always on a compliant work visa, but are not always aware of their work rights under that visa. There is a lack of quality translated materials, and this, combined with a general suspicion and distrust of the Australian migration system and a lack of safe legal migration pathways is a direct cause of migrant workers' vulnerability.

Effectiveness of Relevant Commonwealth Legislation and Policies

Scarlet Alliance is deeply concerned that trafficking and slavery laws contained in Divisions 270 and 271 of the Commonwealth Criminal Code are designed to achieve prosecutions rather than assist people who are experiencing exploitative work conditions.

There already exist a wide range of laws that appropriately capture exploitative behaviours and trafficking, though the Act worked to lower the threshold for trafficking and related prosecutions, in order to capture a wider range of exploitative behaviours and achieve convictions more easily. The Act made consent an irrelevant factor in proving that an offence has taken place. Amendments to the *Criminal Code* mean that a victim's consent or acquiescence is not a defence to conduct that would otherwise be an offence. This means that a person's consent or acquiescence to travel for work is of no relevance when proving a trafficking offence. Implicit in the Act is an assumption that migrant

³⁵ Richard Steen et al. 'Trafficking, sex work, and HIV: efforts to resolve conflicts' (2014) *The Lancet* 385, 94-96.

workers have no agency, free will, and can be treated as minors who cannot make decisions for themselves.

Support for Trafficked People is currently conditional upon a sex workers' 'contribution to a criminal investigation'. This means that trafficked people can only access support if they agree to cooperate with police, are referred by police to the support program, and make a 'contribution' to a prosecution case. Making support conditional upon police assistance limits the willingness and ability of exploited people to access support and justice. Trafficking investigations and prosecutions are lengthy, invasive and difficult for victims of exploitation to go through. Further, migrant sex workers involved in trafficking investigations then face increased immigration scrutiny if they want to return to Australia. They are returned by the Australian government to their home country, their debt remains, and they have reduced means of repaying the debt, leading to increased vulnerability and an increased reliance on traffickers for future travel. Of further concern is that to be eligible for the Support Program the person identified as a potential trafficked person must be an Australian citizen or hold a valid visa further adding to that person's vulnerability and reliance on a prosecution moving forward.³⁶

There is a need for avenues of statutory compensation that sex workers are able to access, to redress exploitative work conditions that do not require contribution to a criminal investigation and provide access to services for sex workers affected by trafficking-related crimes who do not wish to go to the police. Migrant sex workers who experience poor working conditions often do not have access to industrial rights mechanisms for fear of prosecution or deportation. The Fair Work Ombudsman provides remedies regardless of a persons' citizenship status and is only obliged to report information to DIBP that arises through FWO's monitoring of 457 visas.³⁷ However, in most cases, sex workers are only able to recover minimum wage, rather than the full amount they're owed.

The goal of obtaining more successful prosecutions needs to be seriously re-examined. In a policy/legal framework in which sex workers face discriminatory visa requirements, do not have access to safe migration, do not have equitable access to industrial rights mechanisms, fear police because of regular raids, detention and harassment, and are isolated from health and support services, these laws do not assist actual victims of exploitation or trafficking. Support for workers who have been subject to exploitative work conditions must be accessible without the need for involvement in a trafficking prosecution.

The flawed nature of the current approach is highlighted in the experiences of this culturally and linguistically diverse (CALD) peer educator;

"One time sex workers came to our service. Someone from our service rang the trafficking support program because they thought that is what they should do. Workers from the support program came and then immediately called the AFP and we have no idea what happened! It was out of control. The sex workers were so frightened and they said they only wanted to recover unpaid wages! Everything was out of control. There was no one who speak their language there to explain or no explanation happen at all. We see many other workers from the same place who had no issue there so it was a disagreement

³⁶ Australian Government, 'Trafficking in Persons: The Australian Government Response 1 July 2014 – 30 June 2015', The Seventh Report of the Anti-People Trafficking Interdepartmental Committee, p33.

³⁷ *Migration Act 1958* (Cth).

between the workers and boss. But as soon as we rang the support program we never heard anything again and never see the workers again, even though I speak their language and they had trusted me to give support. I think they were shocked when police suddenly show up. I heard much later that everyone was deported.”

Evidence shows that increasing regulation, policing and surveillance are not effective approaches to combating trafficking or exploitation for the small number of cases that have been identified. This approach has been adopted for years with the stated aim of investigating trafficking in the sex industry but with no positive outcomes. Instead it has shown to increase stigma and discrimination against migrants and decrease their willingness to access support in the event of exploitation and trafficking. Any approaches to trafficking must be rights based and support prevention of the circumstances that create vulnerabilities to trafficking such as access to safe migration, translated information and services.

Other Related Issues

The practice of peer sex worker organisations providing peer support to sex workers and outreach to sex worker workplaces has successfully supported a culture of occupational health and safety whereby sex workers can access information and support when needed.³⁸

Peer education and support in Australia, by and for sex workers, has been successful in creating positive norms in the sex industry and promoting a culture where sex workers can seek support if required. Evidence supports that decriminalisation has brought improved work safety, high rates of safer sex practices, low rates of sexually transmitted infections, and no evidence of organised crime or serious group based offending on an ongoing basis. Decriminalisation means sex workers can access police and other justice support in the event of a crime.

The success of a sex worker self-regulatory board (SRB) in India was recognized in *The Lancet* as part of their series on sex work and HIV. The article notes that the SRB “reports better anti-trafficking and antiviolence results at every stage—identification, protection, case management, and follow-up—compared with the raid and rescue model” and “shows substantial advantages that can result from building an anti-trafficking response on a strong community platform with developed peer networks.”

³⁹ The article also explains the lack of success of raid and rescue models:

“Common so-called raid and rescue actions and related police responses destabilise sex worker communities and drive sex workers underground, increasing vulnerability and risk for all sex workers, disrupting HIV and STI prevention efforts, impeding access to services, and severing relations with

³⁸ B. Donovan, et al. *The Sex Industry in New South Wales: A Report to the NSW Ministry of Health* (2012) Kirby Institute, University of New South Wales, Sydney.

³⁹ Richard Steen et al. ‘Trafficking, sex work, and HIV: efforts to resolve conflicts’ (2014) 385 *The Lancet*, 94-96.

service providers. Such actions often fail to uphold human rights or improve the situation of sex workers who have been trafficked, and have not been critically assessed.”⁴⁰

A decriminalised environment supported by sex worker peer organisations providing culturally and linguistically appropriate sex worker peer education is the best way to support good working conditions and prevent organised crime infiltration and trafficking. The outcomes of a study of migrant sex workers in Australia have highlighted the “intersection of social and structural barriers that may marginalise migrant sex workers from accessing services and resources, such as the stigma associated with sex work, limited access to safe migration pathways, fear of deportation and language barriers.”⁴¹ Peer projects like the Scarlet Alliance Migration Project are key in facilitating the effective link between affected migrant sex worker communities and governments. Investing in the expertise and established partnerships of the Migration Project is a cost-effective, evidence based approach to trafficking policy.

Conclusion

Decriminalisation is world renowned as a best-practice model, recognised by the United Nations Secretary General, United Nations Population Fund, UNAIDS and sex worker communities globally as best for sex worker occupational health and safety, industrial rights and human rights. Since decriminalisation, NSW has achieved ‘one of the healthiest sex industries’ ever recorded,⁴² including among migrant sex workers. Evidence from the Kirby Institute, Australia’s National STI and HIV Strategies and case studies demonstrate that decriminalisation has brought improved work safety, high rates of safer sex practice, low rates of sexually transmissible infections, low incidence of trafficking and no evidence of organised crime. Evidence shows that these health and safety outcomes are *because* of decriminalisation, community-driven health promotion and peer education.

Recommendations

1. Scarlet Alliance recommends the decriminalisation of sex work, sex workers’ workplaces and clients across Australia. The outcomes of decriminalisation are significant and cannot be assured under any alternative model. They include:
 - a. Exceptionally good public health outcomes and low rates of STIs and HIV (recognised by Australia’s National Strategies and the Kirby Institute Annual Surveillance Report);⁴³

⁴⁰ Richard Steen et al. ‘Trafficking, sex work, and HIV: efforts to resolve conflicts’ (2014) 385 *The Lancet*, 94-96.

⁴¹ L. Renshaw, J. Kim, J. Fawkes, and E. Jeffreys, ‘Migrant sex workers in Australia’ (2015) *AIC Reports Research and Public Policy Series* 131, xi.

⁴² Professor Basil Donovan, ‘The Sex Industry in NSW’ (Media Release, 23 March 2012).

⁴³ Australian Government Department of Health and Ageing, *Sixth National HIV Strategy 2010-2013*, Commonwealth of Australia, Canberra, 2010, 16;

- b. No evidence of organised crime (recognised by the Land and Environment Court);⁴⁴
 - c. Better access to Occupational Health and Safety (WorkCover and NSW Health worked with sex workers to create the Health and Safety Guidelines for Brothels, which has been translated to Thai, Chinese and Korean);⁴⁵
 - d. No increase in the size of the sex industry (Kirby Institute report to Ministry of Health);⁴⁶ and
 - e. More transparent operation of sex industry businesses and increased access to support for all sex workers, including migrant sex workers, reducing the opportunity for exploitation.
2. Scarlet Alliance recommends preventative approaches that address the circumstances that create trafficking be pursued over criminal justice approaches. Approaches to trafficking prevention must be rights based and support prevention of the circumstances that create vulnerabilities to trafficking such as access to safe migration, translated information and services.
3. Scarlet Alliance recommends that support for sex workers who have experienced labour exploitation or trafficking must not be contingent on the participation of that person in a trafficking investigation and prosecution. Making support conditional upon assisting police limits the willingness and ability of exploited people to access support and justice, undermines the effectiveness of trafficking prevention policies, and compromises trafficking cases.
4. Police raids of sex industry businesses violate sex workers' human rights, and are bad practice. Violations of sex industry regulations are not trafficking offenses, and should not be treated as such. Monitoring sex industry businesses under the guise of trafficking prevention harms sex workers, and is the result of police acting on perceptions rather than responding to evidence. Current police responses harm sex workers, not traffickers, do not prevent trafficking and do nothing to help people who have been trafficked or experience labour exploitation.
5. Scarlet Alliance recommends the Australian migration system undergo reform in order to allow for safe migration for sex workers. At present, conditions and vulnerability for trafficking are created by Australia's discriminatory immigration policies, which disadvantage workers from low-income countries, and create a lack of opportunities for sex workers to access migration pathways. For this reason, sex workers may engage a third party to assist in complicated visa applications and may incur a debt in order to travel; translated documentation, peer capacity

Australian Government Department of Health and Ageing, *Second National STI Strategy 2010-2013*, Commonwealth of Australia, Canberra, 2010, 16;

Kirby Institute, HIV, Viral Hepatitis and Sexually Transmissible Infections in Australia Annual Surveillance Report, University of New South Wales, 2011, p8, Figure 46, Figure 34.

⁴⁴ *Martyn v Hornsby Council*, cited in Nothing About Us Without Us, 'North Sydney Council Prohibits Home Occupation (Sex Services) in All Zones under the New Draft LEP'.

⁴⁵ NSW Government and Workcover, 'Health and Safety Guidelines for Brothels'.

⁴⁶ B. Donovan, et al. *The Sex Industry in New South Wales: A Report to the NSW Ministry of Health* (2012) Kirby Institute, University of New South Wales, Sydney.

building partnerships and prevention programs with sex worker organisations in country of origin, such as the partnership of the Migration Project and Empower Foundation would enable migrant sex workers to access visas independently would end sex workers reliance on third parties in order to engage with an unnecessarily complex and discriminatory immigration process.

6. The way that working hours are calculated for student visa holders has created significant issues for migrant sex workers who hold student visas; particularly when sex workers have been given conflicting information about how hours are calculated. Currently “working hours” are calculated as when a sex worker is rostered on shift, even if there were no jobs on that shift and therefore no wages earned. Sex workers have breached their 40 hour per fortnight work restriction by being on “shift” even if their actual hours worked earning an income was far less than the allowed hours. Scarlet Alliance recommends review of the working hours policy for student visas to ensure that only hours actually spent working are factored into allowed work hours and that the policy is applied uniformly.
7. General public campaigns targeted at raising awareness of sex industry trafficking have done little more than increase stigma and discrimination against sex workers, particularly migrant sex workers, and spread misinformation. Awareness raising campaigns have sensationalised trafficking, have not been evidence based, and have diverted resources that could be used to actually support people who have experiences trafficking or labour exploitation. Awareness raising must be accurately targeted, tailored appropriately and evidence based, not based on a misperception of trafficking prevalence and risk. Awareness raising by bilingual peer educators as facilitated by the Migration Project is effective in disseminating accurate information relevant to the realities of migrant sex workers lives.
8. Culturally and linguistically appropriate peer education has demonstrated its effectiveness in addressing sex worker isolation and providing information, referral and support when needed. Scarlet Alliance recommends further resourcing for sex worker peer organisations, particularly CALD and migrant sex worker projects, as essential to maintain and amplify the capacity of these organisations to ensure the working conditions of sex workers and reduce the vulnerability of migrant sex workers to trafficking.
9. Migrant sex workers are key stakeholders in trafficking prevention policies, and the experts on their lived experiences and provide invaluable contributions to trafficking labour exploitation projects and initiatives. The support of peer migrant sex worker projects such as the Scarlet Alliance Migration Project is a cost-effective practical way for the government to support trafficking prevention efforts in Australia. Scarlet Alliance recommends ongoing government support for the Migration Project is essential to facilitate practical policies and initiatives to address trafficking and labour exploitation.