



**Australian  
Sex Workers  
Association**

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Mr Stephen Howells  
[employercompliance@immi.gov.au](mailto:employercompliance@immi.gov.au)

Dear Mr Stephen Howells,

RE: Review of Employer Sanctions Legislation – Combating Illegal Work in Australia

Thank you for the opportunity to comment on creating a simpler framework for temporary and permanent entry to Australia on behalf of Scarlet Alliance, the Australian Sex Worker Association Inc. Formed in 1989 Scarlet Alliance represents sex workers and Australian State based sex worker community organisations, projects, networks and groups at a national level. Through its objectives, policies and programs Scarlet Alliance aims to achieve equality, social, legal, political, cultural, health and economic justice for past and present workers in the sex industry.

Scarlet Alliance and our membership are engaged in supporting migrant sex workers health; human rights, and fair and safe migration to Australia. Our outreach, peer support, community development and cross cultural work has encompassed many language groups throughout the more than two decades of our work. Currently our focus reflects the main language groups of Asian background migrant sex workers in Australia; Thai, Chinese and Korean.

Accessing fair visas for migrant sex workers to enter Australia is difficult for sex workers. Lack of information translated into relevant languages is part of the problem, leading sex workers to opt for third party traffickers rather than come to Australia independently. For this reason some sex workers believe they are doing the right thing (ie their visa allows them to work) when actually their visa may not allow them to work – and vice versa. A third party migration agent, trafficker or contractor may not properly inform sex workers of what their visa allows them to do in Australia. As such migrant sex workers may be unknowingly working illegally and not aware of the crimes they are contributing to.

Sex workers face arbitrary discrimination on the basis of being suspected victims of sex trafficking. As one advocate has put it, “It is easy for an ugly Australian to gain a visa but much more difficult for a beautiful Thai woman.” (Empower Foundation, Thailand, at a recent Trafficking policy meeting in Prague, June 2010).

Recent partnership work by our organisation with Andrew Bleeze, Kim Reichelt and Beth Powell from DIAC aims to overcome some of these issues. Scarlet Alliance is investing heavily in translation of visa subclasses relevant to migrant sex workers. However, the employer sanctions aimed at fining and criminalising businesses associated with employing migrants have only served to drive the practise of migrant sex work further underground rather than preventing it from occurring.

Thank you again for the opportunity to submit our concerns and ideas,

Elena Jeffreys  
President  
Scarlet Alliance, Australian Sex Workers Association  
0420 315 542

Scarlet Alliance, Australian Sex Workers Association, through our objectives, policies and programs, aims to achieve equality, social, legal, political, cultural and economic justice for past and present workers in the sex industry, in order for sex workers to be self-determining agents, building their own alliances and choosing where and how they work.

Scarlet Alliance works towards sex worker rights (legal, health, industrial, civil) and uses [health promotion](#) approaches to achieve this. The tools Scarlet Alliance recognises as best practices include peer education, community development, community engagement, advocacy etc.

Our membership includes State based Sex Worker Organisations and Projects throughout Australia and ensures we are able to represent the issues affecting our members and sex workers Australia wide.

Australia has very low rates of HIV/AIDS amongst sex workers, due to response by sex workers in partnership with Scarlet Alliance members, community based sex worker organisations and the successful implementation of health promotion.

### 绯红联盟会 (Scarlet Alliance) –

澳大利亚性服务工作者协会公司，其宗旨在于通过我们的目标、政策和计划为过去和现在的性服务行业工作者争取平等以及社会、法律、保健、政治、文化、经济上的公正，使性服务工作者成为独立自主人士，成立自己的联盟，并自己选择工作地点和方式。我们在全国范围的层次上提出影响性服务工作者的议题。

绯红联盟会的会员遍布澳大利亚全国各地，他们其中有性服务工作者个人、社区层的性服务工作者组织、与我们持有相同思想观念的项目和团体。我们具有肯定的行动政策，以确保我们的会员、职员和行政长官由来自每个层面的性服务工作者组成，并且

我们在很大程度上依据性服务工作者的信息意见进行一切工作。

从现实上讲，这意味着我们要为性服务工作者遭受的歧视和污蔑声张正义。我们为更平等的法律进行游说、制定政策及立场文件、组织讨论会、宣传信息，提高对影响性服务工作者问题的大众意识，并打破社会上的成见。

我们为性服务工作者争取权利运动的其中一些方式是利用媒介、出版物、期刊、公共活动等以提高性服务工作者团体的知晓度和可见度。

สการ์เล็ต อะไลอันซ์ (Scarlet Alliance) เป็นสมาคมคนทำงานธุรกิจค้าบริการทางเพศในประเทศออสเตรเลีย องค์กรของเรามีวัตถุประสงค์, นโยบาย และโครงการในงานด้านต่างๆเพื่อสนับสนุนให้เกิดความเสมอภาค สร้างความยุติธรรมด้านสังคม ด้านกฎหมาย ด้านสุขภาพ ด้านการเมือง ด้านวัฒนธรรม และด้านรายได้แก่คนทำงานบริการทางเพศทั้งในอดีตและปัจจุบัน

ทั้งนี้เพื่อสนับสนุนให้คนทำงานบริการทางเพศมีสิทธิในการตัดสินใจในการดำเนินชีวิตได้ด้วยตนเอง, เสริมสร้างสมาคมเครือข่ายของคน และ

เลือกสถานที่ที่ทำงานหรือวิธีการทำงานได้ด้วยตนเอง องค์กรของเราเป็นตัวแทนเพื่อการแก้ไขปัญหาที่ส่งผลกระทบต่อคนทำงานบริการทางเพศในระดับชาติ

สมาชิกของสการ์เล็ต อะไลอันซ์ มีสาขาอยู่ทั่วประเทศออสเตรเลีย องค์กรของเราประกอบด้วยคนทำงานบริการทางเพศอิสระ,

องค์กรคนทำงานบริการทางเพศระดับชุมชน, โครงการและกลุ่มคนที่มีปรัชญาการทำงานบริการทางเพศเช่นเดียวกับองค์กรของเรา

เรามีนโยบายที่ยืนยันให้สมาชิกทุกคน, เจ้าหน้าที่ และผู้บริหาร เป็นคนทำงานบริการทางเพศทั้งหมดในทุกระดับชั้น

ดังนั้นข้อมูลความคิดเห็นที่กำหนดการทำงานของเราจึงได้มาจากคนทำงานบริการทางเพศเป็นส่วนใหญ่

ในทางปฏิบัตินั้น องค์กรของเราเป็นปากเสียงในการต่อต้านการเลือกปฏิบัติและการประณามคนทำงานบริการทางเพศ, รณรงค์ให้กฎหมายมีความเสมอภาคมากขึ้น,

จัดทำรายงานด้านนโยบายและมุมมองด้านต่างๆ,

จัดประชุมเชิงปฏิบัติการและให้ข้อมูลเพื่อเป็นการส่งเสริมความรู้ความเข้าใจถึงประเด็นปัญหาที่ส่งผลกระทบต่อคนทำงานบริการ และลบล้างอคติเดิมๆของสังคม

ในฐานะที่องค์กรของเราเป็นส่วนหนึ่งของการรณรงค์เพื่อสิทธิของคนทำงานบริการทางเพศ เราได้ใช้สื่อมวลชน, สิ่งตีพิมพ์, วารสาร และ กิจกรรมต่างๆทางสังคม เพื่อสร้างความรู้ความเข้าใจ และแสดงความคิดเห็นของคนทำงานบริการทางเพศให้ปรากฏต่อสังคม

**Employers who are migrants from non-English speaking background are not using VEVO. VEVO is not translated and is not well known.**

Australia's visas are quite complex in language and difficult to truly understand. The Government has information on the website<sup>i</sup>, but most of them are in English and difficult to understand. The information is suitable for people who have academic backgrounds.

When VEVO was first launched, Scarlet Alliance saw this as a tool for sex workers to be more empowered with knowledge about their visa status and their rights to work in Australia. We promoted it to our membership.

Due to VEVO being only in English it has been of little or no use to our membership, because the sex workers who would use it the most do not read or write English.

As a tool it has failed in assisting sex workers to date. We believe if it were translated then more sex workers and sex worker businesses would use it.

*Scarlet Alliance Migration Project, notes from outreach and consultation with migrant sex workers:*

It is common for sex work businesses to not have a computer to check on a person's visa status (ie through VEVO). VEVO is only in English, so when the boss who speaks English as a second language tries to check a person's visa status they cannot understand the website.

A situation arose when a boss looked at a person's passport but was not able to tell if the passport was legitimate. How then does the boss make a decision about the person working there?

There is little trust from sex workers, the sex industry, to DIAC and DIAC staff, so bosses are not likely to ask DIAC for information about how to comply with the laws. This doesn't mean that they don't want to comply, but they are unlikely to report a person trying to get a job who is not eligible for work in Australia. Rather they will simply say no to the person.

The laws and regulations surrounding this area in Australia are written only in English and inaccessible to people who don't read or write English. This means that business owners may be unaware of their obligations.

When a migrant sex worker asks for a job, the boss may feel they are doing the person a favour, and will give them a job to be nice to the sex worker. However the boss does not want to attract criminal prosecution and would not deliberately break the law.

**PENALTIES**

The criminal sanctions have given the employer more power to control the workplace of migrant sex workers. This can only result in worse outcomes for human rights and industrial conditions.

Scarlet Alliance is concerned that the penalties for employers and businesses are too high. Migrant sex workers already are caught up in the criminalisation of all activities associated with contract labour, debt contracts, trafficking, and third party agents in general. This means there is pressure on their industry from AFP and DIAC under the guise of trafficking prosecution.

The increased sanctions has created a new layer of criminalisation which we believe does not match the seriousness of the crime. While we understand that the general public have (perhaps inflated) concerns about illegal migration, this does not justify criminalising what we believe could be overcome via policy, namely improvements to the visa system in Australia.

The penalties for trafficking and exploitation are already incredibly high in Australia. We don't feel it is appropriate to also have added increased penalties for employing people without a valid work visa.

**TRANSLATION OF MATERIALS**

Scarlet Alliance notes on page 7 of the briefing paper on this issue the claim that a poster in 8 community languages assists employers to understand their obligations. Scarlet Alliance has never seen these posters, and our membership have never been offered these posters for distribution on outreach. We would

like to assert that such materials may be beneficial to sex worker employers – if they had been made available to us.

We also note that we are in regular contact with DIAC and at no time have any of the compliance staff mentioned or offered these posters to us or our membership.

#### **INCREASED CRIMINALITY = DECREASED SERVICE PROVISION TO ILLEGAL MIGRANT SEX WORKERS**

Sex worker organisations conduct regular outreach, including multicultural outreach to sex workers of Thai, Chinese and Korean background. Our peer educators are migrant sex workers also, and speak the languages of the sex workers they are outreaching to.

The increased penalty places the employer at greater risk if they are found to be supporting the employment of an illegal migrant sex worker.

When outreach is occurring an employer may choose to tell an illegal worker to go into a workroom and pretend to be busy in a booking so that the outreach team does not get to talk to the illegal worker. Even though we do not ask people what their visa status is, a employer may choose not to risk the illegal worker being discovered.

Many sex workers who have travelled here as migrants and do not speak English may not be aware of the laws, safe sex, their rights, and other issues that are common knowledge to local sex workers. Sex workers here illegally may require even MORE outreach support than those who are here legally.

Increased penalties has the effect of distancing illegal migrant sex workers from outreach services.

#### **CONFIDENTIALITY**

Previously when migrant sex workers came to Australia they were under no obligation to share their passport or visa arrangements with their employer. Due to the Employer Sanctions, DIAC now expect employers to check a persons passport and visa. This becomes a breach of confidentiality for the sex worker – and may put the sex workers safety at risk. Where as previously they were able to keep their personal information private – now DIAC require it to become more public.

#### **EMPLOYER SANCTIONS DO NOT HAVE ANY MEASURABLE EFFECT ON REDUCING THE EXPLOITATION OF ILLEGAL WORKERS**

The claim that the Employer Sanctions Legislation reduces exploitation cannot be made without:

- an evidence base that demonstrates that illegal workers are being afforded lesser working conditions, pay and entitlements than legal workers and
- establishing a causal relationship between the enforcement of the Employer Sanctions Legislation and the restitution of illegal workers' conditions, pay and entitlements.
- in the experience of Scarlet Alliance the Employer Sanctions Legislation has not reduced the exploitation of sex workers.

#### **COMMENTS ON THE TERMS OF REFERENCE OF THE REVIEW**

The effectiveness of the Employer Sanctions Legislation in reducing exploitation of illegal workers cannot be measured by this review as the terms of reference explicitly excludes any consideration of illegal workers' working conditions, pay and entitlements.

This will require more detailed information and perhaps resourcing of groups such as Scarlet Alliance to try to measure any changes in conditions. We are working on a research project at the moment that will compare work conditions for Chinese sex workers (2006-2007) with work conditions of Chinese, Thai and

Korean workers (2010). This may offer some insight into the impacts of the Employer Sanctions Legislation in recent years, however we are not reporting our results until mid 2011.

#### **COMMENTS ON RATIONALE UNDERPINNING THE DISCUSSION PAPER**

There is no evidence to prove that illegal workers in the sex industry take jobs away from Australian citizens, permanent residents or temporary residents with the right to work. Contrary to this stereotype, migrant sex workers create their own niche service delivery in sex work in Australia. It is not in direct competition to those of us who have valid work visas.

There is no evidence that illegal sex work work undermines efforts to build a strong, secure and fair economy. To the contrary, Lin Chew in her book "The Sex Sector" argued that migrant sex work in Asia is contributing to the economy of developing countries.

#### **COMMENTS ON THE STEREOTYPES PROMOTED IN THE BRIEFING PAPER**

The conflation of illegal work in the sex industry with human trafficking has lead to may perverse outcomes including the criminalisation of migrant sex work generally; even those who are complying with migration and sex work laws. Scarlet Alliance is concerned that the briefing paper has approached these issues in a particularly insensitive way. We look forward to working with DIAC in the future to better frame these arguments in ways that do not discriminate against or spread misinformation about migrant sex workers in Australia.

The number of sex workers in Australia illegally is very small. Extensive research over a ten year period in Sydney found that more than half of migrant sex workers were visiting Australia on a valid work visa on entry, and at the time of survey only 4.8% were overstaying their visa.<sup>ii</sup> Interestingly 4.8% paid an agent in Australia for their visa – this may call into question the quality of migration advice that sex workers are receiving. Sex workers may not be intending to overstay or be on the wrong visa but a lack of access to information may contribute negatively to their visa status. Notably the prevalence of contract workers was also shown to have decreased to less than 9% - we believe that information provided systemically through sex worker outreach has resulted in these low figures of contract work.

Our prevention work includes distribution of information in relevant languages. DIAC has a gap in good translated resources that we are working and lobbying to fill. However this gap may be contributing to the low but important numbers of sex workers who are working on the wrong visa.

#### **COMMENTS ON POLICY OBJECTIVES**

The comment that 'some forms of illegal work may be of more concern than others' and particularly the examples given that backpackers overstaying their visa may be of lesser concern than those from developing countries who seek a better life by working with no visa at all exemplify the racially bias implementation of the legislation.

There is a distinct lack of visa options for migrant workers from developing countries when they plan their travel to Australia. This lack of options forces workers to consider going through third party agents, debt contractors and/or traffickers. The less money a person has to invest in their documentation, the more likely it is that they will be vulnerable to third party agents and others making migration and visa decisions on their behalf.

The vulnerability comes from problems that can be found within our visa system. There is nothing inherently different about the migration motivation of a Thai person than that of a British citizen. However the options that a British citizen has means that they do not have to go into exorbitant debt in order to travel.

We encourage you to view a ten minute presentation on Thai sex workers in Australia by Jum Chimkit, presented to the Scarlet Alliance National Symposium in Brisbane 2008.

<http://gigtv.rampms.com/gigtv/Viewer/?peid=f78ffea7ab1a47dea4f08e1393d38219> This presentation outlines some of the life realities and motivations of Thai sex workers when they consider coming to Australia.

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<sup>i</sup> [www.immi.gov.au](http://www.immi.gov.au)

<sup>ii</sup> Demographic, migration status, and work-related changes in Asian female sex workers surveyed in Sydney, 1993 and 2003, C. Pell, J. Dabbhadatta, C. Harcourt, K. Tribe (*Sydney Sexual Health Centre, Sydney Hospital, New South Wales*), C. O'Connor (*Central Sydney Sexual Health Service, Royal Prince Alfred Hospital, New South Wales, and School of Public Health, University of Sydney, New South Wales*), *Published in the Australian and New Zealand Journal of Public Health, Vol 30, No 2, 2006 pp157 – 162.*