

**Australian
Sex Workers
Association**

Demanding sex worker rights in Australia

**sex work
is WORK**

www.scarletalliance.org.au

The Principles for Model Sex Work Legislation

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Principles for Model Sex Industry Legislation, 2000 Edition:
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About Scarlet Alliance

Scarlet Alliance is the Australian Sex Workers Association. Through our objectives, policies and programs, Scarlet Alliance 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 our own alliances and choosing where and how we work.

Scarlet Alliance was formed in 1989. Scarlet Alliance is Australia's national peak body representing a membership of individual sex workers, and sex worker networks, groups and community-based projects and organisations from around Australia. Each year a National Forum and Annual General Meeting is held, where key policies are developed, an Executive and spokespersons are elected and workshops on issues for sex workers are conducted.

Scarlet Alliance is a leader when it comes to advocating for the health, safety and welfare of workers in Australia's sex industry. Scarlet Alliance member organisations and projects have the highest level of contact with sex workers in Australia of any agency, government or non-government. Throughout projects and the work of our membership we have very high access to sex industry workplaces in the major cities. Some of our sex worker organisations and projects within Australia also have multicultural or CALD (Culturally and Linguistically Diverse) project workers and Scarlet Alliance has a migration project employing multilingual project staff.

Scarlet Alliance has played a critical role in informing governments and the health sector, both in Australia and internationally, on issues affecting workers in the Australian sex industry. In addition, Scarlet Alliance has been active in promoting internationally the principles and approaches which have been effective in minimising the transmission of HIV and STIs amongst Australian-based sex workers and our clients. Scarlet Alliance represents sex workers on a number of Commonwealth committees and ministerial advisory mechanisms.

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Introduction

About the Principles

The Principles for Model Sex Work Legislation comprehensively outline core principles in sex work law reform. They act as an integral source of information and reference for politicians, government bodies, advocates, health providers, community sectors, current and potential sex workers, and sex industry owners and managers. These Principles have been developed by sex workers. They are the outcome of a five-stage consultation process with the Scarlet Alliance membership, including sex workers from a range of organisations and locations and with diverse experiences and backgrounds. The purpose of this process was to ensure the Principles reflect the voices, needs, objectives and consensus of sex workers in Australia. Putting sex workers voices at the centre of policy is a key step in creating law reform that is ethical, effective and sustainable. The Principles reflect contemporary research, literature and personal experiences, and are essential for anyone engaging in law reform or advocacy on sex work issues.

Terminology

The phrase 'sex work' was coined by Carol Leigh in the late seventies, and remains the preferred terminology of sex workers in Australia. Carol Leigh first used the phrase 'sex work' at a women's conference in the United States, during which there was a workshop titled 'Sex Use Industry.' Leigh recalls, 'The words stuck out and embarrassed me. How could I sit amid other women as a political equal when I was being objectified like that, described only as something used, obscuring my role as an actor and agent in this transaction?'¹ Leigh suggested the title be changed to 'Sex Work Industry', because the term sex worker better described our profession.

Sex workers in Australia reject the term 'prostitute' and other oppressive language such as 'prostituted woman', which sees sex workers as objects without agency or choice, and makes invisible all sex workers who do not identify as women. Today, the gender-neutral term 'sex worker' is used internationally by media, academics, health service providers and advocates. The use of sex worker-preferred terminology is fundamental to sex worker self-determination, and reflects the central premise that sex work is a legitimate form of occupation, deserving of the same rights and protections as other professions. The Australian Human Rights Commission report on addressing sexual orientation and/or gender identity discrimination notes the importance of 'using appropriate, inclusive and empowering terminology'.²

International best practice approaches to sex work legislation

Increasingly, international policy supports the decriminalisation of sex work. It demonstrates that the best regulatory approach is a human rights approach

that treats sex workers as partners in health promotion and education. The research establishes that excessive regulation actively negates the positive health outcomes of peer education and community health development. United Nations Secretary General Ban Ki-Moon, quoted in the UNAIDS Guidance Note on HIV and Sex Work, states:

In most countries, discrimination remains legal against women, men who have sex with men, sex workers, drug users, and ethnic minorities. This must change. I call on all countries to live up to their commitments to enact or enforce legislation outlawing discrimination against people living with HIV and members of vulnerable groups... In countries without laws to protect sex workers, drug users, and men who have sex with men, only a fraction of the population has access to prevention. Conversely, in countries with legal protection and the protection of human rights for these people, many more have access to services. As a result, there are fewer infections, less demand for antiretroviral treatment, and fewer deaths. Not only is it unethical not to protect these groups: it makes no sense from a public health perspective. It hurts us all.³

The UNAIDS report on the Global AIDS Epidemic 2010 states that 'countries should now take action to decriminalize sex workers.'⁴ The Australian Government Sixth National HIV Strategy 2010-2013 states that 'Australia's approach to HIV/AIDS has demonstrated the protection of human rights to be compatible with and *essential* to the effective protection of public health.'⁵ The Commonwealth HIV/AIDS Action Group and the International HIV/AIDS Alliance write:

Removing legal penalties for sex work assists HIV prevention and treatment programmes to reach sex

workers and their clients. Rather than arresting sex workers and closing down brothels, the most effective approach to preventing HIV is to view sex workers as partners in prevention, and encourage them to engage in sexual health promotion as peer educators and advocates.⁶

In their paper on Building Partnerships on HIV and Sex Work (report from the Asia Pacific Regional Consultation), UNAIDS and UNFPA (the United Nations Population Fund) recommend that the meaningful participation of sex workers is crucial in developing policy ('Nothing about us without us'). They state that 'successful programmes on making sex work safer and preventing HIV include sex workers as partners in development and implementation', and note that stigma and discrimination against sex workers and our families impedes our human rights. UNAIDS and UNFPA 'insist on universal rights for sex workers' whilst 'removing criminal laws against sex workers' to promote access to justice and create an 'enabling legal and policy environment'.⁷ The paper states that '[v]iolence against sex workers, including by state actors, are human rights violations that should be taken up by human rights institutions'.⁸

Experience in the region shows that punitive laws, policies and practices around sex work do not reduce

the number of people buying and selling sex but they do form barriers to sex workers' access to services and they change the shape (venue, methods) of the sex industry in ways that increase vulnerability.⁹

The 2012 UNAIDS, UNFPA and UNDP (UN Development Fund) report *Sex Work and the Law in Asia and the Pacific* recommends enabling laws and practices that are supportive of HIV responses, including:¹⁰

- 🚩 community mobilisation of sex workers, sex worker unions and self-regulatory initiatives;
- 🚩 labour laws regulating the sex industry as an occupation;
- 🚩 anti-discrimination laws; and
- 🚩 legal recognition of the human rights of sex workers, under constitutional provisions or other human rights legislation.

International evidence reveals that only rights can stop the wrongs against sex workers. As the Hon. Michael Kirby AC CMG states, 'We will insist on human rights for all, including for sex workers. Nothing else is acceptable as a matter of true public morality'.¹¹



Regulatory frameworks in Australia and overseas

In Australia, each state and territory administers their own sex work legislation. Broadly, these regulatory models fall into one of three legal frameworks: criminalisation, licensing and decriminalisation. In practice, each jurisdiction implements these models uniquely, and all Australian jurisdictions employ a mixed combination.

Criminalisation

Under a criminalised system, part or all of the sex industry may be illegal. For example, sex work may be illegal, both sex workers and our clients may be prosecuted, workplaces may be illegal, and sex workers may be criminalised for working with a Sexually Transmissible Infection (STI) or HIV. Criminalisation, as Ally Daniel writes, ‘transforms the selling of sex between consensual adults into a criminal act’.¹² Criminalisation isolates sex workers, who may avoid health and other services to avoid stigma, discrimination and prosecution. It diminishes opportunities for peer education, and police role in regulation means that sex workers are less likely to seek police assistance in emergency situations. Criminalisation actually increases the potential for the transmission of HIV and STIs, and fails to reduce the size of the sex industry.

Licensing

Licensing inevitably creates a ‘two-tiered system’, with some sex workers and businesses able to comply with strict regulation, and the rest unable or unwilling to comply. Under a licensing system, sex workers and business operators may be required to record our names on a police or government department register and sex workers may be subject to mandatory STI and HIV testing. Licensing is sometimes referred to as ‘legalisation’, however the limited options for sex workers and sex industry businesses to establish and work within the limited licensing framework means that large segments of the industry are often forced to operate outside the licensing framework. Sex workers often avoid licensing because it may require us to: work in isolated industrial areas (posing a threat to our safety); disclose our legal names to clients (increasing risk of harassment); obtain

a permanent police record (limiting ability to travel); work alone (reducing access to support); or face forced medical testing (impinging sex worker human rights, confidentiality and privacy). Licensing affects the ability of sex workers to call upon the police if they need assistance. It means that acts which are lawful for non-sex workers become unlawful – and punishable – for sex workers, and sometimes clients.

Decriminalisation

Under a decriminalised system, sex industry businesses are treated like any other business. They are subject to existing regulatory mechanisms, such as: local council planning; zoning and location controls; workers compensation requirements; occupational health and safety standards; and industrial rights obligations. Decriminalisation does not mean *no* regulation. Decriminalisation means *whole of government* regulation. Importantly, police are not involved as regulators at any level unless there is a breach of law. Decriminalisation is endorsed by the Commonwealth Department of Health and Ageing’s National Strategies on HIV and STIs as best practice sex work legislation. Decriminalisation supports the development and enforcement of occupational health and safety standards, access to industrial rights protections, and allows sex workers to organise for better working conditions. The New Zealand experience with decriminalisation shows that decriminalisation does not increase the size of the sex industry, and brings better access to justice, health and safety for sex workers.

Structure

The following chapters set out a number of key principles for model sex work legislation. The topics include myths and stereotypes, decriminalisation, industrial rights and OHS, health promotion and peer education, STI and HIV testing and criminalisation, migration, mobility and freedom of movement, local planning and sex industry businesses, human rights and discrimination, and sex worker consultation, inclusion and self determination. Each chapter is accompanied by a summary of the issues and recommendations for reform. These chapters are a crucial point of reference for anyone engaging in law reform and policy on sex work in Australia.

Scarlet Alliance objectives

- To promote the civil and human rights of past and present sex workers and to work toward ending all forms of discrimination against them;
- To lobby for legal and administrative frameworks which do not discriminate against sex workers;
- To challenge any government at any time when and where it implements legislation, regulations, rules, policies or law enforcement practices which are discriminatory and/or repressive to the rights and autonomy of sex workers;
- To actively promote the right of all sex workers to work in whatever area of their chosen occupation, including street, brothel, escort, private and opportunistic work;
- To actively work towards guaranteeing the right of all sex workers to optimum occupational health and safety provisions. This will promote conditions where safe sex and general health knowledge can be converted to safe work practices. Furthermore, challenge any legislation, policy or process which does not so promote the rights of the worker;
- To strive to eradicate sex worker stereotypes and stigmatisation in the popular consciousness and to communicate the diversity of ideas, opinions and aspirations of past and present sex workers;
- To liaise with international sex worker rights groups in the development of regional and international networks, programs and objectives;
- To support sex workers and sex worker organisations to become more politically active;
- To enhance the capacity of sex workers to participate in advancing their rights and build networks & organisations;
- To gather and disseminate sex industry related information to members;
- To play an active role in Australia's response to HIV/AIDS;
- To provide training and education on issues relating to the Australian sex industry and the migration of sex workers into Australia; and
- To present up to date information on sex work issues at national and international forums.

These objects are undertaken in order to advance sex worker rights.



The Principles for Model Sex Work Legislation . . .

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- 2 Australian Human Rights Commission, *Addressing Sexual Orientation and Sex and/or Gender Identity Discrimination: Consultation Report*, Sydney, 2011, 1.
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Chapter 1

**Addressing Myths and Stereotypes
About Sex Work**

whore

Recommendations for Reform:

- Decriminalisation is the optimal model for sex work legislation. Under a decriminalised framework, sex industry businesses are treated like other businesses, subject to existing regulatory mechanisms, and police are not involved as regulators. All states and territories should decriminalise sex work in their jurisdiction;
- Sex workers continue to face systematic discrimination and denial of our human rights at the hands of Australian law. Sex worker human rights are intrinsically linked to sex worker's ability to negotiate with clients, access essential services and attain satisfactory workplace conditions. State, Territory and Federal Governments should enact comprehensive human rights and anti-discrimination laws to protect sex workers from discrimination;
- Excellent sex worker health is a result of community outreach and peer education. Mandatory testing, disclosure laws and criminalisation of HIV positive sex workers all increase isolation, discrimination and stigma and hinder sex workers' access to health services. Voluntary testing, decriminalisation, enforcement of occupational health and safety standards and peer education remain the best practice approach to health promotion.
- Sex work is treated as a legitimate occupation by a range of industries and government departments, including occupational health and safety, industrial law, taxation, insurance and local planning. Laws that criminalise and license sex work are out of touch with this approach, and act to diminish sex workers' control and autonomy in our workplaces. Legislation must acknowledge that sex work is a legitimate occupation to afford sex workers better control over working conditions and create opportunities for collective organising and negotiation;
- To decrease migrant sex workers' reliance on debt contracts and to support our human rights, the Federal Government should negotiate fair visa systems for those seeking visas to travel to Australia for work and provide accessible information on visa access and conditions in multiple languages;
- Local councils continue to discriminate against sex workers and sex industry businesses through restrictive and stringent planning requirements that do not apply to other commercial businesses. These requirements segregate the sex industry into poorly lit, under-resourced and unsafe areas, and can lead to the harassment of individual sex workers in their homes. Sex work should be treated as legitimate employment, and state governments should fund the development of an education program to inform councillors of the rationale behind decriminalisation; and
- Sex workers are rarely treated as experts on our own lives and professions. Our experiences are erased from legal, political, academic, media and feminist spaces. History has shown that when others speak for sex workers, it results in policies that injure and endanger sex workers. Governments, academics and feminists need to recognise that sex worker involvement in policy, research and debate is valuable and necessary. Listening to and learning from sex workers is essential in developing policies that are evidence-based, transparent, accountable and effective.

Summary of Issues:

- Myths and stereotypes about sex work have acted to harm, isolate and misrepresent sex workers and lead to misinformed policies and laws. Sex work legislation must be based on current epidemiology, research and the experiences of sex workers in Australia;
- Sex work is a skilled occupation. Sex workers do not sell our bodies – we sell a skilled, professional service which involves both the body and mind. Sex workers have skills in negotiation, asserting boundaries and safer sex educating;
- Sex work is not inherently violent, degrading, objectifying or exploitative. Many sex workers experience objectification and exploitation from public misinformed stigmas about sex work, rather than sex work itself. The Anti-Discrimination Commission in Tasmania has ruled that attitudes that sex work is damaging to families and women are discriminatory;
- The best way to empower sex workers is through improving working conditions, human rights, industrial rights, job satisfaction, occupational health and safety and access to services;
- Anti-sex work agendas have had catastrophic effects on the lives of sex workers. They have resulted in the criminalisation of our workplaces, imprisonment of sex workers, forced health testing, compulsory police registration, restraining orders, cavity searches and a lack of access to justice due to police corruption, stigma, isolation and discrimination;
- The sex worker community includes trans and gender diverse sex workers and sex workers of diverse sexual orientations. Depictions of sex work as a cisgendered female occupation means that the experiences of the many trans and gender diverse sex workers are silenced and marginalised;
- Sex workers have important intimate and supportive relationships, including partners, lovers, marriages, kinships, friendships, families, mentors and alliances;
- There are many different kinds of sex work, including private, brothel and street sex work, escorting, massage, stripping, phone sex operating, pornography, web camming, sadism and masochism, bondage and discipline, and sex for favours, goods and accommodation;

Summary of Issues (continued):

- Stigma around sex work is often based on class-based hierarchies that legitimise some kinds of sex work and stigmatise others. Research shows that most brothel and private sex workers have also worked on the street, and that street-based sex workers often have greater autonomy in our workplaces – a high degree of independence, control over one’s prices, low overheads and flexible work hours;
- Although stereotypes exist about sex workers and drug use, the most common drug used among sex workers is tobacco;
- Sex workers have far lower rates of Sexually Transmissible Infections and HIV than the general population, and Australian sex workers have some of the lowest rates among sex workers in the world. Sex workers are safer sex experts and educators;
- Migrant sex workers in Australia are diverse, well educated and have an international outlook. Our rights and wellbeing are best protected by policies focusing on multilingual peer education and prevention of exploitative conditions rather than increased surveillance. Anti-trafficking policies pose a significant threat to migrant sex worker rights, health and safety and act to force the industry underground. Trafficking debates in Australia fail to distinguish between trafficking and sex work. Trafficking is exacerbated by Australia’s hostile immigration policies, including the favouring of specific ‘skilled’ migration from industrialised countries;
- Criminalising the purchase of sexual services (for example, in Sweden), has had no effect in reducing the size of the sex industry, and has instead acted to isolate sex workers and force us into unsafe working conditions; and
- Sex workers have a long history of activism and organising, and have been involved in social movements to end oppressions such as sexism, homophobia, transphobia, ableism, classism and racism. Many sex workers use their work as a site for healing, educative, creative, exploratory, spiritual and feminist practices.

Principles for Model Sex Work Legislation
Addressing Myths and Stereotypes about Sex Work

I think a useful exercise for sex workers to challenge internalised stigma is to look at the things said about sex work and sex workers, and apply it to other professions, or other minority groups, such as Indigenous people, gays and lesbians or people with disabilities. If it feels uncomfortable to make those statements, then why is it acceptable to buy into those beliefs in relation to sex workers?¹

Historically, sex work has been theorised, conceptualised and pathologised through various philosophical frameworks. These paradigms have been instrumental to the ways in which sex work has been regulated and legislated. Sex work has been imagined through feminist, health and religious lenses, and historically managed under the guise of regulating contagious diseases, disorderly houses and undesirable practices. However, these understandings of sex work have been largely divorced from evidence in current epidemiology, research, and the experiences of sex workers in Australia.

Compounded with media attention, popular sensationalism, political expediency and moral panic, these frameworks have replaced the dissemination of productive, informed and accurate information about sex work and sex workers. Myths and stereotypes about sex work have informed public dialogue, government policy, police practices and law reform in Australia and have acted to isolate, harm and misrepresent sex workers. Sex worker blogger Vi writes that there is a distinct ‘history of treating sex workers like we exist independently of community, clients, family and other human beings’:²

When law reform occurs around sex work, politicians and law makers are always saying that they need to take into account the concerns of ‘citizens’ and ‘residents’ (usually in terms of ‘protecting’ them from sex work or keeping it out of their backyards). This is phrasing that ignores the fact that sex workers are *also* citizens and residents. We are members of communities, we vote, and when we are allowed to we pay taxes. We should not be treated as though we exist outside of society.³

Many sex workers feel disenfranchised by public representations of our profession which are often wildly divorced from our daily experiences. Ally Daniel recalls of her first experience in the sex industry, ‘Sex work was not as I had imagined; it was not as I had seen in the media or had read about in books.’⁴ In their study Roberta Perkins and Frances Lovejoy report that sex workers in Australia have a range of different ages, relationship statuses, parental statuses, religious beliefs, education,

Sex workers are also citizens and residents. We are members of communities, we vote, and when we are allowed to we pay taxes. We should not be treated as though we exist outside of society.

previous occupations (including nursing, teaching, office work, arts, housework and sole businesses), parents’ occupations (blue collar, white collar and miscellaneous), residential areas (in NSW coming from areas such as Sydney, Newcastle, NSW South Coast, NSW North Coast, Western NSW, and Southern NSW, as well as interstate), and reasons for entering sex work (including independence, curiosity, supporting children and earning more money).⁵ One sex worker writes, ‘The irony is the anger, betrayal, disempowerment and fear I’ve felt from media portrayals of sex work/ers is a complete contrast to my experience of control, pride, camaraderie and empowerment as a sex worker.’⁶ The following sections correct some common myths and stereotypes about sex work.

Sex work was not as I had imagined; it was not as I had seen in the media or had read about in books.

Sex work is skilled work

Sex work is a skilled occupation often referred to as the world’s ‘oldest profession.’ Recognising that sex work

is *skilled* work is an important part of acknowledging sex work as a legitimate job. At the 15th International AIDS Conference in Bangkok, sex workers from twenty countries engaged in skill-sharing workshops, which included working with condoms and dams, negotiating prices and services, performing STI checks, making risk assessments and establishing boundaries.⁷ Sex work clearly involves negotiating ethical, mutual, consensual sexual experiences, exercising physical prowess, sexual expertise, safer sex practices, and finely tuned perception, intuition and control. Sex workers educate our clients about safer sex, pleasure and anatomy. One sex worker states, 'Sex work has given me many life skills. I am knowledgeable and empowered enough to negotiate safer sex practices both in my working and private life. I have become confident, strong, independent and incredibly adept at setting my own boundaries.'⁸

Sex work has given me many life skills. I am knowledgeable and empowered enough to negotiate safer sex practices both in my working and private life. I have become confident, strong, independent and incredibly adept at setting my own boundaries.

Sex workers reject the concept that we 'sell our bodies'. In providing a skilled, professional service, we use both our minds and bodies, like other forms of work. Many forms of work involve use of the body: labourers use their bodies; professional athletes use their bodies; models use their bodies; dancers use their bodies. Like sex work, these professions receive money in exchange for skilled physical, mental, and often spiritual and emotional labour. Acknowledging sex work as another form of work precludes readings of sex worker as deviant, morally wrong, mysterious or special, and reduces opportunities for sex workers to be pathologised. Instead, it recognises sex workers' agency over when and how we use our bodies and skills. As one sex worker says, 'Navigating sexual touch with a stranger involves excellent communication skills, great boundaries, and an ability to read people.'⁹

Zahra Stardust has written that recognising sex work as

work does not mean, as some Marxist feminists have argued, that sex work is always disassociated from the self in a way that means sex workers are not engaged with its political context or underlying factors. Sex workers do not dismiss our work as 'just a job' – sex work can also be a site of political activism, a catalyst for change, a place of pleasure, a space of healing and a source of community belonging.¹⁰ Sex work is many things to different people. The distinction is, rather, that sex workers are under pressure to constantly *prove* our work *is* work to begin with, in the fight for the decriminalisation of our workplaces.

Ally Daniel writes of her experiences:

Sex work is often seen as an unskilled profession yet I have obtained and used more skills as a sex worker than what I ever did as a therapist or as the coordinator of a child protection service. As a sex worker I run a small business and pay my taxes like any other worker in the world. I also use the same skills as a therapist – listening to and really being there 100% with clients; I'm a negotiator – being clear about what services I provide and what I won't provide; I'm a medical practitioner – I check every client for visible STIs; I'm an educator – I often educate clients about sex and safe sex practices.¹¹

Sex work is not inherently violent, objectifying or exploitative

One of the most harmful misconceptions about sex work that informs policy and law reform is that sex work constitutes violence against women. Anti-sex work feminists have claimed both that sex work *is* violence and *causes* violence, and have argued that sex work is inherently exploitative, violent and degrading, painting sex workers as victims of 'false consciousness' and 'brainwashing' without agency over our own bodies.¹²

The Kirby Institute's LASH (Law and Sexual Health) report to the NSW Health Department in 2012 found that Sydney brothels workers enjoyed levels of mental health that were comparable to the general population.¹³ Discourses that read sex work as violence are often based on assumptions about the sanctity of sex and religious fears about sex outside marriage. Nina Hartley argues that it is not 'demeaning to make a living with my body' and argues that 'anti-female, anti-sex and anti-pleasure' cultural mores stem from religions 'who hanged women who were different'.¹⁴ Così Fabian traces sex work back to ritual, ancient goddess worship and celebration of the Wondrous Vulva.¹⁵ Sex workers argue that sex itself is not

degrading, and should not be scapegoated in attempts to combat sexism. As one sex worker writes, 'Sex is *not* the most intimate experience two people can share.'¹⁶ Another says, 'there is only my limit to the amount of loving that my whole body, mind and soul can partake in.'¹⁷

Many scholars have rejected studies showing a causal link between sex work and violence, misogyny, and gender-based harm. In the 2008 Porn Report, the most comprehensive study of pornography in Australia, Catharine Lumby, Katherine Albury and Alan McKee debunk myths that 'most porn users are uneducated, lonely and sad old men', that 'all porn is violent', that 'pornography turns people into rapists and/or paedophiles' and that 'pornography uniformly portrays women as passive objects of men's sexual urges.'¹⁹ Instead of positing the sex industry as the culprit for sexism, they argue there are many other factors that play into a person's social and sexual beliefs.²⁰

Katherine Liepe-Levinson, in her work on striptease, suggests that while concerns of 'objectification' and 'dehumanisation' have been at the heart of feminist critiques of the sex industry, these fears do not really manifest. Customers do not really demonstrate 'a simple *objectifying* gaze or detachment from the scene – but a certain kind of practiced *mimetic empathy*' whereby they identify with, are interested in, and have feelings for performers and the 'real person' behind our work persona.²¹ In contrast, sex workers are regularly rendered objects by research that exploits us and agendas that do not address our needs and concerns. As Ginger Snap states of her experience with members of the general public, 'the second that you reveal that you're a sex worker, people begin to fetishise and objectify you, or define you wholly by your work, what you do, and they've got all these preconceptions and stereotypes that they bring with them, and you become a little bit of a freak show.'²²

Zahra Stardust writes that 'objectifying gazes seem far more likely to come from *popular representations* of erotic performance rather than customers or audiences.'²³ She suggests that actually 'listening to erotic performers' understandings' and seizing 'opportunities for interaction – between sex workers, feminists and the general public – would allay readings of 'objectification', strengthen performers' collective and political voice, and affect how audiences/feminists *read* what they see onstage.'²⁴ Ulrika Dahl argues that femininity is all too often associated with normativity, passivity and superficiality, and should not be a scapegoat in pursuits to eliminate sexism,

misogyny and harm. She writes in her book with Del la Grace Volcano *Femmes of Power*, 'I want to demolish its reputation as cause for violation'.²⁵ Listening to the voices of sex workers, treating us as experts on our own lives and professions, and involving us at all levels of policy making and law reform is the best method for addressing concerns of violence and objectification.

Anti-sex work agendas have disempowered sex workers

Anti-sex work feminist discourses have had catastrophic effects on the lives of sex workers. Many of these theories have been developed and espoused by those who have never worked in the industry or have had little contact or experience with sex workers and sex industry businesses. They have often been developed without consultation or involvement of sex workers. They are removed from current epidemiology and evidence-based research about the nature, existence and operation of sex work. Fundamentally, they fail to represent the best interests, needs and concerns of sex workers ourselves.

Discourses that conflate sex work with violence have lead to the funding of 'exit programs' over the funding of sex worker support services, and legislation that has systematically stigmatised, isolated and discriminated against sex workers. They have meant that positive experiences of sex work have been dismissed, and abolitionist policies have replaced policies designed to improve our working conditions, industrial rights, human rights, access to services, job satisfaction and occupational health and safety. Instead of seeing problems existing in sex industry workplaces as labour rights issues that affect all workplaces, abolitionist approaches (promoting the abolition of the sex industry) have put sex workers in danger, increased discrimination

Sometimes sex work is about being gentle with someone's need for touch; sometimes it's about being kind toward a man who's ashamed of his body; sometimes it's about being friendly and fun with someone who's lonely; sometimes it's about holding someone's vulnerability very lightly in your hands; sometimes it's about making someone feel desired and appreciated; sometimes it's about sharing intimacy, cigarettes and a laugh.¹⁸

- Juliet November

against us, and jeopardised our access to justice. Ari Reid argues that ‘When people promote the idea that *all* sex work is violence and *all* sex work is exploitative, it diminishes our ability to fight against *actual* violence and exploitation’.²⁶ Instead, she argues, a rights-based approach is the answer to poor working conditions across all industries.

However, sex workers consistently report that anti-sex work agendas inflict far more violence and harm upon sex workers than sex work does itself. As one sex worker writes:

No client, no boss, and no job has ever made me feel as incredibly disempowered and attacked as other women do when they deny my personal experience of sex work and call me a liar, or a victim... That’s what keeps me up at night, not the independence, power, learning, entertainment, respect and flexibility I get from the sex industry.²⁸

The conflating of sex work with violence has been used to justify draconian legislation that endangers the health, safety, rights and lives of sex workers. The practical manifestation of this approach has not been to empower sex workers. Rather, it has resulted in laws that criminalise the organising, operating and managing of sex industry businesses, regulate sex work under the guise of disease, and conflate consensual sexual activity with concerns about organised crime, drugs, corruption and immorality. It has resulted in laws that criminalise, fingerprint and imprison sex workers; take our children from us; order cavity searches and impose forced health testing upon us; issue restraining orders against us and permanently brand us on police records. This violence,

Whether you see yourself as a survivor of the industry or a person of agency and free choice engaging in labour markets, sex workers rights will support you. If you feel trapped in the industry and want to leave, having a society that does not discriminate against sex workers will support that. If you are a worker that feels exploited in your workplace, the ability to organise and fight for your rights will support you, and if you are the happy hooker business woman, sex worker rights will support you. This does not mean feminism cannot critique the sex industry and have differing views on the industry, but it must not happen at the expense of sex workers...²⁷

- Ari Reid

exploitation and human rights abuse against sex workers by governments continues to occur throughout Australia. As Elena Jeffreys summarised at Sydney’s Feminist Conference in 2010:

Anti-sex work feminists have chosen to campaign against our workplaces; lobby for the criminalisation of sex workers and our clients; they’ve supported the closure of our services that support us; they’ve rallied to imprison the migrants among us; stigmatised every aspect of our work; discredited our political organising; undermined our demands; belittled our leadership; and pathologised us through unethical and harmful research.²⁹

Both the Family Protection Society and the Salvation Army have publically apologised for proclaiming that sex work is damaging to families and harmful to women.³⁰ The Salvation Army apologised after Scarlet Alliance accused them of ‘capitalising on discrimination against sex workers’.³¹ Scarlet Alliance commenced action under the Tasmanian *Anti-Discrimination Act* 1998 in relation to the Family Protection Society. A conciliation was held and an apology given and published by the Family Protection Society in Hobart’s Mercury newspaper in April 2010.³² Kate Holden reports that in 2009 Consumer Affairs Victoria contracted Monash University to canvass experiences from licensed and unlicensed sectors of the sex industry. Their 2010 report, *Working in Victorian Brothels*, surveying fifty-five workers of a range of genders, ethnicities, services and sectors of the industry, supports the view that sex work is not inherently damaging. In fact, one of the main disadvantages of the job was social stigma.³³ Feminist sociologist Eva Cox writes that in the sex industry ‘there is exploitation, [but this is] because of illegalities, marginalisation, prejudice and sometimes the actions of “feminists” who trash these jobs.’³⁴

Sex workers have supportive relationships

Popular representations of sex workers on television often present us as being isolated and alone, without

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-Elena Jeffreys

However, sex workers share many different kinds of intimate relationships. The IBIS World Australian Sex Industry Survey found in 2007 that 50% of sex workers are married or in a de-facto relationship.³⁵ We also have important partners, lovers, marriages, kinships, friendships, support systems, families, mentors and alliances. Sex workers' successful management of these relationships illustrates that exclusivity and monogamy are not necessary elements in maintaining healthy relationships, and that committed relationships may be monogamous or non-monogamous. Sex workers have expertise in negotiating ethical, consensual, mutual relationships.

families, partners or support networks. Stereotypes that people would not want to date, befriend, marry, parent or associate with sex workers vilify us, stigmatise our work, and make damaging assumptions about the politics, sexualities, identities and values of our partners, lovers and friends. This stereotype affects us in various ways. One sex worker faced difficulties within the Department of Immigration when sponsoring a spouse to migrate to Australia. In this particular example the Department of Immigration case manager had trouble accepting that a sex worker could be in genuine relationship, as they perceived it made the relationship non-monogamous. The couple faced disbelief that the migrating partner could have no issue with the nature of sex work.

Sex workers share many different kinds of intimate relationships ... We also have important partners, lovers, marriages, kinships, friendships, support systems, families, mentors and alliances.



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The sex worker community includes trans and gender diverse sex workers, and sex workers of diverse sexual orientations

In discussions about us and representations of our communities, sex workers are depicted overwhelmingly as women engaging in heterosexual encounters. This stereotype forms the basis for some feminist readings of the sex industry as perpetuating patriarchal and normative gender and sexual roles. However, sex workers have a variety of genders and sexual orientations, and our practices are often queer, challenging normative gender and sexual roles. The Open Society Institute, in their eight international case studies on sex worker human rights, state that, 'In many countries policy makers assume that all sex workers are women. Males and transgendered [sic] people are also affected by laws and policy, but our presence as sex workers is frequently obscured or denied because of prejudice and discrimination.'³⁶

The erasure of other trans and gender diverse sex worker identities only further marginalises and excludes us. Trans and gender diverse sex worker voices are silenced every day on issues that affect them. We can see this evidenced in sex industry research which is often unaccommodating to trans and gender diverse identities. Because of the stigma attached to being both a sex worker and trans or gender diverse person, many trans and gender diverse sex workers are not out about either their work or their sex or gender identity and this ties in to a lack of trans and gender diverse voices represented in the media, in reports and in public knowledge about sex workers. Workers who work as trans men, intersex workers, genderqueer workers, crossdressers and trans workers who work as their birth sex/gender all exist.

- Jackson, 2011 Scarlet Alliance Trans and Gender Diverse Sex Worker Representative

The Trans and Gender Diverse Representative for Scarlet Alliance in 2011, Jackson, writes that 'It is not common knowledge that trans and gender diverse workers exist in every facet of the sex industry.' The report of a 2010 focus group on gender diversity recognises the 'huge diversity of people who are not cis-sexual or cis-gendered, and that these diverse bodies, identities, sexualities and experiences cannot be contained under the limiting terminology of male, female and transgendered.' The focus group identified a number of non-exhaustive gender identities, including intersex, transsexual, transgender, trans*, tranny, genderqueer, cross

dressers, butches, femmes, boydykes, bois, transmen, transwomen, T girls, gender non-specific trans* people, gender pirates, androgynes, neutois, dandies, drag kings and queens, bearded ladies, ladyboys, gender outlaws, girly boys, princess boys, tomboys, cissies, androgynous, sinadrogynus (without sex and gender identity), and people of gender cultural differences.³⁷

Stereotypes of sex work as a cisgendered female profession act to marginalise and silence the voices of trans and gender diverse sex workers.³⁸ Public perceptions of sex work as only a cisgendered 'women's issue' have created barriers to trans and gender diverse workers accessing health and support services.³⁹ Jackson notes that many representations of trans and gender diverse identities in the sex industry are 'inaccurate', 'hegemonic' and can be harmful.

One of the most common ways of attacking trans women and trans feminine people, including those of us who are sex workers, is by attacking our femininity. We are often ridiculed for performing a hyper feminine and repressive gender role. There are two prevalent archetypes of the trans woman: that of the deceiver, and that of the tragic 'man in a dress'. The deceiver is a trans woman who passes and tricks heterosexual men into desiring her. She is a fake woman and a predator. The tragic 'man in a dress' is a trans woman who looks ridiculous, does not pass, and is obviously a 'man in a dress'. These attacks on trans women are cissexist (the idea that trans identities are fake and unnatural, and cis identities are true and natural), trans misogynist (attacking trans women for 'wanting' or 'choosing' to be women) and femmephobic (the idea that femininity is inferior to masculinity)... In the attempt to include trans and gender diverse sex workers, many organisations and people end up further excluding us by third gendering us or using incorrect terminology. The phrase 'women, men and trans' third genders trans and gender diverse people who do identify as women and men. Using words like transgender or transsexual excludes and alienates those of us who don't identify with those words.

- Mish Glitter Pony, 2013 Scarlet Alliance Trans and Gender Diverse Representative

Sex workers also have a variety of sexual orientations. In a 1991 survey of sex workers in Sydney, Rachel Sharp and Frances Lovejoy found that of sex workers who were working as female, a quarter did not identify as

heterosexual. Of sex workers who were working as male, only 11% identified as heterosexual.⁴⁰ Alina Thomas interviews a number of lesbian and queer sex workers in 'Up Close and Political: Lesbian Sex Workers', and writes that that 'The idea of lesbian sex workers is a powerful notion that interrupts many social assumptions about identity, women's power and of course, same sex relationships and sex workers.'⁴¹

There are many different kinds of sex work

Stereotypes of sex work as 'just' intercourse reflect a lack of understanding of what constitutes sex work. Sex work is an umbrella term than incorporates a wide, inclusive range of different practices. The diversity of sex work in Australia includes working at a brothel, working privately from a residential space, commercial space, or on the street, doing escort work, visiting the home or hotel of another person(s), performing sex acts with another person(s), stripping or performing suggestive or explicit sex acts in a temporary or fixed site either in a physical or virtual space for one or more voyeur, being filmed or photographed for commercial or amateur pornography (still and moving images), performing domination and/or submission in bondage, discipline, sadomasochistic, fetish or kink activities, phone sex, live webcam or chat sex and doing these activities for either monetary payment, reward or other forms of compensation.⁴²

Many street based workers talk of working with dignity and pride in public settings, negotiating with clients independently and having close relationships and camaraderie with fellow workers in the same area. Street based workers were also among the first Australian sex workers to enforce condom use as a response to HIV, challenging the public perception of street based sex workers as disempowered and caring little for their health and safety.⁴⁸

-Elena Jeffreys

In their study, 'The Many Faces of Sex Work', Christine Harcourt and Basil Donovan compile a global typography of sex work where they suggest there are 25 different kinds of sex work worldwide. Scarlet Alliance does not subscribe to categorisation of sex workers in this way as many of us transverse different types of sex work in a day/week/career. Simplified understandings of sex work that only recognise a few ways of working result in poor policy decisions. What is sometimes referred to as 'direct' sex work around the world may include, but is not limited to, street-based sex work from windows or

To work on the street is to challenge oppressive notions of women being good girls if they stay indoors and don't venture out unless accompanied by a male chaperone. By working out of doors we are taking our financial and sexual independence into a public space. Far from being downtrodden, working on the streets is a way to gain money on our own terms – on our own time and without anyone telling us when or how to work.⁴⁷

- Elena Jeffreys

doorways (for example in Amsterdam), all-male venues (bathhouses, saunas or barbershops), and transport (ships, trucks, trains). In their typography, Harcourt et al refer to 'indirect' sex work which can include sexual fantasy through role play, lap dancing, massage work, travelling entertainers (such as dancers), swingers clubs and beer girls (promotional staff who may sell sexual services to supplement income). Many of these practices and categories may overlap. A range of different legal frameworks surround these practices, and not everyone engaged in these activities identifies as a sex worker.

The term sex worker can refer to anyone who exchanges any form of sexual activity for money, favours, drugs, goods, accommodation, or any other form of reward. It is important to note that not all people who engage in sex work self-identify as sex workers, and this is particularly the case in some Aboriginal and Torres Strait Islander communities. The Scarlet Alliance Aboriginal and Torres Strait Islander Working Party write in *HIV Australia* (from a presentation at the Anwernekenhe National Aboriginal and Torres Strait Islander HIV/AIDS Alliance Conference in Cairns):

When we say 'sex work' we mean lots of activities, and it encompasses lots of people. We believe all sex work is work. We believe transactional sex is work. We believe sex work to support drug or alcohol habits is work. Transactional sex, for money or reward or survival, is a form of sex work. Regardless of how the person identifies, that work deserves human rights, industrial protections, occupational health and safety, and dignity. Not identifying as a sex worker should not be a barrier to HIV prevention.

Street-based sex workers and class-based stigma

Sex workers are often described in the media according to class-based hierarchies. The 'high class escort' is juxtaposed with the street-based sex worker, and a

person's wealth and privilege is used to measure the validity of our occupation. As one sex worker writes, 'There seem to be only black and white depictions of sex workers in the media: [the] sex worker is either glamourised or maligned. Neither depiction helps destroy the stigma attached to sex work.'⁴³ Harcourt and Donovan argue that this break-down (valuing a person's legitimacy according to their income) is inappropriate. They state that 'income is a continuum' and note that 'different "classes" of sex worker can be found in any one type of sex work.'⁴⁴ Roberta Perkins' interviews with sex workers in private and brothel workplaces reveal that most private and brothel workers have also worked on the streets at some time.⁴⁵ Elena Jeffreys argues that street-based sex workers often have greater independence, autonomy and freedom in our workplaces:

There's a high degree of independence, control over one's own prices, low overheads and flexible work hours. It's perfectly suited to sex workers who do short stints in the industry and is also good for longer term sex workers who build up regulars and become known in an area. Unlike brothel work, where shifts are determined by the brothel, street based sex workers can come and go as they please and don't have to share earnings with management.⁴⁶

Street-based sex work makes up only 2% of the Australian sex industry, and yet street-based sex workers are often the most targeted by legislation that seeks to make us invisible or eradicate us entirely. Elena Jeffreys notes that contrary to the *Pretty Woman* stereotype of the street-based sex worker who is 'rescued' out of her 'situation', street-based sex work can be seen as a symbolic feminist response to the public/private distinction that provides that women belong at home.

In Australia the drug use most costly to our health system is alcohol and tobacco. Heroin and ice use don't rate particularly highly in comparison to the hundreds of thousands of tobacco and alcohol related cases of cancer, violence and hospitalisation every year. Among our sex worker community, the most commonly used drug is tobacco... If there is any drug use we should be concerned about in the sex industry, it is tobacco.⁵⁰

- Elena Jeffreys

Street-based sex workers challenge hetero-normative assumptions about sex as a private act. Policies, laws and attitudes that corner sex to the private domain

have acted to marginalise and render invisible many queer sexualities, practices, bodies and iconographies. Law and order crackdowns to 'clean up' gay beats, red light districts and spaces of cultural significance to non-heterosexual communities have meant that only certain kinds of (conservative, monogamous, heterosexual) sexualities are allowed validation and representation in the public sphere. The intense regulation of non-normative sexual behaviour in public illustrates that sex workers are in danger – not from our clients – but from homophobic, transphobic and whorephobic violence that is effectively sanctioned by policies and legislation that heavily regulate and criminalise us. Moreover, street-based sex workers have been at the forefront of community health initiatives and safer sex education.

There seem to be only black and white depictions of sex workers in the media: the sex worker is either glamourised or maligned. Neither depiction helps destroy the stigma attached to sex work.

Sex work and drug use

The rhetoric that surrounds drug use and sex work is often inaccurate, misinformed and hypocritical. Like the general population, some sex workers use drugs and some do not. People working in other professions, such as lawyers, are not accused of being forced to work in the legal profession to support their drug habits.

Elena Jeffreys argues that people of all professions have their own financial commitments, recreational activities and individual 'addictions' that necessitate work 'whether it is vintage car restoration, a mortgage, overseas holiday, kids school fees', and that it is inappropriate for others to tell sex workers how to spend our money.⁴⁹ Moreover, Jeffreys notes that the focus on illicit drug use in sex industry workplaces is misplaced. Citing research from Roberta Perkins and Francis Lovejoy, Elena Jeffreys writes that tobacco is the most prevalent drug in the sex industry.

International evidence supports the decriminalisation of drugs as the best-practice harm reduction model. The

2011 Global Commission on Drug Policy states that the ‘war on drugs has failed’ and that harsh criminalisation and punishment of drug use has been ‘an expensive mistake.’⁵¹ An increasing body of evidence, including case studies from Portugal, supports the decriminalisation of drugs as best practice from a public health and human rights framework.⁵²

Sex workers are safer sex experts and educators

Contrary to popular stereotypes, sex workers have far lower rates of STIs and HIV than the general population. While historically, sex work legislation has sought to regulate sex work under the guise of managing disease, sex workers have consistently been at the forefront of community health initiatives, acted as pioneers in peer education programs, and are widely recognised as the safer sex educators of our clients.⁵³ Australia has the lowest rate of HIV/STIs amongst sex workers in the world, due to the work of community based sex worker organisations and projects by those working in the sex industry.⁵⁴

Migrant sex workers

Research by migrant sex workers has generated valuable demographic data on the lives, backgrounds, experiences and needs of migrant sex workers in Australia.⁵⁵ Studies detailing the age, life experience, language skill, and education level of migrant sex workers in Australia show that we are diverse, many having previously travelled and worked throughout the region. Some anticipate returning to Australia. Evidence-based research by migrant sex workers demonstrates that their rights and wellbeing are best protected by policies focusing on prevention of exploitative conditions rather than increased surveillance.

Trafficking debates in Australia often conflate important terminology and fail to distinguish between trafficking and sex work. Moral hysteria about the sex industry, panic over the sanctity of the body, xenophobic views on migration and racial stereotypes have led to inflated figures of trafficking victims. International research demonstrates that anti-trafficking policies continue to have adverse impacts on migrant sex workers’ human rights worldwide. Raid and ‘rescue’ operations, harassment, and detention of Asian sex workers in visible brothels and massage parlours have forced sex workers to adapt and change the way we work and have acted to force the industry ‘underground’. Research shows that criminalisation approaches to trafficking are often culturally insensitive, create barriers to migrant sex workers accessing essential services, hinder migrant sex

workers’ opportunities to negotiate suitable workplace conditions and instill distrust in outreach workers and other community service providers.

Evidence-based research by migrant sex workers demonstrates that our rights and wellbeing are best protected by policies focusing on prevention of exploitative conditions rather than increased surveillance.

Trafficking is exacerbated by Australia’s hostile immigration policies, including the favouring of specific ‘skilled’ migration from industrialised countries. Information on visas, forms and the actual visas themselves are not available in languages other than English. Australia’s stringent and discriminatory migration policies disadvantage workers from ‘developing’ countries and ensure a lack of opportunities for sex workers to migrate to Australia legally. These policies and lack of appropriate language resources have led to a greater likelihood of dependence on third-party agents in order to travel, ultimately forming an opportunity whereby people may be more susceptible to deception and trafficking.

To decrease reliance on debt contracts and support the human rights of migrant sex workers, the Australian Government should negotiate fair visa systems for those seeking visas to travel to Australia for work, provide accessible information on visa access and conditions in multiple languages, and provide funding and support for peer education and community outreach to strengthen the human, civil and political rights of migrant sex workers and increase our autonomy, agency and self-determination.

Australia looks to sex worker organisations around the world as role models in advocating on sex worker rights. International examples of best practice and autonomous sex worker organisations include the Can Do Bar in Thailand, owned and operated by sex workers with just, safe and fair conditions, the Durbar collective in India representing 65 000 sex-workers fighting for sex worker rights, and Friends Franjipani in Papua New Guinea

representing sex workers in eight provinces.

Criminalising the purchase of sexual services

In some jurisdictions around the world, governments have called for the criminalisation of the purchase of sexual services but not the selling of sexual services.

This model reflects the inaccurate assumption that clients are perpetrators and sex workers are victims of violence. Not only does this approach deny the agency of sex workers, but it has acted to endanger the lives and working conditions of sex workers. By categorising sex work as ‘violence against women’ this model also denies the existence of sex workers who are not female. Swedish sex worker Pye Jacobsson notes that in Sweden this has marginalised male and trans and gender diverse sex workers.⁵⁶ Research from Sweden illustrates that the ‘Swedish model’, as it is sometimes referred, has no effect in reducing the size of the sex industry.⁵⁷ Instead, laws that criminalise everyone around sex workers act to isolate us and force us into unsafe working conditions. As sex worker Audry Autonomy said at the Melbourne Feminist Futures Conference in 2011, in response to The Greens candidate Kathleen Maltzahn’s assertion that this model does not criminalise sex workers, ‘When you criminalise my clients, you criminalise me.’

[W]hile the legislation does not specifically criminalise the sex worker, it criminalises everyone around the sex worker. It becomes illegal to rent a room, house, hotel room or apartment for anyone to do sex work out of, or the landlord risks being charged with pimping... ‘Pimping’ is also a charge applied to anyone who assists in finding clients, provides security services, or allows advertising for sex workers. Sex workers cannot work together or they risk being charged with pimping each other, which dramatically decreases our opportunity to look out for each other’s safety, reduce overhead costs, and establish peer support networks, which are known to be our most effective method of reducing the STI rate.⁵⁸

- Vi

Moreover, Vi notes that laws which prohibit anyone ‘living off the earnings of prostitution’ have been used to charge sex workers’ children with pimping, where they have been living with their parents and not paying rent.⁵⁹ The Swedish Government has also denied access

to methadone treatment programs to sex workers unless they leave sex work.⁶⁰ Elena Jeffreys writes that the Swedish model has proven to be ‘a decade-long failure’ and that those proposing to implement it in Australia are ‘showing wilful ignorance to the harms of criminalisation, and are ignoring sex workers’ actual needs.’⁶¹ Compared to decriminalisation, which is the harm-reduction model, and which evidence shows does not increase the size of the sex industry, Jeffreys writes that the Swedish model ‘ultimately hurts sex workers; decreasing sex workers’ human rights, income, health, dignity, increasing corruption and creating barriers for sex workers to access justice if crimes occur.’⁶²

The Swedish Model reflects the inaccurate assumption that clients are perpetrators and sex workers are victims of violence.

Sex worker activism and organising

Sex workers have our own autonomous, evidence-based experiential understandings of sex work and the sex industry, and have a long history of activism and political organising. Sex workers have been instrumental to the sex-positive feminist movement, and in combating intersecting oppressions such as whorephobia, homophobia, racism, sexism and ablism.

Sex workers were heavily represented at the Slut Walks held around Australia in 2011 to end victim blaming for sexual assault. Elena Jeffreys, Audry Autonomy and Zahra Stardust spoke about the ways that slut shaming and victim-blaming are institutionalised in Australian media, policy and law, and the need for comprehensive sex education programs that address consent, gender diversity, negotiating sexual intimacies and gender-based harm. In 2011, sex workers held a panel on the topic of ‘Sex Working for Social Change’ at Camp Betty, a conference on sex, sexuality, gender, politics and action.⁶³ Zahra Stardust spoke about sex workers having a kinetic, sentient, working knowledge of sex and gender that is an important but underutilised resource for feminism and queer theory.⁶⁴ Audry Autonomy spoke about sex work providing spaces in which they could deliver

Sex workers have a long history of activism and political organising.



emotional and political support to people struggling with ‘debilitating alienation and internalised queer and whorephobia’ as well as ‘peer education with isolated, and often younger, workers’. Audry used ‘clear and explicit advertising’ to protect their personal and political boundaries, and refused to service police, military personnel and ‘bigots’.⁶⁵

My sex work also enables me to undertake volunteer advocacy as well as lobbying work within the organised sex worker rights movement. This is whore activism.⁶⁶

- Audry Autonomy

In 2010 four sex workers (Mish Glitter Pony, Vi, Elise and Zahra) received third place in the Whore of the Year Awards for their panel ‘Being Femme, Working Sex’ at the inaugural Femme in the Frame Conference on queer femme visibility and solidarity.⁶⁷ Sex workers have been represented at Sydney’s F (Feminist) Conference in 2010⁶⁸ and Melbourne’s Feminist Futures Conference in 2011.⁶⁹ Mish Glitter Pony and Elena Jeffreys have spoken at local queer event Women Say Something,⁷⁰ and sex workers participated in the Sydney Gay and Lesbian Mardi Gras in 2011 alongside the Fat Empire, Still Fierce Collective, the Sex Workers Outreach Project (SWOP) NSW and the Femme Guild with the theme ‘Our Bodies Say Something: A Body Positive Float’.⁷¹

In a working environment, sex workers provide unique healing services and emotional support to our clients. As Ari Reid said at the Network of Women Students Association conference, the sex industry is a place where ‘sexual diversity is often celebrated, and people’s life choices are accepted’.⁷² Delaney writes that ‘the straight men who are my clients are funny, tender, scared, confused. And often just want to be treated nicely. I admire that in a person, no matter what their sexual preference or gender is.’⁷³ Whoretic describes how for her, ‘Sex work is one of the ways I demonstrate valuing sex for its therapeutic effects, its beneficial effects on self esteem and self-worth... As an out proud queer/dyke/whore, I can accept my clients’ varied desires without judgment, with support and playfulness.’⁷⁴

The documentary Scarlet Road details Rachel Wotton’s experiences working with clients with disability through the organisation Touching Base,⁷⁵ a charity assisting people with disabilities and sex workers to connect with each other, ‘focusing on access, discrimination, human rights and legal issues and the attitudinal barriers that these two marginalised communities can face.’⁷⁶ Scarlet

Road featured at the Sydney Film Festival in 2011 and was nominated for the Foxtel Documentary Prize. It showcases the important role sex workers play in making sex services accessible to people with disability. Rachel says of her work:

I see clients with many types of disabilities, including Parkinson’s and cerebral palsy... It’s really rewarding to be part of their lives. Some people haven’t been touched intimately for most of their adult life, and they’re so happy and gracious when I come to see them – it’s really beautiful... I treat every client holistically, as a whole person, and I think a lot of people don’t see them in that light, and that’s what they really appreciate... I love my job as I get to create meaningful connections that a lot of people have previously missed out on in life.⁷⁷

- Rachel Wotton

Sex work can be creative, spiritual, healing, exploratory, and as Elena Jeffreys writes, profoundly feminist: ‘being sexually active, putting a value on your sexual interactions, negotiating boundaries and making informed choices about your body. Sex workers aren’t subscribing to prescriptive morals about chastity, nuclear family and monogamy – this is the feminist project, is it not?’⁷⁸ Eva Pendleton argues that merely the act of making men pay ‘reverses the terms under which men feel entitled to unlimited access to women’s bodies.’⁷⁹ And sex workers see a variety of clients with different genders – in some cases specifically catering to female clients or offering discounts at our discretion to specific groups in order to ensure that sexual services are not only tailored to male clients.

The sex industry is a place where sexual diversity is often celebrated, and people’s life choices are accepted.

Despite our clear history of engagement in social movements, myths and stereotypes about sex work continue to have disastrous implications for sex worker health, wellbeing and human rights in Australia. Janelle Fawkes writes that at the 2004 International AIDS Conference in Bangkok, sex workers from around the world shared our experiences of having our voices

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dismissed by law and policy makers:

While the week was filled to overflowing with community marches, poster halls, art, performance, demonstrations, workshops, oral presentations, and images of sex workers used by the media to bring colour and life to their pages, the resounding experience of sex workers attending Bangkok was one of disparity between governments, researchers, policy makers and the experiences of the individuals who work in the sex industry of the 20 countries represented.⁸⁰

Listening to sex workers and our experiences is crucial in the formulation of policy and law reform. To be sustainable and targeted, legislation must be based on the actual experiences of sex workers, developed with our involvement, and reflect our needs and concerns.



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- 4 Ally Daniel, 'Shaking Up the Views of Sex Work: The Lived Experience of One Sex Worker', *Red Magazine*, 16.
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- 6 Oral Vox Pop, *Provision: Sex Workers and Media*, Issue 4, Scarlet Alliance, 2009, 6.
- 7 Janelle Fawkes, 'Sex Work and Empowerment', *HIV Australia*, 4:1, September-November 2004, accessed at http://www.afao.org.au/view_articles.asp?pxa=ve&pxs=95&id=499 on 18 August 2011.
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- 9 Oral Vox Pop, *Provision: Defining Sex Worker Space*, Issue 1, Scarlet Alliance, 2006, 7.
- 10 Zahra Stardust, 'Feminist Stripper – A Call to Arms: Convention and Counter-Practice in Erotic Performance', Masters of Arts (Research) thesis submitted to the University of Sydney, June 2011.
- 11 Ally Daniel, 'Shaking Up the Views of Sex Work' above n4 at 16.
- 12 For example, see writings by Sheila Jeffreys, Andrea Dworkin, Catherine MacKinnon, Diane E Russell, Kate Millett, Susan Brownmiller, Melinda Tankard-Reist, Kathleen Maltzhan, Melissa Farley.
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Chapter 2

Decriminalisation is the optimal model for sex work legislation



Recommendations for Law Reform:

- Decriminalisation is recognised as the best practice model by Australia's National Strategies on HIV and STIs. In NSW where sex work is partially decriminalised, there are very low rates of HIV and STIs;
- A decriminalised system amplifies opportunities for outreach, magnifies capacities for peer education, supports sex worker self-determination, maximises compliance, increases transparency and minimises discrimination;
- In a decriminalised framework, corruption is reduced because sex work businesses are treated like other businesses, subject to existing regulatory mechanisms such as local council planning and zoning regulations, WorkCover and the Australian Taxation Office, and the police are not involved as regulators unless there is a breach of law;
- Decriminalisation provides a sustainable regulatory approach to wider public health issues, including physical and emotional health, occupational health and safety, and human, civil, and industrial rights of sex workers; and
- Decriminalisation must be coupled with comprehensive human rights and anti-discrimination protections for sex workers at state, territory and federal levels to be fully effective.

Summary of Issues:

- Legal climates without decriminalisation continue to negatively affect the delivery of health promotion as well as the human rights and occupational health and safety of sex workers;
- In criminalised jurisdictions, policing practices, fear of prosecution, stigma and forced invisibility have acted as barriers to safe sex practices, human rights and OHS. The use of condoms by police as evidence of sale or purchase of sex demonstrates how criminalisation impedes safe sex practice. Sex workers' ability to seek information, support and health care is severely limited by the risk of prosecution, while health professionals and outreach organisations face obstacles in identifying workers due to our invisibility;
- Discriminatory laws surrounding sex work continue to result in the harassment of Aboriginal and Torres Strait Islander sex workers by both police and the general public;
- Laws that criminalise sex workers working with HIV mean that workers may be afraid to take sexual health tests, fail to recognise that HIV-positive people participating in safe sex do not necessarily put our clients or partners at risk and remain an ineffective way of reducing transmissions;
- Models that criminalise the clients of sex workers have demonstrated detrimental effects on the health, safety and rights of sex workers. Research illustrates that where purchasing sex is criminalised, street-based workers are predominantly targeted and are often spatially displaced, forced into more isolated industrial and outdoor areas;
- Licensing models also breach the rights of sex workers. Licensing generally results in low compliance – sex workers and businesses avoid licensing because of the burdens of mandatory testing and registration. Licensing then creates a group of 'clandestinas', members of whom fall outside health interventions and miss targeted health programs;
- Requirements for sex workers to mandatorily register our legal names and addresses on police or civil databases breach the confidentiality and privacy of sex workers and affect our opportunities for employment, further education and access to justice. Registration acts as a barrier to sex workers working legally and limits sex workers' access to health services for fear of being 'outed'; and
- In their 2005 comparative study of brothels in Perth, Melbourne and Sydney, Harcourt et al. found that of three Australian approaches to sex work legislation (criminalisation, licensing and decriminalisation), decriminalisation led to the best health outcomes. In Sydney where sex work was decriminalised, the outreach organisation had the 'greatest financial support' and the 'best access to brothels for its outreach workers'. Of all three states, SWOP NSW was the only organisation to provide staff with Asian language skills and conduct outreach during the evenings.

Decriminalisation is the optimal model for sex work legislation

There is nothing ostensibly more or less 'wrong' with sex work, porn, stripping, online web cam, phone sex or BD/SM that isn't wrong with any other industry and workplace under capitalism. Except the over-regulation we face. Those who want to rescue the world from sex work, and the moving and still images that the sex industry produces, are essentially arguing that we, sex workers, should not work in this job. The argument for increased regulation, and the research it quotes, is based upon advocacy. The arguments for decriminalisation are based on evidence.¹

It is widely recognised that decriminalisation is the optimal model for sex work legislation. The majority of research clearly demonstrates that health promotion initiatives are best supported by the decriminalisation of sex work.² A decriminalised framework removes police as regulators of the sex industry, repeals criminal laws specific to the sex industry, regulates sex industry businesses through standard business, planning and industrial codes, and does not single out sex workers for specific legislation. In doing so, a decriminalised system removes barriers to HIV prevention, amplifies opportunities for health promotion, including outreach, and magnifies capacities for peer education. Decriminalisation supports strong public health outcomes, including negligible incidences of STIs and HIV, and provides a sustainable regulatory approach to wider health issues, including physical and emotional health, occupational health and safety, and the human, civil, and industrial rights of sex workers, enhancing our capacity to engage in health promotion within the broader community. Favourable experiences of decriminalisation in New Zealand demonstrate that decriminalisation supports sex worker self-determination, maximises compliance, increases transparency, reduces police corruption and minimises discrimination.³

Benefits of decriminalisation

Decriminalisation:

- Removes police as regulators of the sex industry;
- Repeals criminal laws specific to the sex industry;
- Regulates sex industry businesses through standard business, planning and industrial codes;
- Does not single out sex workers for specific regulation; and
- Is a whole-of-government approach to regulation.

Research clearly illustrates that decriminalisation is the most effective model for promoting public health objectives and the best practice model for the prevention of HIV and STIs.⁴ In New South Wales where sex work is partially decriminalised, there are very low rates of HIV and STIs. The annual national surveillance report between 2001-2009 demonstrates prevalence of HIV among sex workers has remained consistently low – less than 1%.⁵ The 2012 Law and Sexual Health (LASH) report illustrates that condom use approaches 100% in Sydney brothels.⁶ In their 2005 comparative study of brothels in Perth, Melbourne and Sydney, Harcourt et al. found that of three Australian approaches to sex work legislation (criminalisation, licensing and decriminalisation), decriminalisation led to the best health outcomes.⁷ The authors found that in Sydney, where sex work was decriminalised, the outreach organisation had the 'greatest financial support' and the 'best access to brothels for its outreach workers'.⁸ Of all three states, the Sex Workers Outreach Project (SWOP) NSW was the only organisation to promote peer education and provide staff with Asian language skills and conduct outreach during the evenings. In comparison Perth, where brothels were operating illegally, had the lowest health and safety levels.⁹ In Melbourne, although prescriptive licensing rules had delivered greater availability of condoms, dental dams and lubricant, these 'positive health and safety outcomes' were 'heavily biased toward the licensed sector'¹⁰ supporting sex worker organisation claims that the licensing model creates a two-tiered sex industry.

Decriminalisation means that workers can better assert our occupational health and safety (OHS) rights. Without the threat of criminal sanctions, sex industry businesses in a decriminalised framework have greater capacity to develop comprehensive OHS policies.¹¹ Although, as Penny Crofts notes, sex industry businesses continue to be treated more restrictively than businesses with similar amenity impacts,¹² a decriminalised environment gives businesses further opportunities to develop

important OHS policies, including providing lubricants and massage oils that are non-allergenic, maintaining beds in good repair, ensuring workers have adequate breaks between clients, developing policies to prevent/deal with any condom breakage, providing training and education on disinfecting and safe use of equipment and recommending culturally sensitive medical health clinics.¹³

Decriminalisation has brought improved work safety, high rates of safer sex practice, low rates of sexually transmissible infections, improved Occupational Health and Safety, little to no amenity impacts and no evidence of organised crime.

Research evaluating the impact of decriminalisation in New Zealand, five years after the enactment of the *Prostitution Reform Act 2003*, provides strong evidence that decriminalisation does not lead to an increase in the size of the sex industry. The New Zealand Prostitution Reform Committee, noting that the purpose of the Act was to decriminalise prostitution, safeguard the human rights of sex workers, promote the welfare and occupational health and safety of sex workers and contribute to public health, found that the public fear about an expanding sex industry failed to manifest – rather the numbers of sex workers in Christchurch had stayed approximately the same between 1999 and 2006 despite the decriminalisation of sex work.¹⁴ In NSW, the Law and Sexual Health (LASH) report shows that the number of sex workers in Sydney brothels in 2012 was similar to estimates from 20 years ago.¹⁵ This supports the assertion that decriminalisation does not increase the incidence of sex work.

Dangers of criminalisation

Dangers of police regulation

Criminalisation of sex work has significantly encumbered health promotion initiatives in Australia and overseas. Research from Western Australia shows that criminal sanctions do not reduce the incidence of sex work.¹⁶

Elena Jeffreys writes that for street-based sex workers, ‘Experiences with police range from disappointing to horrific.’¹⁷ She cites research from WA and NSW to show that in ‘WA, 2002, half the street based sex workers answering a survey targeting women who have experienced sexual assault had been raped by police. [In] NSW, 2006, street based workers questioned in a survey said half of their contact with police included police harassment.’¹⁸ Policing practices, fear of prosecution, stigma and forced invisibility have acted as barriers to safe sex practices, human rights, OHS and the management of blood-borne viruses (BBVs) and STIs. The use of condoms by police as evidence of a crime is one of the most obvious examples of how law enforcement hinders safe sex practice. Police corruption and violence towards sex workers has been consistently documented.¹⁹

Criminalisation:

- Some or all forms of sex work may be criminalised;
- Workplaces may be criminalised;
- Sex workers may be prosecuted;
- Clients may be prosecuted;
- Sex workers with sexually transmissible infections (STI) or HIV are criminalised; and
- Sex workers, sex industry businesses and clients may face fines and/or imprisonment.

In jurisdictions where criminalisation exists, Aboriginal and Torres Strait Islander sex workers, and also Pacific Islander and Māori sex workers, report being targeted by police for over-policing and harassment. Discriminatory laws surrounding sex work continue to result in the harassment of Aboriginal and Torres Strait Islander sex workers by both police and the general public. People living, working, or present on the street face particular attention from police, bearing the brunt of racism and stigma.

Criminalisation increases sex worker contact with police, which means that sex workers – predominantly women, men who have sex with men, and trans and gender diverse communities – are then regulated by a predominantly cisgendered male, ‘straight’, conservative authoritarian police force. As one sex worker writes, ‘Historically and globally, police have been the source of continued abuse, rape, violence and harassment of sex workers. They are not our protectors.’²⁰ One of the major drivers for decriminalisation in NSW was the findings of the Wood Royal Commission into corruption within the NSW Police

Force. The Commission cited evidence showing ‘a clear nexus between police corruption and the operation of brothels.’²¹

One escort worker in South Australia recalls her experiences working in a criminalised context:

Three escort workers leave a top motel in the City. The two blond escorts walk straight to the driver’s car and get in. The third escort, having dark skin, was harassed by a police officer. The driver approached the police and asked what the problem was. He was told to return to his car. After 40 minutes I decided to drive downtown and find out what is happening. The escort by this stage is on the ground crying her eyes out, in fear, her personal belongings scattered over the footpath. I ask police why he is harassing her. No reason is given. He told me to get back in my car. The Escort is crying out for me to help her. She was charged with having two small hotel bottles of alcohol, which she could not prove she had bought.²²

**Historically and globally,
police have been the source of
continued abuse, rape, violence
and harassment of sex workers.
They are not our protectors.**

In criminalised regimes, such as Western Australia, 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.’²⁴ Street-based workers are often harassed and further marginalised in the interests of keeping sex work invisible, while health professionals and outreach organisations face obstacles in identifying workers due to our invisibility. In contrast, in New Zealand where sex work is decriminalised, the New Zealand Prostitutes’ Collective (NZPC) report that instead of legislating against street sex workers, the Prostitution Law Review Committee has found that ‘Local Authorities should invest in street cleaning, lighting, and city ambassador schemes, and provide adequate rubbish bins and toilet facilities in and around street sex work areas.’²⁵ In one New Zealand case study, one sex worker complained that a police officer was pressuring her into providing sexual services to the police officer for free. She approached NZPC who supported her to lay a complaint with the police. Police charged him with misusing his authority to obtain sex from a sex worker.

He was convicted and imprisoned for two years.²⁶ This incident illustrates that decriminalisation clearly provides sex workers with opportunities for access to justice that criminalisation does not.

Criminalising HIV

The National Needs Assessment of Sex Workers who Live with HIV shows that laws that criminalise working with HIV mean that workers may be afraid to take sexual health tests, fail to recognise that HIV-positive people participating in safe sex do not necessarily put our clients at risk and remain an ineffective way of reducing transmissions.²⁷ As a result, as Ally Daniel writes, ‘The overall affect of criminalisation is that it has the potential to increase STI/HIV transmission rates and is more likely to increase the stigma and discrimination experienced by sex workers.’²⁸ As one sex worker states, ‘Just because you’re a positive sex worker doesn’t mean that you are deliberately spreading HIV.’²⁹ Existing laws already cover malicious behaviour; criminalising sex workers who live with HIV instead only acts to further ostracise those who already bear dual social stigmas attached to sex work and HIV. The World Health Organisation acknowledges that ‘Legislation criminalising prostitution-related activities has frequently been identified as a barrier to the promotion of safer sex practices’³⁰ and research illustrates that ‘health promotion for the sex industry is much easier when the target group is not covert and is working without the daily fear of a criminal prosecution.’³¹

**The use of condoms by police as
evidence of a crime is one of the
most obvious examples of how
law enforcement hinders
safe sex practice.**

Criminalising clients

Models that criminalise the clients of sex workers also act as a barrier to sex worker health and safety. Petra Ostergren and Susanne Dodillet report that in Sweden they have found ‘serious adverse effects of the Sex Purchase Act – especially concerning the health and well-being of sex workers – in spite of the fact that the lawmakers stressed that the ban was not to have a detrimental effect on people in prostitution.’³² An interview with Swedish sex worker Pye Jacobsson describes this

At the Women's Human Rights Court held in June 2004, one sex worker gave a testimonial of her experiences with police harassment in Perth. She had been walking home from visiting her sister's new baby, when some local outreach officers approached her to chat about an 'Ugly Mug' and hoped she would pass on details to other workers in the area. Sharon indicated that she was unable to stop for long as she was not working that night and did not want to be hassled by police. However:

During the 15-20 minutes the Outreach staff chatted to Sharon they slowly walked with her in the direction of her home. As they reached the corner of a main street a police car pulled over onto the verge. A police officer approached the three people and told Sharon to come with them. She asked why. He said 'because you know you shouldn't be out here'. She said 'I am not working I have been visiting my sister and am on my way home'.

The police officer indicated that he had observed her walking toward a certain street a few hours ago and now she was still here so it was clear she was working. The police officer grabbed Sharon's arm and attempted to pull her over to the vehicle. At this point one of the Outreach Educators indicated that it was not necessary to be violent and that they had in fact prevented Sharon from going directly home by stopping her and talking to her. The police officer stated it was none of their business and they should keep out of it or be arrested as well.

Another officer came over and spoke to the Outreach staff while Sharon was taken over to the police car. The contents of Sharon's bag were emptied onto the car bonnet. Sharon was photographed by the police. At this stage Sharon became very distressed and continued to repeat that she was not working and that she can't even leave her house without being harassed.

Another police car had pulled up by this time and one of those officers joined the Outreach staff and the other officer. When the outreach staff attempted to explain to this officer that Sharon had not been working when she was apprehended and that they had delayed her from going home the officer stated that Sharon had been found to have condoms in her bag and that proved she had been working.

One of the outreach staff stated that having condoms did not indicate she intended to work. The officer retorted that 'you can tell she is a sex worker anyway from the way she is dressed'. The outreach staff complained about this comment and that in fact Sharon was dressed no differently from any office worker going home from work. The officer indicated that he knew where Sharon lived and if she wanted to go out and get milk she better dress down.

Sharon was given a 'move-on notice' and a map. The map highlighted a large section of inner city suburbs. This indicated the area which Sharon was now excluded from entering for next 24 hours. If she was found back in that area she would be charged.

The mapped out area included Sharon's home. It also included most of the city's welfare agencies, including the Sex Worker Project, Women's Health Centre, Perth Women's Centre, Needle and Syringe Program, and drug and alcohol and counselling services.

This was Sharon's second move-on notice. If she received three the police could apply to the court to issue a restraining order against her which would prevent her from entering the area for twelve months even though she was a resident of the area.²³

condescending attitude towards sex workers, ‘We want to save you! And if you don’t appreciate it, you will be punished!’³³ The Prostitution Licensing Authority (PLA) Queensland reports that the prohibition on the purchase of sexual services in Sweden has ‘driven the sex industry underground’.³⁴ The PLA reports, ‘sex workers feel less secure and consider themselves at greater risk of violence.’³⁵ With predominantly clients of street-based workers being targeted, sex workers are then denied the choice and autonomy that comes with selecting one’s own work and clients.³⁶ Fearful of losing their client base, street-based sex workers have been spatially displaced, forced into more isolated, poorly-lit industrial and outdoor areas where they are more vulnerable.³⁷ Further, the Penal Code prevents the use of private apartments for sex work, requiring a landlord or tenant to terminate the tenancy or move out if premises are being used for sex work.³⁸ The overall effect of these laws has been to reduce sex workers’ control over their workplace.

The Swedish Model has not been effective in reducing

The overall implications of these laws is that no one can operate a brothel, rent an apartment, room or hotel room, assist with finding clients, act as a security guard or allow advertising for sex workers. This in turn implies that sex workers cannot work together, recommend customers to each other, advertise, work from property they rent or own or even cohabit with a partner (since that partner is likely to share part of any income derived from sex work).³⁹

- Susanne Dodillet and Petra Ostergren

the size of the sex industry. The Swedish Government itself in its 2010 Official Evaluation notes that ‘When it comes to indoor prostitution in which contact is made at restaurants, hotels, sex clubs or massage parlors, the available information on the extent to which this occurs is limited.’⁴⁰ The National Board of Health and Welfare in its 2007 report states:

It is also difficult to discern any clear trend of development: has the extent of prostitution increased or decreased? We cannot give any unambiguous answer to that question. At most, we can discern that street prostitution is slowly returning, after swiftly disappearing in the wake of the law against purchasing sexual services. But as said, that refers to street prostitution, which is the most obvious manifestation. With regard to increases and decreases in other areas

of prostitution – the “hidden prostitution” – we are even less able to make any statements.⁴¹

Dangers of licensing

Licensing:

- Increased government control over the number, location and operation of brothels;
- Sex workers and sex industry businesses are required to register their legal names on a permanent police or government department register;
- Unlicensed sex workers and sex industry businesses remain criminalised;
- Sex workers are subject to mandatory STI and HIV testing;
- Sex industry businesses may be required to operate in isolated industrial areas;
- Sex workers may be required to display their licenses, featuring their legal names, to clients;
- Sex workers may be prohibited from working together;
- Sex workers may be prohibited from hiring drivers, security or receptionists; and
- Private sex workers may be prohibited from working from home.

Licensing is sometimes misleadingly referred to as ‘legalisation’, however it is more accurately described as over-regulation. In Queensland the system has cost nearly seven million dollars in Government contributions to operate over a ten year period, and it still does not self-sustain through licensing fees.⁴² The excessive legislative requirements involved in licensing mean that large segments of the industry, both private and commercial, are often forced to maintain their underground status. It is extremely costly and difficult for sex workers and sex industry businesses to apply for a licence. In 2001-2 the average time to process a brothel license application in Queensland was 231 days.⁴³ A study of why potential applicants did not apply for a license showed because of the information required, privacy invasion and fees too expensive as the top three reasons to not apply.⁴⁴ Sex workers avoid licensing because it may require us to work in isolated industrial areas (posing a threat to our safety), disclose our legal names to clients or the public (increasing risk of harassment), obtain a permanent police record (limiting ability to travel), work alone (reducing access

to support), or face forced medical testing (impinging human rights, confidentiality and privacy). Licensing affects sex workers' ability to call upon the police for assistance, and means that acts which are lawful for non-sex workers become unlawful – and punishable – for sex workers.

Licensing models have similarly detrimental effects on sex worker health because their focus on licensed brothels creates a group of 'clandestinas', members of whom fall outside health interventions and miss targeted health programs⁴⁵ – 'usually they "capture" only a minority of sex industry workers.'⁴⁶ Sex workers and businesses avoid licensing because of the burdens of registration. In Queensland, 11 years of licensing has resulted in only 24 brothels being registered, while the majority of workplaces operate outside the licensing system.⁴⁷ In Queensland, councils are granted permission to refuse brothel development applications. Within two years of implementation, 201 towns in Queensland 'black banned' brothels, forcing them to operate outside the licensing system.⁴⁸ In comparison to NSW where 'decriminalisation has helped to ensure that the benefits gained in one sector are not denied to people working in less well-tolerated sectors',⁴⁹ Harcourt et al. argue that the 'one-size-fits-all' approach is 'inappropriate'.⁵⁰ Although sex workers are gender diverse, Chen et al. report from their Melbourne study, 'As long as a licensing system persists, promotion of sexual health among women in this sector is likely to face hurdles.'⁵¹ The LASH (Law and Sexual Health) report to the NSW Health Department in 2011 recommend that the licensing or 'legalisation' of sex work should not be regarded as a viable legislative response.

For over a century systems that require licensing of sex workers or brothels have consistently failed – most jurisdictions that once had licensing systems have abandoned them. Under licensing systems most sex workers remain unlicensed, so criminal codes remain in force, leaving the potential for police corruption. Licensing systems are expensive and difficult to administer, and they always generate an unlicensed underclass. That underclass is wary of and avoids surveillance systems and public health services: the current systems in Queensland and Victoria confirm this fact. Thus, licensing also represents a potential threat to public health.⁵²

- The Kirby Institute

Mandatory testing

Mandatory STI and HIV testing for sex workers in licensing regimes is contrary to best-practice models of voluntary testing outlined in Australia's National Strategies and is not evidenced by current epidemiology in Australia.⁵³ Compulsory testing creates an unnecessary, expensive burden on public health funds, encourages sex workers to hide our profession from medical experts, jeopardises sex worker privacy and can endorse a false sense of security among clients, leading to increased requests for unsafe practices.⁵⁴ Although sex workers are often seen in policy initiatives to be a high-risk group for HIV, research shows that sex workers have successfully implemented and consistently maintained safe sex practices. Sex workers have consistently low rates of sexually transmissible infections and HIV,⁵⁵ with very high rates of prophylactic use.⁵⁶ STI/HIV prevalence remains low among sex workers in jurisdictions with voluntary testing.⁵⁷ Evidence indicates that current testing rates in jurisdictions with mandatory testing are 'excessive',⁵⁸ and in their study, Samaranayake et al. found that the use of resources in screening sex workers could be better spent.⁵⁹ Peer education initiatives remain highly effective with a proven track record in health promotion and prevention of STI and HIV transmission. In comparison, Harcourt et al. note, 'Pressure on resources can lead to poor medical standards; including insensitive or inhumane treatment of sex workers, poor-quality examinations, and breaches of confidentiality.'⁶⁰ In their article in the *World Journal of Aids*, Elena Jeffreys, Janelle Fawkes and Zahra Stardust write that 'Mandatory testing fails as evidence-based policy':

There is no evidence that mandatory testing produces better results than well resourced, targeted community-based health promotion strategies involving sex worker communities in a comprehensive response, including provision of peer education and prophylactics.⁶¹

The chapter on STI and HIV Testing and Criminalisation discusses mandatory testing in further detail.

Dangers of registration

In jurisdictions where sex workers are required to register on a police database, registration represents a significant threat to sex workers' human rights, confidentiality and health promotion. The obligation to register our legal name and proof of address means that, in effect, sex workers are singled out for surveillance and acquire a criminal record, which affects our opportunities for

employment, further education and access to justice. The Chapter on human rights and discrimination details incidents where sex workers' registered work has been brought up as evidence of poor character in court, or negatively taken into account in demonstrating what is considered a reliable witness.⁶² Sex worker Whoretic reports that her criminal record from sex work can restrict her movement between countries and ability to work in different areas.⁶³ Others fear being deemed an unfit parent in custody cases where their work is disclosed.⁶⁴ As Harcourt et al. write, 'Registered sex workers are socially labelled, acquiring an official history that is not readily buried if their circumstances change. Depending on the severity of the regime, licensed sex workers may have their movements restricted, their travel documents identified and their choice of medical care limited to approved clinics.'⁶⁵ Registration erects a barrier to people working legally (there is often low compliance) and affects the quality of health advice received because workers may not be candid with our health professional for fear of 'outing' ourselves, or may actively avoid health services for fear of prosecution.⁶⁶ As Ally Daniel writes,

The police register acts similarly to a criminal database and once a person's name is listed it can never be removed, even after they have left the sex industry. The stigmatisation of this lasts a lifetime and sex workers, past and present, may avoid health professionals for fear of being discriminated against or of having to disclose their name.⁶⁷

Registration does nothing to improve the OHS of sex workers, but rather violates human and civil rights to privacy, to work in an occupation of choice and to live and work free from harassment and discrimination, whilst detracting resources from wider public health projects.⁶⁸ In the Northern Territory, having a drug conviction

The obligation to register our legal name and proof of address means that, in effect, sex workers are singled out for surveillance and acquire a criminal record, which affects our opportunities for employment, further education and access to justice.

excludes sex workers from being able to register. Yet unregistered sex workers face further isolation from support and safety mechanisms. Although a sex worker with a former drug conviction is able to work privately, unregistered, it is illegal for us to work with another person, including hiring security or a driver. Sex workers with former drug convictions then are cornered into more dangerous working conditions – effectively punished for our drug use and sex work status. Such legislation acts to marginalise sex workers and plainly acts as an obstacle to support. Further, law enforcement by police means that workers are less likely to seek police assistance in unsafe situations.⁶⁹

Licensing has proven to be an expensive, ineffective and unworkable model to regulate the sex industry. Licensing results in low compliance and reinforces stigma by promoting the sex industry as needing special treatment.

Legislation and law enforcement affects sex worker human rights, health and safety

In their comparative law and health study, Harcourt et al. found that legal climates continue to affect the delivery of health promotion and the occupational health and safety of workers.⁷⁰ While a range of structural, social and cultural barriers impact on our health, safety and rights, Ally Daniel notes, 'the overarching factor affecting the sexual health of sex workers can be found in the legal context in which they work.'⁷¹ Frameworks that criminalise brothels, escorts, sex workers or our clients have significant impacts on sex worker safety, health, support and working conditions and are contrary to public health objectives.⁷² Licensing systems have significant ramifications for sex worker confidentiality, privacy and human rights, and act to drive workers further underground. Evidence-based research demonstrates that harsh legislation and law enforcement acts to 'breed corruption and seriously damaged public health'.⁷³ In their report, Harcourt et al. note that 'most prohibitionist regimes only achieve their aim through the suppression of democratic and human rights.'⁷⁴

Decriminalisation is necessary to protect human rights, health and safety

A decriminalised framework – where sex work businesses are treated like other businesses, subject to existing regulatory mechanisms, and the police are not involved as regulators unless there is a breach of law – is the only model to adequately provide for the safety and wellbeing of sex workers and the wider community. Decriminalisation is the only model to protect and

promote sex workers' human rights, industrial rights and civil rights. Decriminalisation has been consistently evidenced to support sex workers in our role as peer educators, partners in health promotion and the primary safe sex educators of Australia. It is crucial to ensuring reduced corruption, high compliance and a sustainable approach that is consistent with the Commonwealth's National HIV and STI Strategies.

Decriminalisation is the only model to protect and promote sex workers' human rights, industrial rights and civil rights.

NSW has enjoyed a partially decriminalised system since 1995 with positive outcomes upon sex worker health, safety and rights. The NSW model has not been a complete success, still criminalising street based sex work in certain areas, and experiencing discriminatory local council planning practices. Total decriminalisation must include introducing comprehensive human rights and anti-discrimination protections for sex workers to be fully effective. The Department of Health and Ageing Sixth National HIV Strategy 2010-2013 states that 'Australia's approach to HIV/AIDS has demonstrated the protection of human rights to be compatible with and *essential to* the effective protection of public health.'⁷⁵



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Demanding sex worker rights in Australia

**sex work
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WORK

**Chapter 3
Sex Work is a
Legitimate Occupation**

Recommendations for Reform:

- The complete decriminalisation of sex work is necessary in all jurisdictions to ensure that sex workers have equal access to industrial protections, occupational health and safety standards and opportunities to engage in collective bargaining and advocacy;
- National industrial standards should be developed at a federal level with the consultation of sex workers;
- The Best Practice Guide to Occupational Health and Safety in the Sex Industry should be adapted for use in all states and territories;
- The Award Modernisation Process should explicitly allow for awards to be established for workers who have traditionally not been covered by awards previously, including the creation of a Sex Industry Award, developed by and for sex workers;
- The Department of Employment, Education and Workplace Relations should specifically resource sex worker organisations or the establishment of new unions for sex workers, to participate meaningfully in what can be a complicated and human resource heavy process; and
- It is vital that sex workers are classified accurately to ensure we obtain the associated workplace entitlements, flexibility and conditions of being employees, contractors, private workers running our own businesses, and all the possible combinations of these work status.

Summary of Issues:

- Sex work is recognised as a legitimate form of work in areas of tax, occupational health and safety, industrial rights, insurance, immigration, family law and local planning, and incurs the associated obligations and entitlements;
- The national Best Practice Guide to Occupational Health and Safety recommends sex industry businesses provide non-allergenic safer sex supplies, personal protective equipment (alarms and mobile phones), staff training in cleaning toys and surfaces, policies to prevent occupational overuse and repetitive strain injury, safety devices and adequate lighting, and adequate breaks to maintaining sex worker health and wellbeing. This best practice guide has been adapted for use in New South Wales, the Australian Capital Territory, Victoria and New Zealand;
- Criminal and licensing laws are out of step with the increasing number of government departments and industries that recognise sex work as work;
 - Without organised labour, advocacy organisations and unions, many sex workers will continue to be incorrectly classified in our workplaces as contractors rather than employees, meaning that sex industry businesses escape industrial responsibilities such as workers compensation, superannuation and sick leave;
 - The criminalisation and licensing of sex work disempowers sex workers. Research shows that harsh criminal and licensing laws make sex workers more vulnerable, increase occupational risks and mean that sex workers are less likely to report violence to police. Criminal and licensing laws make it difficult to access remedies, enforce contracts or lobby for better working conditions because of fear of prosecution. They make sex workers less visible to each other and minimise and diminish our access to occupational health and safety protections and industrial rights, and engage in collective bargaining and advocacy;
 - Central to seeing ‘sex work as work’ is the decriminalisation of all forms of sex work in Australia;
 - All Australian workplaces are covered by federal industrial laws, and sex workers can utilise services of the Fair Work Ombudsman and Fair Work Australia in resolving disputes. Sex workers may fall under the Live Performance Award 2010 and the Miscellaneous Award 2010. Further opportunities for labour organising and advocacy would assist sex workers negotiating for sick leave, superannuation, parental leave and industrial awards in our workplaces; and
- Sex workers who genuinely choose the option of independent contracting need to enjoy the full benefits, flexibility and independence this brings rather than being subject to sham contracts with employment style conditions.

Principles for Model Sex Work Legislation Industrial Rights and Occupational Health and Safety

Everything that sex workers have won in terms of work conditions, dignity, health and access to services, we have won because we have fought for it ourselves.¹

Sex work is work

Scarlet Alliance actively promotes the right of all sex workers to work in any area of their chosen occupation, including street, brothel, escort, private and opportunistic work. Supporting the autonomy of sex workers to choose our area of work is an important step in ensuring the right of all sex workers to optimum industrial and occupational health and safety provisions.

Positioning sex work as ‘work’ – in law and policy – brings a range of industrial and occupational health and safety (OHS) protections to sex workers. Legislation that recognises sex work as a legitimate occupation affords sex workers better control over our working rights and conditions, improves our abilities to implement safer sex practices, enhances opportunities for collective bargaining and industrial advocacy (for holiday pay, sick leave, superannuation, parental leave, industrial award coverage), recognises contracts made for working purposes (between sex worker and client, or in the hiring of premises, drivers or security), legitimises income (paying taxes, claiming work-incurred expenses and applying for loans), and gives sex workers better legal redress for unfair dismissal and other injustices in the workplace. Recognising sex work as a legitimate occupation also has important flow-on effects for Australia’s whole-of-government approach to Social Inclusion, which envisages an inclusive society in which ‘all Australians feel valued and have the opportunity to participate fully in the life of our society.’²

**Positioning sex work as
‘work’ – in law and policy –
brings a range of industrial
and occupational health and
safety (OHS) protections
to sex workers.**

While an increasing number of government departments across Australia recognise sex work as work, laws that licence and criminalise sex work mean that sex workers have far reduced access to these industrial and occupational health and safety protections. In some jurisdictions, sex work has historically been treated as an undesirable practice, and sex workers seen as undeserving of legal protections. Underlying criminal and licensing legislation remains a desire for the eradication of sex work and heavy government and police control of sex workers and our industry. Sex workers still bear the burden of proving to law makers that our work is work.

Sex workers should not be forced into contracting relationships or employer-employee relationships in order to access industrial rights, human rights or occupational health and safety. And yet continuing criminalisation of some types of sex work (such as street-based sex work, home-based sex work or private work) and licensing of others (such as brothel work) limits sex workers freedom of occupation and our capacity to protect our privacy and rights. There are strong reasons why sex workers in Australia may prefer to be in a contractor relationship rather than an employee relationship, such as to protect our privacy (not having to disclose personal information to an employer for fear of misuse or harassment) and a preference for flexibility in the workplace. In some contexts, such as in regional areas, there may be few workplace options for sex workers. Scarlet Alliance believes that all forms of sex work, including opportunistic sex work, deserve human rights and protections, regardless of their legal status. The decriminalisation of all sex work would bring more flexibility and diversity in choice of workplaces.

Recognising sex work as a legitimate occupation at law – through decriminalisation and anti-discrimination protections – would have tangible effects upon how sex workers are perceived and treated in the wider community, vastly improve working conditions, empower sex workers to collectively organise for occupational health and safety, assist sex workers in negotiating industrial rights, and bring state laws into line with the approach of progressive government departments and industries.

Increasing government departments and industries treat sex work as legitimate work

Sex work is acknowledged as a valid occupation by a range of industries and departments. In areas of tax, immigration, work cover, occupational health and safety, local planning and insurance, sex work has been treated as work with the associated benefits and obligations. In Victoria, Equal Opportunity and Human Rights Commission staff may inspect workplaces to ensure sex workers are protected from discrimination or harassment at work.³ Accountants and insurance brokers offer risk assessment and consultancy catering specifically to sex workers and industry businesses, advertising through the local Sex Worker Outreach Project (SWOP) or equivalent and marketing themselves as sex industry specialists.⁴ Australian sex worker Rachel Wotton has presented internationally to tax, health, council, outreach, OHS and police officials in both the United Kingdom⁵ and Amsterdam⁶ about Australian sex industry and OHS issues as well as at the University of Amsterdam on industrial issues and taxation.⁷ The new ILO labour standard, Recommendation 200 concerning HIV and AIDS and the World of Work identifies sex work as work and sex workers as entitled to the same rights to HIV prevention and care and occupational safety as any other workers.⁸ The Australian Taxation Office (ATO) has held forums around Australia as part of an education campaign about sex industry taxation requirements, and expects sex workers and sex industry businesses to pay income tax and Goods and Services Tax (GST). The ATO has comprehensive information about tax deductible expenses⁹ and GST obligations for people working in the sex industry¹⁰ and regularly audits sex workers (regardless of the legality of our work). The ATO has treated brothel workers in Sydney as employees unless they have proven otherwise, and issued fines and compliance demands to sex industry businesses. These approaches show that criminal and licensing laws are out of step with the wider acknowledgement of sex work as valid work.

All forms of sex work, including opportunistic sex work, deserve human rights and protections, regardless of their legal status.

Industrial and labour laws recognise sex work as legitimate work

All sex industry workplaces in Australia are covered by federal workplace relations laws, regardless of state laws, with the possible exception of some Western Australian businesses. This is due mainly to the use of the Constitutional Corporations power of the Commonwealth Constitution which the Federal Government relies on to apply its industrial laws to all corporations. States and Territories except Western Australia have referred their industrial relations powers to the Federal Government, meaning that other business structures such as single owners and partnerships also fall under industrial laws. However in Western Australia, only constitutional corporations will fall under federal industrial laws.

Independent bodies such as the Fair Work Ombudsman can provide advice for sex workers on what our entitlements are, and undertake prosecutions where laws, contracts, entitlements are breached.¹¹ Employees and employers can seek an independent umpire to assist in resolving disputes at Fair Work Australia (formerly the Australian Industrial Relations Commission).¹² Strippers and bar waitresses fall under the Live Performance Award 2010¹³ and sex workers may potentially fall under the Miscellaneous Award 2010 where they are employees.¹⁴ General industrial protections apply to all employees and contractors, but must be prosecuted through the courts via lawyers and can be expensive to initiate. New South Wales, Victorian and Federal Courts have all provided for the suppression of names to protect the identity of sex workers when pursuing industrial rights.¹⁵

In 2008, Fair Work Australia commenced an Award Modernisation Process with the aim of reviewing and rationalising awards in the national workplace relations system. The purpose was to create a system of 'modern awards'.¹⁶ With the Award Modernisation Process has come the termination of a number of pre-modern awards which have previously served sex workers. The Striptease Industry Conditions Awards established in 2006 were terminated in July 2011 and the Striptease Artists Association deregistered. These awards now cease to operate. However, the Award Modernisation Process has opened up the opportunity for sex workers to seek the establishment of a Sex Industry Award.¹⁷ The Sex Workers' Union has argued that the process should explicitly allow for awards to be established for workers who have traditionally been excluded. In 2008 they argued that sex workers are entitled to award conditions developed by sex workers with genuine and comprehensive consultation with the diverse groupings

of sex workers across the country, so that award coverage would include sex workers in a variety of workplaces, sectors and jurisdictions.¹⁸

Occupational health and safety

The Best Practice Guide to Occupational Health and Safety in the Sex Industry states that ‘all workers, no matter what industry they work in, have a right not to have their health put at risk through carrying out the normal requirements of their work.’¹⁹ The Best Practice Guide is comprehensive in its recommendations to protect the occupational health and safety of sex workers. The Guide recommends that sex industry businesses: provide information on safer sex in a variety of common community languages; provide free supplies of personal protective equipment (such as condoms, lubricant, alarms and mobile phone for escort workers); provide training for staff in cleaning toys, aids and surfaces, prevent occupational overuse (such as repetitive strain injury) by ensuring proper work tool design (adjustable massage tables, correct massage techniques, alternating between repetitive and non-repetitive activities); install safety devices (alarm buttons, policies of ejecting inappropriate clients); maintain temperature regulation (heating and cooling); ensure adequate lighting; and provide written policy documents for staff covering trauma, condom breakage and safety procedures. The Guide states that OHS ‘makes good business sense’, by promoting happy workers and happy clients. The Guidelines state:

OHS doesn’t just mean paying attention to cleanliness, fire extinguishers, repairing faulty electrical equipment. It’s also about being aware of working conditions, which over time will impact on a person’s health and wellbeing. OHS is also about:

- Making sure that beds are in good repair and give proper support;
- Supplying lubricants and massage oils which are non-allergenic;...
- Ensuring that workers have adequate breaks between clients and between shifts, to avoid stress and fatigue.

These national guidelines have been adapted for use at a state level in New South Wales,²⁰ in a document produced by Sex Workers Outreach Project (SWOP), WorkCover and NSW Health, which is available in English, Korean, Thai and Chinese. WorkCover funded SWOP to deliver an education program for sex workers and sex industry

businesses on the implementation of the Guidelines, and NSW have also produced the DVD *Getting on Top of Health and Safety in the NSW Sex Industry*. The NSW Guidelines state that employers must consult with their staff to ensure we have a say in our working conditions and ‘contribute to the making of decisions that affect their health, safety and welfare at work.’²¹ A number of these OHS principles have been further formalised as part of the City of Sydney Development Control Plan,²² which provides requirements in relation to duress alarms, lighting requirements and emergency communication systems in council planning.

In the Australian Capital Territory during the 1990s, sex workers were represented on the Sex Industry Consultative Group that advised the Attorney General on legal policy for the sex industry in Canberra and developed the OHS Code of Practice for Brothels in the ACT.²³ The Australian National Sex Industry Occupational Health and Safety Guidelines have also been adapted for use in New Zealand.²⁴ Workplace obligations and entitlements are discussed regularly in sex worker publications: SWOP publishes *The Professional*, which gives sex workers advice on dealing with tax visits and GST,²⁵ as well as the *Workers Handbook* and *Sex Industry Legal Kit*.²⁶ Different states have different bodies (WorkCover in NSW and WorkCare in Victoria) to monitor OHS conditions, inspect businesses, prevent workplace injury and administer legislation.

The harmonisation of Occupational Health and Safety laws into the Work, Health and Safety (WHS) legislation has firmly extended WHS to all workers, regardless of the nature of their contract. This specifically includes employees, contractors and anybody in the workplace, which is a positive for sex workers in ensuring global coverage of WHS.

There remains the concern that the NSW Guidelines for the sex industry are not incorporated into the national harmonised Codes of Practice, or they are incorporated without consultation with sex worker organisations.

Illegality, stigma and discrimination reduces sex worker access to industrial rights and OHS

Despite being treated as a legitimate profession and being subject to responsibilities and entitlements like other occupations, many kinds of sex work are still criminalised and heavily licensed in a manner that actively reduces sex worker’s access to industrial rights and OHS protections. In the Western Australian case of *Phillipa v Carmel*, in which a sex worker sued a brothel operator

for unfair dismissal, the judge held that if the Taxation Office was prepared to tax so-called 'illegal' earnings, people working illegally should not be denied the right to compensation under the law.²⁷ However, although sex workers have industrial rights regardless of the legality of our work, criminalisation reduces sex workers' access to these rights.

Criminalisation makes it difficult for sex workers to access remedies, enforce contracts or lobby for better working conditions because of fear of prosecution. Criminalisation makes it difficult for sex industry businesses to develop and enforce OHS standards, and for sex workers to access statutory employment protections, industrial awards and workers compensation. The 2011 Western Australian *Prostitution Bill* expressly precludes sex workers from being covered as workers in the *Workers Compensation Act*. In criminalised jurisdictions, rates of pay, workloads, shifts and other conditions may remain largely at the discretion of brothel owners. Where sex work is criminalised, it disempowers sex workers, makes us less visible to each other and hinders our opportunities for collective bargaining and advocacy.

Criminalisation makes it difficult for sex workers to access remedies, enforce contracts or lobby for better working conditions because of fear of prosecution.

Criminalisation then has led to a situation where sex workers are expected to pay taxes but have less access to industrial rights to protect us in the workplace. Sex workers feel cheated; we are fiercely audited, yet are denied basic working conditions that other workers enjoy. The ATO has undertaken targeted and excessive compliance activity since 2005. This has included sending letters to registered addresses of sex workers and sex industry businesses requesting information on the number of shifts, jobs and rates, and making follow up raids and issuing fines to larger brothels and assessing the scale and nature of the business. As Sheranne Dobinson of the former Prostitutes Collective of Victoria says, 'Paying tax does not make sex workers equal in the community or give sex workers adequate access to public

services, housing and bank loans – nor does it improve industrial conditions for sex workers.'²⁸ The Sex Workers' Union have noted:

The historic criminalisation of sex workers, along with the impact of social stigma and discrimination against sex workers, has impacted on the ability for participation in the organised labour movement, or to gain recognised and legal regulation of employment conditions that other workers have achieved, particularly in relation to Awards and Enterprise Agreements.²⁹

In 2002 SWOP NSW reported that although not the industry norm, poor working conditions experienced by brothel workers in Newcastle and Gosford areas were because of 'reduced options to work legally'.³⁰ In 2003, six sex workers sent a letter to the Women's Electoral Lobby reporting poor working conditions.³¹ In 2005 Mystical Melody of the Striptease Artists Association noted that many strippers were often charged shift fees, fines and bonds and did not receive adequate facilities or spaces.³² Maria McMahon notes that the main complaints to WorkCover in NSW in 2009 related to inadequate washrooms/amenities, poor housekeeping, faulty wiring or plumbing, or lack of fire evacuation procedures, and lack of free personal protective equipment supplied.³³ However she notes that a proactive approach to OHS policy and enforcement has increased uptake of workers compensation insurance, and reduced claims of workplace accidents, injuries or illnesses.³⁴

These labour issues exist across all industries, but are exacerbated where those industries are criminalised. Decriminalisation, combined with more comprehensive anti-discrimination protections for sex workers across all jurisdictions, would improve sex worker autonomy, control, OHS and industrial rights.

Where sex work is criminalised, it disempowers sex workers, makes us less visible to each other, and hinders our opportunities for collective bargaining and advocacy.

Sex worker status as contractors and employees

In their 2008 Submission to the Senate Standing Committee on Education, Employment, Workplace Relations, the Sex Workers' Union stated that it is crucial that sex workers be seen as legitimate workers by the state as well as sex industry businesses, so that our work is classified accurately and we obtain the associated entitlements, flexibility and conditions.³⁵ A key campaign of the Sex Workers' Union was 'to determine more accurately the rights and responsibilities of sex workers who are subcontractors, sex workers who are employees, and sex workers whose workplace may be a mixture of both.'

Employment conditions are of ongoing importance to sex workers. Of particular concern is retaining the ability to individually negotiate flexibility around conditions and wages as well as collectively negotiate for improvement both at the local enterprise level as well as national employment standards. Flexibility of employment conditions within the workplace as well as flexibility between workplaces is important for sex workers, along with the range of employment options being available.³⁶

- Sex Workers Union

For sex workers in Australia, being an employee within a workplace can pose dangers in terms of confidentiality and privacy. It is possible to have ones' legal name and Tax File Number suppressed and confidential from the employer (to avoid stigma, harassment, or improper use of your personal information) and still maintain the benefits of being an employee. However, in this situation the sex worker's occupation is still known to the Australian Taxation Office, and given the continuing stigmas around sex work and lack of sufficient anti-discrimination protection in Australia, sex workers fear our personal information being shared formally or maliciously. These concerns, in addition to preferences for flexibility and style of work, mean that sex workers may prefer to do private, street-based, home-based or opportunistic sex work.

Brothel workers often complain about being called independent contractors but being treated as employees in our workplaces. This practice is significant because it allows brothel operators to effectively lower workplace standards and avoid industrial responsibilities, such as providing superannuation, sick leave, workers

compensation, maternity leave or paid holidays. Being treated as an independent contractor means that it can be difficult for sex workers to prove we have a right to compensation for unfair dismissal and other workplace injustices. Remedies and protections are often only available to those with employee status.

The Best Practice Guide to Occupational Health and Safety in the Australian Sex Industry notes that the employment relationship forms the basis for: participation in the conciliation and arbitration process; entitlement to join a union; rights and obligations under statute law, such as workers compensation; annual leave, sick leave and long service leave; industry-based superannuation schemes; and occupational health and safety legislation.³⁷ The Sex Workers' Union's 2008 submission noted that the vast majority of sex workers in Australia are described by our employers as sub-contractors, despite circumstances suggesting that sex workers should often legally be classed as employees. The legal test for determining if someone is an employee includes consideration of a person's degree of control over their working conditions, pay, rosters, hours, equipment, tax, supervision, insurance, superannuation cover, place of work and exclusivity.³⁸ It can also include who pays the 10% GST on a booking fee. In *Phillipa v Carmel*, the court held that for the purposes of unfair dismissal, an employer/employee relationship did in fact exist between the brothel operator and worker in that case. Yet, as the Sex Workers' Union stated, 'Without the benefits of a long history of [recognised] organised labour, sub-contractor status remains unchallenged in almost all workplaces.'³⁹

While many sex workers prefer the flexibility and independence that comes from contractor arrangements, the Sex Workers' Union argued that 'full benefits of subcontracting are currently being withheld by most brothel owners with conditions more akin to that of an employee.'⁴⁰

Decriminalisation supports occupational health and safety and industrial rights

The decriminalisation of sex work is central to ensuring the industrial rights and OHS standards of sex workers. Decriminalisation means that sex workers and sex industry businesses are treated like other workers and businesses and is essential to supporting the rights, safety and health of sex workers and, through us, the broader community. In New Zealand, seven years after the implementation of the *Prostitution Reform Act*, research shows that decriminalisation has encouraged the reporting of violence to police, and resulted in

a high level of compliance with safer sex and OHS requirements.⁴¹

Supporting sex worker advocacy

Sex workers are currently covered under the umbrella of United Voice (formerly the Australian Liquor, Hospitality and Miscellaneous Workers' Union). The Sex Workers' Union began the process of developing a recognised labour movement for sex workers, and seeking a legally enforceable set of basic working conditions for sex workers across Australia. Because sex workers have 'had our own struggles' fighting harsh laws and addressing stigma and social exclusion,⁴² sex workers have not enjoyed the formal recognition and award benefits of many years of organised labour that other workers have had, and formal sex worker labour organising is still only in its infancy.⁴³ In 2008, the Sex Workers' Union wrote that 'We want the option available for sex workers to be able to, in the future, negotiate and establish award conditions like other, more formally organised workers have achieved'.⁴⁴

Precedent has shown that sex workers in Australia have the capacity to be involved in high level policy discussions on complex social issues, and to be able to implement radical behavioural and cultural change in workplaces when education and resources are available to support us.⁴⁵

- Sex Workers' Union

Collective bargaining and advocacy is an important means for sex workers to contribute to the ongoing improvement of our workplace conditions. Union representation follows the momentum of sex work advocacy worldwide – the documentary *Live Nude Girls Unite!* records the plight of peepshow workers at the San Francisco's Lusty Lady to unionise for better pay and conditions.

We deserve better working conditions. We don't need more police or doctors or public servants scrutinising our lives and our bodies; we need better rights as workers. We need to be enabled, just as any other worker is, to feel safe and thrive in our workplaces.⁴⁷

- Christian Vega, a member of VIXEN Victoria and Australian Male Sex Worker Representative for Scarlet Alliance

... Sex Work is a Legitimate Occupation

Australian Council of Trade Unions (ACTU) president Sharon Burrows said in an address To Sixth International Congress on Aids in Asia And The Pacific Melbourne 2001, 'It is vital that [sex workers] are seen as being engaged in work and therefore have the same rights as other workers to organise and to expect that their right to health and safety at work are respected'.⁴⁸



Conclusion

Sex work is work, and it is treated as work by an increasing number of government departments and industries. Sex workers are subject to OHS standards, industrial laws and taxation requirements. However, the criminalisation and licensing of sex work greatly reduces sex workers' access to these rights. Criminalisation and licensing means that OHS standards may not be developed or enforced, industrial rights protections may not be accessible, and the fear of prosecution means that sex workers have diminished opportunities to collectively organise for our health and safety and negotiate for better working conditions. Decriminalisation remains the proven best-practice approach to empowering sex workers and improving our workplaces. In a decriminalised environment, sex workers would have enhanced opportunities to have our work accurately classified, form unions and lobby for industry awards.

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Scarlet Alliance
Australian Sex Workers Association

for sex worker rights in Australia

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Chapter 4

Health promotion and peer education



Recommendations for Reform:

- Maintain and improve resourcing for sex worker peer education in Australia;
- Remove legal barriers to the effective delivery of sex worker peer education in Australia;
- Enable sex worker organisations to continue to implement sex worker recruitment strategies for peer education and other relevant health promotion roles; and
- All law reform efforts targeting sex work should draw upon the Australian National Strategies on HIV and STIs.

Summary of Issues:

- Australian sex workers practice safe sex as a fundamental occupational health and safety practice;
- Research consistently illustrates that sex workers enjoy lower rates of STIs than the general population and have close to 100% rates of prophylactic use;
- The National Strategies on HIV and STIs note that the incidence of HIV/STIs in sex workers in Australia is among the lowest in the world;
- Excellent sex worker health is a result of community outreach, peer education and health promotion;
- Peer education, affirmative action policies and sex worker training projects acknowledge the expertise and knowledge actively demonstrated by sex workers on a daily basis, and remain one of the most effective forms of sex education, skill sharing and positive networking; and
- Health promotion is best effected through peer education, community development, community engagement and advocacy.

Principles for Model Sex Work Legislation Health Promotion and Peer Education

Health promotion is the process of enabling people to increase control over, and to improve, their health. To reach a state of complete physical, mental and social well-being, an individual or group must be able to identify and to realize aspirations, to satisfy needs, and to change or cope with the environment. Health is, therefore, seen as a resource for everyday life, not the objective of living. Health is a positive concept emphasizing social and personal resources, as well as physical capacities. Therefore, health promotion is not just the responsibility of the health sector, but goes beyond healthy life-styles to well-being.¹

Safer sex and low rates of STIs

Australian sex workers practice safe sex as a fundamental occupational health and safety practice. Our communities are often better informed on safe sex practices than the broader community. Sex workers share low rates of STIs largely as a result of community outreach, peer education and health promotion. Both the Sixth National HIV Strategy 2010-2013 and the Second National STI Strategy 2010-2013 note that 'the incidence of HIV/STIs in sex workers in Australia is among the lowest in the world. This is largely because of the establishment of safe-sex as a norm, the availability of safe-sex equipment, and community-driven health promotion and peer-based interventions.'²

Research clearly and consistently illustrates that sex workers enjoy lower rates of STIs than the general population, and have very high rates of prophylactic use.³ The LASH (Law and Sex worker Health) report to the NSW Health Department in 2012 found that condom use at work approaches 100% in Sydney brothels.⁴ A Canberra Sexual Health Centre study demonstrates low rates of STIs amongst sex workers through testing between 2002 and 2005. Of 71 sex workers screened, of whom 68 were female and 3 were male, positive diagnosis of chlamydia was 1 from 63 tests (1.6%) and positive diagnosis of syphilis was 0 from 51 tests - 0.0%.⁵ In comparison, research in the ACT from 2008 illustrates that the prevalence of chlamydia among tested women in general practices was 4.3% (including a rate of 6.5% among those 20-25years).⁶ Research in the ACT from 2006 illustrates that in 2004, the incidence of positive tests for chlamydia was 5.1%.⁷

In other states in Australia, epidemiology and research consistently show that sex workers have better sexual health than the non-sex working population in Australia. In their 2010 study, Donovan et al. note that in the sex industry in NSW, 'condom use for vaginal and anal sex exceeds 99% and sexually transmissible infection rates

are at historic lows.'⁸ The LASH Report on the Sex Industry in Western Australia in 2005 also found close to 100% rate of condom use at work in Perth brothels.⁹ In their Victorian study, David Wilson et al. support the claim that sex workers have lower rates of STIs than the general community.¹⁰ In their 2009 paper they estimate STI incidence in Victorian sex workers based on sexual health clinic databases as '0.1/100 person-years for HIV, 0.1/100 person-years for syphilis, 3.3/100 person-years for chlamydia, and 0.7/100 person-years for gonorrhoea.'¹¹ The authors make reference to Australia's culture of high condom use amongst sex workers.

Australian sex workers practice safe sex as a fundamental occupational health and safety practice.

The Kirby Institute (formerly the National Centre in HIV Epidemiology and Clinical Research) Annual Surveillance Report for 2011 shows that the chlamydia rate was the lowest among female sex workers, that testing rates were highest among female sex workers, and that HIV prevalence remained low among women self-identifying as sex workers, with or without a history of injecting drug use.¹²

Another recent study by The Kirby Institute at the University of New South Wales used data from 21 sexual health services across Australia to study chlamydia positivity among new patients seen at sexual health services participating in ACCESS (the Australian Collaboration for Chlamydia Enhanced Sentinel Surveillance). This study found that female sex workers enjoyed far lower rates of chlamydia than other women. Nationally, the study found chlamydia rates among female sex workers to be 5.7%, compared to 9.8% among 'other women', and in the ACT, only 2.3% of sex workers

tested positive, compared with 9.2% of other women surveyed.¹³ Contrary to public perception and stereotype, research consistently reveals that sex workers have lower STIs than the general community.

Migrant sex workers have similarly low rates of STIs and HIV and high rates of condom use. A Sydney Sexual Health Centre study of Asian female sex workers surveyed in Sydney in 1993 and 2003 demonstrated that 92.5% of Thai sex workers had consistent condom use with clients for vaginal sex in 2003.¹⁴ In 2007, a survey by Zi Teng (Hong Kong) and Scarlet Alliance of Chinese sex workers in Sydney, Adelaide, Melbourne and Canberra demonstrated that 97% of Chinese sex workers always use condoms.¹⁵ In 2010, a study from the National Centre in HIV Epidemiology and Clinical Research, Sydney Sexual Health Centre, UNSW Faculty of Law and School of Population Health at the University of Melbourne demonstrates similar rates of condom use between Asian and non-Asian sex workers for vaginal and anal sex:

Condom use by the Asian women is now similar to resident sex workers (Figure 1) and the prevalence of sexually transmissible infections is at an historic low; for example, the incidence of gonorrhoea has fallen from 440 per 100 woman years in 1980-1981 to 0.24 per 100 woman years in 2004-2006 among brothel-based workers in Sydney. Less than 1% of these women arrive with HIV infection and to date there are no documented cases of HIV transmission to or from these women resulting in their work from Australia.¹⁶

Research clearly and consistently illustrates that sex workers enjoy lower rates of STIs than the general population, and have very high rates of prophylactic use.

Sex workers – both migrant and non-migrant – have far higher rates of condom use than the general population. By comparison, the Australian and New Zealand Journal of Public Health published a 2003 study conducted by the Australian Research Centre in Sex, Health and Society at

La Trobe University, Victoria, which identified that of a representative sample of 19,307 adults surveyed, only 20% had used a condom on their most recent sexual encounter.¹⁷

Sex workers – both migrant and non-migrant – have far higher rates of condom use than the general population.

Health promotion

Health promotion is the framework Scarlet Alliance has adopted in order to achieve sex worker legal, health, industrial, human and civil rights. We recognise a number of tools as best practice for health promotion, including peer education, community development, community engagement and advocacy. The work of our members (state based sex worker organisations and projects throughout Australia) on STI and HIV prevention and advocacy is recognised internationally as best practice implementation of health promotion.

The Ottawa Charter was established at the first International Conference on Health Promotion in 1986 and remains the international best-practice charter for health promotion. The Charter establishes three fundamental strategies of health promotion: advocate, enable and mediate.¹⁸ The first strategy, 'advocate', recognises that good health is a resource for social, economic and personal development. Political, economic, social, cultural, environmental, behavioural and biological factors can all affect health. Advocacy aims to make these conditions favourable to health promotion. The second strategy, 'enable', aims to reduce differences in current health status by ensuring equal opportunities and resources to enable all people to achieve their fullest health potential. Creating an enabling environment includes support, access to information, life skills and opportunities for making healthy choices. The third strategy, 'mediate', recognises that health promotion demands coordinated action by governments, health, social, economic, non-governmental and voluntary sectors as well as local authorities and the media.

The Ottawa Charter for Health Promotion identifies five key action areas, these are:¹⁹

- **Building healthy public policy** – health promotion policy combines diverse but complementary approaches, including legislation, fiscal measures, taxation and organisational change. Health promotion policy requires the identification of obstacles to the adoption of healthy public policies in non-health sectors and the development of ways to remove them;
- **Creating supportive environments** – the protection of the natural and built environments and the conservation of natural resources must be addressed in any health promotion strategy. Work, leisure and living environments should be a source of health for people;
- **Strengthening community action** – community development draws on existing human and material resources to enhance self-help and social support, and to develop flexible systems for strengthening public participation in, and direction of, health matters. This requires full and continuous access to information and learning opportunities for health, as well as funding support;
- **Developing personal skills through information and education skills** – enabling people to learn (throughout life) to prepare themselves for all of its stages and to cope with chronic illness and injuries is essential. This has to be facilitated in school, home, work and community settings;
- **Re-orientating health care services toward prevention of illness and promotion of health** – the role of the health sector must move increasingly in a health promotion direction, beyond its responsibility for providing clinical and curative services. Reorientating health services also requires stronger attention to health research, as well as changes in professional education and training.

Scarlet Alliance’s health promotion activities include: playing an active role in Australia’s response to HIV and being a member of the Australian Federation of AIDS Organisations (AFAO); producing national resources on occupational health and safety and law reform; informing governments, policy makers and the health sector on legislation affecting sex workers; internationally promoting models of service delivery that have been most effective in minimising the transmission of HIV and STIs amongst sex workers and their clients; promoting peer education and professional development and training for peer educators; educating government departments on issues relating to migration and sex work; and presenting at national and international health, law, human rights, feminist, community education, immigration and global forums.

Peer education

The most successful means of health promotion for sex workers in Australia has been through peer education. Scarlet Alliance and our members’ policies of affirmative action in hiring only past or present sex workers, framed in context of the World Charter for Prostitutes Rights and Ottawa Charter of Health Promotion, is a commitment to peer education: ‘When people outside of [sex worker] communities are recruited as educators, prevention and behaviour change messages are often construed as authoritarian and prohibitionist rather than about health promotion.’²⁰ In their chapter in *Sexual Health Medicine*,

Donovan, Bates and Harcourt write that ‘whenever adequately resourced health promotion programs for sex workers have been implemented, the outcome has been marked improvements in the sexual health of sex workers with positive benefits for their clientele and the general population.’²¹

Peer education acknowledges the expertise, experience and knowledge actively demonstrated by sex workers on a daily basis. Serena Mawulisa and Kenn Robinson wrote in 2003 that sex workers may be doing the some of the most effective sex education work with adult heterosexual and homosexual men in Australia:

Sex workers worldwide have unique and exclusive access to men that may never actively seek information about HIV or STIs. Clients generally view sex workers as ‘sexperts’ and as a result, they may ask questions that they would never dare broach with a health professional, making sex workers a valuable resource in HIV education work.²²

- Serena Mawulisa and Kenn Robinson

Serena Mawulisa writes that formal peer education training is a form of ‘role modelling’ and acts as an ‘extension of the informal tradition of peer education that occurs in sex industry workplaces’.²³ Peer education

among sex workers can develop our 'self esteem, pride and personal skills to manage the impact of oppression [in a sex-negative society]' and 'celebrate a history of supportive community between sex workers, promoting a focus on sex workers' co-operation, skill sharing and positive networking, rather than competition within sex industry workplaces.'²⁴ Mawulisa writes that peer education can 'encourage professionalism and pride in sex workers, and supports a greater assertiveness with clients, a culture of safer commercial sex practices and a positive attitude towards sex work.'²⁵

Alina Thomas notes that the Scarlet Alliance National Training and Assessment Project (SANTAP) 'recognises the skills that sex worker peer educators have developed during the course of their work'²⁶ by awarding them with a Diploma in Community Development. The project is endorsed by the national Vocational Education and Training (VET) model practices by Australia state and federal governments, and the units that make up the diploma are determined by national training standards, 'equivalent of those delivered by TAFE and the higher educational sector across Australia.'²⁷

Similarly, Nicolette Naxalite writes that in Thailand, the Empower Foundation runs a sex worker specific education program:

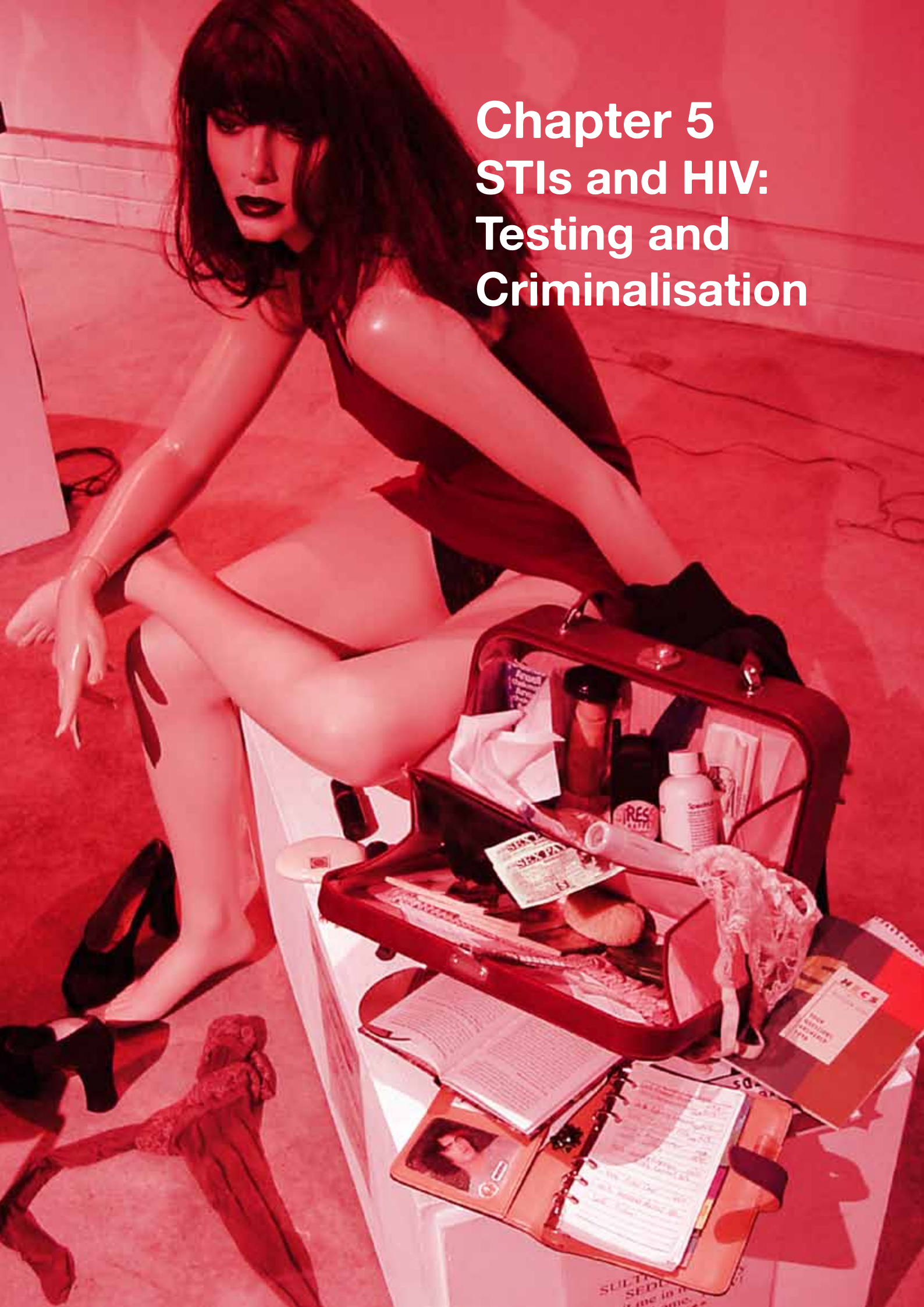
Empower runs a government accredited Non Formal Education (NFE) scheme, under the name Empower Sex Worker University. Sex workers who have not completed high school are able to enroll in this scheme to complete their high school certificate. This scheme is unique in that a woman enrolled in the Empower University can attend classes as frequently as her time permits and sex workers who have graduated from university are responsible for teaching students.²⁸

Providing more funding for peer education initiatives and ensuring the decriminalisation of sex work would promote good sexual health, risk management, skill-sharing and sex education. The Sex Workers Outreach Project in the Northern Territory (SWOP NT) writes in their magazine Red Light Rites that 'Achieving our optimum sexual health is a daily process of which our physical, spiritual, psychological, environmental and socio-cultural well-being are all determinants.'²⁹ Peer education is compatible and necessary for a human rights and self-deterministic approach to sex work. As the National HIV Strategy says, 'Australia's approach to HIV/AIDS has demonstrated the protection of human rights to be compatible with and essential to the effective protection of public health.'³⁰



- 1 Ottawa Charter for Health Promotion, 21 November 1986, accessed at <http://www.who.int/healthpromotion/conferences/previous/ottawa/en/> on 7 September 2011.
- 2 Australian Government Department of Health and Ageing, Sixth National HIV Strategy 2010-2013, Commonwealth of Australia, Canberra, 2010, 16; Australian Government Department of Health and Ageing, Second National STI Strategy 2010-2013, Commonwealth of Australia, Canberra, 2010, 16. Comparatively low rates of STIs among Australian Sex Workers are also cited in NSW Health, STI Strategy Environmental Scan, 2006.
- 3 Roberta Perkins and Francis Lovejoy, *Call Girls*, University of Western Australia Press, 2007. High rates of condom use also relate to oral services: Health Needs Assessment of Parlour Workers in South Western Sydney Area Health Service, SWSAHS 2002.
- 4 Basil Donovan, C Harcourt, S Egger, L Watchirs Smith, K Schneider, JM Kaldor, MY Chen, CK Fairley, S Tabrizi, *The Sex Industry in New South Wales: A Report to the NSW Government*, Kirby Institute, University of New South Wales, Sydney, 2012, vi, Preliminary findings presented at the Sex Workers Outreach Project Policy Meeting, Australian Society for HIV Medicine, 9 September 2011.
- 5 Christine J Sturrock et al., 'Community-Based Sexual Health Care Works: A Review of the ACT Outreach Program', *Sexual Health*, 2007, 4, 201–204 at Table 1 and Table 3.
- 6 Francis J Bowden et al., 'Screening for Chlamydia Trachomatis at the Time of Routine Pap Smear in General Practice: A Cluster Randomised Controlled Trial' *MJA* Volume 188 Number 2, 21 January 2008 at Table 6.
- 7 Marian J Currie and Francis J Bowden, 'An Epidemic of Infection, Not Just Testing: Chlamydia Prevalence Estimates in the Australian Capital Territory 1998-2004' *Australian and New Zealand Journal of Public Health* 2006 vol. 30 no. 3, 286.
- 8 Basil Donovan et al., 'Improving the Health of Sex Workers in NSW: Maintaining Success', (2010) *Public Health Bulletin*, Vol 21 (3-4), 74 at abstract.
- 9 Basil Donovan, C Harcourt, S Egger, K Schneider, J O'Connor, L Marshall, MY Chen, CK Fairley, (2010). *The Sex Industry in Western Australia: a Report to the Western Australian Government*. Sydney: National Centre in HIV Epidemiology and Clinical Research, University of New South Wales, vii.
- 10 D Wilson, K Heymer, J Anderson, J O'Connor, C Harcourt and D Donovan (2009), 'Sex workers can be screened too often: a cost-effective analysis in Victoria, Australia', *Sexually Transmitted Infections*, October 2009.
- 11 *Ibid* at 5-6.
- 12 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.
- 13 Table: Number of new patients seen at sexual health services participating in ACCESS, number (percent) tested for chlamydia and number (percent) tested positive with chlamydia in 2009, Source: Australian Collaboration for Chlamydia Enhanced Sentinel Surveillance – Sexual Health Services Network <http://www.access-study.org/>, table results provided by Dr Hammad Ali, Kirby Institute.
- 14 C Pell, J Dabhadatta, C Harcourt, K Tribe, 'Demographic, migration status, and work-related changes in Asian female sex workers surveyed in Sydney, 1993 and 2003', *Australian and New Zealand Journal of Public Health*, 30:2, 2006, 157, Table 1.
- 15 Zi Teng and Scarlet Alliance, *Chinese Sex Workers in Australia: 2006-2007 Survey*, <http://www.scarletalliance.org.au/library/chinesesexworkerposter0607>.
- 16 Basil Donovan, Christine Harcourt, Sandra Egger and Christopher Fairley, 'Improving the health of sex workers in NSW: Maintaining Success', *Public Health Bulletin*, 21 (3-4), 2010, 74 at Figure 1 and 75.
- 17 RO de Visser, AM Smith, CE Rissel, J Richters, AE Grulich, 'Sex in Australia: Safer Sex and Condom Use among a Representative Sample of Adults. *Australia and New Zealand Journal of Public Health*. 2003;27(2):223-9., accessed at <http://www.ncbi.nlm.nih.gov/pubmed/14696715> on 17 January 2013.
- 18 World Health Organisation, *The Ottawa Charter for Health Promotion*, 21 November 1986, accessed at <http://www.who.int/healthpromotion/conferences/previous/ottawa/en/> on 28 September 2011.
- 19 *Ibid*.
- 20 Scarlet Alliance, 'Affirmative Action in Sex Work: Past and Current Sex Workers', accessed at http://www.scarletalliance.org.au/library/BestPracticesWorkingParty_08/ on 19 July 2011.
- 21 Basil Donovan, Julie Bates and Christine Harcourt, 'Sex Workers' in Darren Russell, David Bradford and Christopher Fairley, *Sexual Health Medicine*, 2nd Edition, February 2011, Chapter 35.
- 22 Serena Mawulisa and Kenn Robinson, 'Sex Workers as Educators', *HIV Australia*, Volume 3, September-November 2003.
- 23 Serena Mawulisa, 'Principles of Peer Education with Sex Workers', 2002, accessed at <http://www.scarletalliance.org.au/library/mawulisa02> on 18 July 2011.
- 24 *Ibid*.
- 25 Serena Mawulisa, 'Principles of Peer Education with Sex Workers', above n23.
- 26 Alina Thomas, 'Community Development, Work Force Development', in *Provision: Empowerment*, Issue 3, Scarlet Alliance, 2008, 17.
- 27 *Ibid*.
- 28 Nicolette Naxalite, 'Living, Laughing and Loving: Working with the Empower Foundation', *Provision: Empowerment*, Issue 3, Scarlet Alliance, 2008, 24.
- 29 Sex Workers Outreach Project Northern Territory, *Red Light Rites*, Issue 22, Inside cover, Darwin, 2011.
- 30 Australian Government Department of Health and Ageing, Sixth National HIV Strategy 2010-2013, above n1 at 6.4, emphasis added.

Chapter 5 STIs and HIV: Testing and Criminalisation



Recommendations for Reform:

- Health approaches should focus on peer education, harm reduction and self-determination;
- All sexually active people should be educated to have periodical health screening for STIs and HIV in a way that is appropriate to our type and incidences of sexual activity;
- Mandatory testing should be abolished. STI and HIV testing should always be voluntary and patient-initiated;
- Because sex workers provide a vast range of services, many of which pose little or no risk of STI transmission, and because existing laws already cover deliberate transmissions, sex workers should not be criminalised or excluded from working if they have an STI or HIV;
- State and territory governments must remove HIV and STI disclosure requirements from state laws;
- Legislation surrounding sex work for people living with HIV should reflect legislation relating to private sex;
- State, territory and federal governments must introduce comprehensive and consistent human rights and anti-discrimination protections for sex workers; and
- Sex work should be decriminalised in all jurisdictions.

Summary of Issues:

- The National Strategies on HIV and STIs note that the incidence of HIV/STIs in sex workers in Australia is among the lowest in the world;
- Despite a proven track record of exemplary sexual health, in some jurisdictions sex workers are required to have regular mandatory tests for STIs and HIV;
- Mandatory testing is not evidenced by current epidemiology in Australia. Mandatory testing creates unnecessary, expensive burden on public health funds, leads to sex workers hiding our profession from medical experts, jeopardises sex worker privacy, consumes resources that could be better spent on peer education, and can lead to increased requests for unsafe practices;
- Mandatory testing perpetuates unfounded stereotypes of sex workers as diseased, which are reflected in higher insurance and superannuation premiums for sex workers. Sex workers are perceived as 'high risk', regardless of our individual workloads, practices and health. Sex workers are experts at identifying, assessing and managing different degrees of risk;
- Voluntary testing remains the optimal and best-practice approach to STI and HIV testing in Australia. Research shows that STI prevalence is uniformly low among sex workers where screening is voluntary and negotiated between the worker and our clinician on an individual basis;
- In some jurisdictions, it is illegal for HIV positive people and people with an STI to practice sex work. Criminalisation increases isolation, discrimination and stigma towards people living with HIV. Discrimination from health providers means that sex workers may be unlikely to disclose our status or undergo testing for fear of discrimination;
- Criminalisation of sex workers living with HIV and STIs fails to recognise that positive people participating in safer sex do not necessarily put our clients at risk;
- Sex workers engage in a range of practices that may involve minimal to no risk (massage, masturbation, bondage and discipline or fantasy scenarios not requiring penetrative sex). Research shows that men who have sex with men already engage in HIV risk-reduction strategies, including strategic positioning, serosorting and undetectable viral load. Some HIV positive sex workers cater solely to HIV positive clients;
- Requirements for people to disclose our HIV or STI status fail to recognise that sexual decision-making is a shared responsibility; and
- Criminal laws and licensing systems pose barriers to effective outreach, encumber rights of sex workers, force sex workers to work invisibly and underground, perpetuate discrimination and stigma, and impinge health promotion.

Principles for Model Sex Work Legislation STI and HIV Testing and Criminalisation

I found that many service providers found it difficult to understand or believe that anyone who was educated, strong and autonomous would want to be a sex worker; would feel empowered by that choice and even feel proud of the work they do... their inability to believe and listen to my story effectively silenced me... I chose not to access these services, which severely limited my access to services full stop.¹

In Australia, sex workers enjoy excellent sexual health, acting as role models and safer sex educators to our clients and the wider community. Sex workers have been at the forefront of the Australian response to HIV, established longstanding partnerships with governments and community sectors, and continue to engage in health promotion activities through peer education, outreach and the implementation of safer sex practices. These achievements are detailed in the chapter on Health Promotion and Peer Education.

The most significant element impacting on sex worker physical and emotional health and safety is the continued existence of criminal laws and licensing systems, which actively undermine the effectiveness of health promotion, peer education and community health. Criminalisation and licensing clearly impede health promotion strategies developed over years of partnership between government and sex workers to combat HIV, Sexually Transmissible Infections (STIs) and blood-borne viruses (BBVs). The removal of criminal sanctions and licensing systems – effectively removing policies of mandatory testing, disclosure laws, criminalisation of HIV positive sex workers and registration, in addition to ending law enforcement practices that use sex workers carrying condoms as evidence – are imperative to achieving public health objectives.

Mandatory testing is ineffective, expensive and discriminatory

Despite a proven track record of exemplary sexual health, in some jurisdictions in Australia, depending on their section of the industry, sex workers are required to have regular mandatory tests for STIs and HIV. Laws and policies which promote or enforce mandatory testing are contrary to best-practice models of sexual health and are not evidenced by current epidemiology in Australia. Compulsory testing has been shown to create an unnecessary, expensive burden on public health funds, has led to sex workers hiding our profession from medical experts, jeopardised sex worker privacy and consumed resources that could be better spent on peer

education. Further, mandatory testing fails to confirm a sex worker's actual sexual health status due to window periods, and can create a false sense of security among clients leading to increased requests for unsafe practices.²

Contemporary Victorian research reveals that government expenditure on mandatory STI screening could be better spent on more cost-effective preventative health programs. Recent studies indicate that current testing rates are 'excessive',³ placing an unnecessary burden on sexual health clinics which are already beyond capacity. A comprehensive study by Wilson et al. reveals that it costs over AU\$90,000 in screening costs for every Chlamydia infection averted. Although Victoria recently moved from requiring monthly to three-monthly testing, Wilson et al. recommend that HIV testing be conducted every 40 weeks and Chlamydia testing approximately once per year, and importantly that 'screening intervals for sex workers should be based on local STI epidemiology and not locked by legislation.'⁴ In their study, Samaranayake et al. found that the use of resources in screening and providing certificates to sex workers could be better spent.⁵ Increasing evidence supports targeted investments for key affected populations as a strategy to change the trajectory of national epidemics.⁶ Peer education initiatives remain highly effective with a proven track record in health promotion and prevention of STI and HIV transmission. Harcourt et al. concur, 'Pressure on resources can lead to poor medical standards; including insensitive or inhumane treatment of sex workers, poor-quality examinations, and breaches of confidentiality.'⁷

Recent studies indicate that current testing rates are 'excessive'.

In their article in the *World Journal of AIDS*, Jeffreys, Fawkes and Stardust write that mandatory testing is a 'policy failure' and 'has proven to be a very difficult policy to repeal once in place':

In a recent public forum in Victoria when questioned about their participation in mandatory testing regimes, staff from a range of services repeatedly and emotionally argued that mandatory testing was neither their responsibility nor their concern. This raises policy questions: if health bureaucrats are reluctant and reticent to take legal, administrative, moral and practical responsibility for mandatory testing implementation, who is taking responsibility for its failure?⁸

Mandatory testing fuels discrimination and has no founding in evidence

There are other, broader consequences of mandatory testing. Mandatory testing places a burden upon sex workers that is not placed upon other workers who engage in risk activities. Health care workers are not required to be tested for blood-borne viruses, yet contraction of blood-borne viruses occurs far more easily through needle stick injuries than a broken condom. Mandatory testing for sex workers perpetuates prejudices and unfounded fears of sex workers as diseased. It fuels stereotypes that have flow on effects in the way sex workers are treated by the public, media, health organisations and the wider community. These stereotypes are reflected in the higher health insurance and superannuation premiums sex workers pay. They are reflected in the Australian Red Cross policy that bans sex workers from donating blood if we have worked within a certain period because we are perceived as 'high risk', despite advertisements pleading for donors ('1 in 3 people need blood; only 1 in 30 donate').⁹ This 'risk' has no evidentiary basis, but serves as a foundation for ongoing discrimination.

Mandatory testing also has consequences for sex worker

Historically, sex work legislation in Australia has been guided by myths and public stigma and sought to regulate sex work under the guise of managing disease, nuisance, criminality and corruption.

confidentiality, human rights and industrial rights. In some instances, sex workers report brothel operators requiring them to see a doctor of the operator's choice, following which the results are handed directly back to the operator rather than the worker, without regard for that worker's privacy. Even in instances where mandatory testing is not in force, health care providers may be required to meet certain targets for testing those perceived to be in high risk groups in order to receive funding. In these cases 'voluntary' testing may not always be voluntary in practice. Although it may be legal to work, it may be difficult to obtain work without a health certificate. In some countries, sex workers report sexual health clinic staff arriving spontaneously at their workplace to conduct blood tests on the premises. Those workers who declined testing were treated with suspicion. An NGO Delegate (Asia and the Pacific) to the 2011 UN AIDS Program Coordinating Board writes that HIV programming for sex workers is often implemented at the expense of sex worker human rights:

When there is HIV programming for sex workers, it is often fraught with human rights violations. In trying to meet donor indicators, national voluntary counselling and testing (VCT) targets often lead to programmes that force sex workers into unnecessary HIV and STI tests, as evidenced in Laos, Thailand and India. Results are often shared with brothel owners, outreach workers and NGOs. Pre- and post-test counselling do not inform sex workers of their right to refuse tests. In some countries, the police or the army are also used to enforce testing and to register sex workers.¹⁰

In these instances, 'voluntary' testing effectively acts as mandatory testing. These approaches are far less effective than funding community-based strategies in promoting sexual health, are an ineffective use of public resources, and remain detrimental to sex worker human and industrial rights. In their international comparative study on sex worker human rights, the The Open Society found that:

The framing of sex work issues within health has been both useful and dangerous for sex workers. Many good organizations working with sex workers and actions for change have been supported by health funds, especially HIV funds [Thailand, Brazil, Australia]. However, the most repressive forms of regulation have also been justified on public health grounds [Queensland, Australia].¹¹

Historically, sex work legislation in Australia has been

guided by myths and public stigma and sought to regulate sex work under the guise of managing disease, nuisance, criminality and corruption. This approach is reflected in mandatory testing policies, which have no evidentiary basis, and are used as a means to control people whose professions are deemed 'undesirable.' Mandatory testing reveals an enormous gap between evidence and policy. Members of the general public, who have demonstrated the highest rates of STIs, are not subject to forced health testing.

Sex workers are experts at identifying, assessing and managing risks

Mandatory testing as a policy is divorced from the ways that sex workers operate in practice. Mandatory testing does not take into account epidemiological evidence that shows that sex workers engage in safer sex practices, act as safer sex educators, and are experts at identifying, assessing and managing different degrees of risk.

Mandatory testing is based on an assumption that intercourse is part of every service. However, sex workers offer many services to clients that do not expose either party to risk; for example, massage, masturbation, bondage and discipline or fantasy scenarios not requiring penetrative sex. In discussions about proposals to mandate condom use in pornographic films, porn stars and directors have noted that in some cases, condoms can be risky for performers, where they may have a latex allergy, or where 'latex drag' can create abrasions in the internal membranes, leading to rawness, bacteria and micro-abrasions that make them more vulnerable to STIs.¹² Porn Star Madison Young notes that for performers working as part of a monogamous couple, condoms may not be necessary and that the use of condoms should always be a personal decision.¹³ Similarly, a sex worker's decision to seek STI and HIV testing or to use condoms and dams should be an individual one, based on our workload, practices and level of risk, rather than mandated at law in a way that bears no relevance to the sex worker's own personal practices.

Mandatory testing reveals an enormous gap between evidence and policy.

Voluntary testing is the optimal model

Voluntary testing remains the optimal approach to STI and HIV testing in Australia as outlined in the National Strategies. The National STI Strategy recommends voluntary patient-initiated testing as a successful approach to detecting STIs, and warns that mandatory testing has 'potential to limit access to services for higher risk groups'.¹⁴ The National HIV Strategy states that 'principles for informed consent and confidentiality underpin high rates of voluntary testing', and aims to increase the number of people voluntarily seeking testings.¹⁵ Importantly, research illustrates that despite more frequent testing in Victoria, STI prevalence is uniformly low among sex workers in Sydney and Perth where screening is voluntary and negotiated between the worker and their clinician on an individual basis.¹⁶ In New Zealand, the New Zealand Prostitutes Collective stated that since decriminalisation, nearly 97% of sex workers have voluntary sexual health checks.¹⁷

Criminalisation of HIV positive sex workers and sex workers with an STI

In some jurisdictions it is illegal to work as a sex worker if you have an STI or are HIV positive. In other jurisdictions disclosure laws require people with an STI and HIV positive people to disclose our status to sexual partners. Historically disclosure laws have affected sex workers disproportionately, acting to further ostracise those of us who already bear dual social stigmas attached to sex work, STIs and HIV. Criminalisation and disclosure laws increase the discrimination towards people living with STIs and HIV, impede health promotion objectives, and are far removed from the ways in which sex workers practice sex and manage risks.

The effect of criminalisation is to decrease testing, decrease detection, and therefore potentially increase transmission rates overall.

In 2008 an Australian sex worker living with HIV was prosecuted and jailed in the Australian Capital Territory for providing a sexual service while knowingly HIV positive even though no evidence of unsafe behaviour was presented. The person's name, HIV status and unrelated personal details were released to the media.¹⁸

The Chief Public Health Officer released these details as a contact chasing strategy, against the advice of Scarlet Alliance. Articles appeared across Australia, New Zealand, Germany, Vietnam, Belgium and Hong Kong, contributing to their public stigma.¹⁹ Elena Jeffreys, Kane Matthews and Alina Thomas note that as a result of the case, ‘many sex workers became fearful of testing for HIV’ leading to a dramatic drop in sex worker attendance at a outreach medical services. They report: ‘In the four-week period following the court case, the numbers attending the service dropped from an average of 40 per night to three.’²⁰ In this sense, the effect of criminalisation is to decrease testing, decrease detection, and therefore potentially *increase* transmission rates overall.²¹

HIV positive sex workers successfully manage risks and practice safer sex

Laws that criminalise HIV positive sex workers discriminate against sex workers on the basis of our health status, without reference to whether individual workers practice safer sex, cater to specifically HIV positive clients, or offer non-penetrative services. For example, research reveals that men who have sex with men already undertake a range of non-condom based HIV risk reduction strategies, including strategic positioning (the use of serostatus to determine sexual roles during sex), serosorting (the restriction of unprotected sex to partners of concordant HIV status), and undetectable viral load (the use of viral load test results to assess the risk of HIV among non-condordant partners).²²

The high number of sero-discordant relationships in which the HIV negative partner does not acquire HIV demonstrates that protected sex with an HIV-positive person does not necessarily lead to transmission... The high levels of condom use amongst Australian sex workers means there is no need to exclude HIV positive people from sex work.²³

- Janelle Fawkes

The annual national surveillance report between 2001-2009 demonstrates prevalence of HIV among sex workers has remained consistently low – less than 1%.²⁴ This low rate illustrates that HIV positive sex workers are highly aware of safer sex practices and are skilled at negotiating and managing risks. Some sex workers living with HIV cater specifically to HIV positive clients.

I used to be an [openly] HIV escort and I used to help and go see other HIV guys who could not find someone else to have sex with due to the fact they were HIV and no other man in the community would touch them and I would be the man who would come over and make them feel special and that life was still worth living.²⁵

- Sex worker

Discrimination by health providers

Criminalisation means that HIV positive sex workers, or sex workers who suspect they may have contracted HIV or STIs, may be reluctant to disclose our status or undergo HIV testing for fear of discrimination from our workplaces, communities and health providers. The National Needs Assessment of Sex Workers who Live with HIV in 2008 found that many health organizations ‘are judgmental and critical of the involvement of HIV positive people in sex work and often attempt to dissuade them from continuing.’²⁶ Participants in the study reported that ‘[i]nstances of disclosure of both HIV status and sex work generally lead to very poor treatment and harassment, and in one reported case included physical violence by a health care worker.’²⁷ Others reported ‘misinformation’ being provided to them about the legality of participating in commercial sex,²⁸ or felt health services were ‘taking on more of a law enforcement role.’²⁹

Disclosure of both HIV status and sex work generally leads to very poor treatment and harassment.

Sexual decision-making is a mutual responsibility

Laws that criminalise those living with HIV or STIs or require us to disclose our status fails to recognise that safer sex is a mutual responsibility. Criminalisation and disclosure laws place the entire burden upon one party. As one positive worker said in the National Needs Assessment, ‘what we should be teaching people, is you treat everybody as positive... I have studied first aid; when you find a patient, you treat them as infectious.’³⁰ Another interviewee said, ‘I would like to see everyone take responsibility for their own sexual health. I don’t think the onus should always be on the positive person,

to protect society. Everyone is responsible for their own actions and health.³¹ The Victorian Sex Industry Network Vixen notes that ‘This legislation is unable to acknowledge the shared responsibility... or the wide variety of sexual activity that is available posing low or no risk.’³² The law should recognise that all parties to sexual encounters are responsible for their own sexual decision-making and risk-taking.

No special legislation: Existing laws cover deliberate or malicious transmission

States and territories have existing public health and criminal laws that cover the knowing, deliberate or malicious transmission of STIs or HIV. These laws are already sufficient to cover the knowing or reckless transmission of HIV both in private and professional contexts. As one worker in the National Needs Assessment stated, ‘If you go around deliberately giving people HIV it is a criminal offence and you do go to jail for it. Which I think is fair enough.’³³ There is no need to single out sex workers or people living with HIV as requiring separate legislation.

Sexual activities that are lawful within the wider community, become a criminal act when performed by a sex worker.

Legislation surrounding sex work should reflect legislation surrounding private sex

In comparison to the harsh legislation affecting sex workers (gaol sentences and mandatory testing), consensual sexual activity among non-sex workers is barely regulated. As Scarlet Alliance writes, ‘This creates a situation where sexual activities that are lawful within the wider community, become a criminal act when performed by a sex worker (e.g. having sex without a condom, oral sex without a condom, or having sex

while HIV positive).’³⁴ The National Needs Assessment instead recommends that legislation for HIV positive sex workers reflect legislation relating to private sex.³⁵ All sexually active people should be educated to have periodical health screening for STIs and HIV in a way that is appropriate to their type and incidences of sexual activity. As Janelle Fawkes commented during the high profile ACT case, ‘HIV is transmitted by unsafe sex, not because money changes hands’.³⁶

HIV is transmitted by unsafe sex, not because money changes hands.

The criminalisation of sex workers living with HIV and STIs impedes health promotion, marginalises workers, poses barriers to effective outreach, and perpetuates discrimination against people who already suffer the dual stigma attached to sex work and HIV. As Kane Matthews, Elena Jeffreys and Alina Thomas write, ‘Having HIV is not a death sentence and neither should it be a prison sentence.’³⁷

Public health outcomes are best achieved by the total decriminalisation of sex work

A substantial body of research clearly illustrates that decriminalisation is the most effective model for promoting public health objectives and the best practice model for the prevention of HIV and STIs.³⁸ The Harcourt et al.’s 2005 comparative study of brothels in Perth, Melbourne and Sydney, found that a decriminalised system enjoys the best health outcomes.³⁹ Where sex work is decriminalised, outreach organisations have the best access to workers, businesses have the best opportunity to develop occupational health and safety measures, and workers have the best control over our health, safety and working conditions. The decriminalisation of sex workers with an STI or HIV is essential to effective health promotion.

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Chapter 6 Human Rights and Anti-Discrimination

Recommendations for Law Reform:

- States and territories should decriminalise sex work in all forms in order to ensure sex workers are protected by legal and industrial mechanisms, to reduce police and official corruption, eliminate stigma and prejudice, and maximise sex workers' autonomy and agency;
- A federal human rights framework should be established that specifically addresses the experiences of sex workers, actively supports our human rights, and protects us from discrimination on the basis of sexual activity, behaviour and sex worker status; and
- States and territories should fund training for judiciary, police, local councils, health providers and communities to address myths and stereotypes associated with sex work that contribute to discrimination experienced by sex workers.

Summary of Issues:

- Sex worker human rights are intrinsically linked to sex workers' ability to negotiate with clients, and to access essential services and satisfactory workplace conditions;
- Criminalisation and licensing undermine sex workers' basic human, civil and industrial rights. Discrimination comes from private, public and government spheres. When these practises are not held into account, social stigma is reinforced and cycles of discrimination are perpetuated;
- Sex workers are denied equal treatment and protection under the law, facing discrimination in our access to goods and services, housing and accommodation, employment opportunities and in access to justice;
- Sex workers are denied the right to free choice of employment and just and favourable conditions of work, facing the criminalisation of our workplaces, barriers to occupational health and safety, and limited access to legal remedies due to stigma and prejudice;
- Sex workers do not enjoy the right to freedom of movement, facing restrictions on international travel, restrictions on our mobility across various sectors of the industry, and pressure to re-locate to areas that pose danger to our safety and well-being;
- Sex workers are denied freedom of association, with laws forbidding sex workers from working with drivers, security or colleagues, limiting our ability to organise, advocate and work safely;
- Aboriginal and Torres Strait Islander sex workers are a particularly marginalised group within the sex worker community, working at the intersection of whorephobia and racism and experiencing stigma and discrimination on a variety of levels;
- Sex workers experience discrimination on the basis of assumed HIV risk rather than actual risk behaviour. HIV positive sex workers in Australia have been criminalised and jailed. Criminalisation is contrary to the National HIV Strategy and has negative public health outcomes;
- Despite our contributions to public health policy and practice, sex workers do not receive adequate representation in government, and are often excluded from government funding, debate, research and policy regarding sex work;
- Some international documents retain oppressive and stigmatising language towards sex workers. Sex worker consultation and involvement is necessary in drafting, monitoring and evaluating treaty texts; and
- The criminalisation and licensing of sex work is consistently demonstrated to have negative impacts on sex worker occupational health and safety, sexual health, industrial and human rights.

Principles for Model Sex Work Legislation

Human Rights and Anti-Discrimination Protection

I don't hide my job because of my feelings about my work – I hide it because of your feelings about my work. It is your ignorance and feelings that victimises, humiliates and degrades me. It is your feelings that make me ashamed of who I am and what I do. I can't hold my head up high and be proud of myself, until you allow me to do so.¹ - Ally Daniel

Sex worker human rights are essential

The Scarlet Alliance submission to the National Consultation on Human Rights in Australia in 2009 stated that 'sex worker human rights are intrinsically linked to our ability to negotiate with our clients... Increased human rights translate to better health and wellbeing in the sex worker community.'² Respecting the human rights of sex workers is an integral part of meeting both public health objectives and Australia's international obligations. A human rights approach is recognised at a national and international level as the best strategy for health promotion and sex work regulation, supporting sex workers in peer education, labour organising and self-determination. The Department of Health and Ageing's Sixth National HIV Strategy 2010-2013 shows the protection of human rights to be 'essential' to the effective protection of public health.³ United Nations Secretary General Ban Ki-Moon states that 'In most countries, discrimination remains legal against women, men who have sex with men, sex workers, drug users, and ethnic minorities. This must change.'⁴ Former Australian High Court judge the Hon. Michael Kirby AC CMG states that 'We will insist on human rights for all, including for sex workers. Nothing else is acceptable as a matter of true public morality.'⁵ UNAIDS and the United Nations Population Fund state that it is essential for governments to create an enabling legal and policy environment which insists upon universal rights for sex workers and ensures our access to justice.⁶

The Scarlet Alliance submission to the National Human Rights Consultation states that 'sex industry legislation routinely violates sex workers' basic human, civil and industrial rights.'⁷ Sex workers face discrimination in our access to goods and services, housing and accommodation, employment opportunities and access to justice. Sex workers are denied the right to free choice of employment and just and favourable conditions of work, facing the criminalisation of our workplaces, barriers to occupational health and safety at work, and limited access to legal remedies due to stigma and prejudice. Sex workers do not enjoy the right to freedom of movement, facing restrictions on international travel,

restrictions on our mobility across sectors of the industry, and pressure to re-locate to areas that pose danger to our safety and well-being. Sex workers are further deprived of freedom of association, with laws forbidding sex workers from working with drivers, security, colleagues or other sex workers, hindering our ability to collectively organise and advocate. Sex workers are discriminated against on the basis of our HIV status – HIV positive sex workers in Australia have been criminalised and jailed even though no transmission or unsafe practices were proven.

In most countries, discrimination remains legal against women, men who have sex with men, sex workers, drug users, and ethnic minorities. This must change.

As one sex worker said (noting that people often have sex in their residential homes without consequence or regulation), 'Why does the fact that we charge for sex feel so threatening, that people are happy to see our rights and freedom so curtailed?'⁸

It cannot be said enough: sex workers are people – they are your friends, your family members, they are wage earners, tax payers and parents – and they deserve the same human rights as everyone .¹²
- Ally Daniel

In 2009, the United Nations Human Rights Committee stated that it was 'concerned that the rights to equality and non-discrimination are not comprehensively protected in Australia in federal law'.⁹ That same year the Australian Human Rights Commission made submissions to the National Human Rights Consultation which recommended that 'Australia's anti-discrimination

laws need to be overhauled'.¹⁰ The submissions stated that the failure of federal anti-discrimination laws to protect against discrimination on the basis of occupation 'sends a poor message to the Australian community'.¹¹ Anti discrimination and human rights protections are a necessary and practical step towards sex worker and community health, safety, inclusion and wellbeing.

Sex workers experience systemic discrimination

Sex workers experience discrimination in Australia that affects our personal lives, professional lives, families, health, wellbeing, workplace conditions and our access to justice. We are subject to systemic vilification, including severe ridicule and serious contempt, which is largely accepted and endorsed by media, policy and laws. As one sex worker writes, we experience 'years of overt, systemic, structural, ongoing, accepted, supported, celebrated discrimination'.¹³ As Scarlet Alliance's submission to the National Consultation on Human Rights states:

Governments, the public sector and the private sector all discriminate against sex workers. This discrimination results in a general acceptance of social stigma against sex workers and internalised stigma among the sex worker community.

Discrimination against sex workers extends beyond the limited legal categories protected under anti-discrimination law in Australia. As one sex worker explains:

[Discrimination] means not answering the question 'what do you do?' without considering that at best, I'll probably end up answering a bunch of naff questions to satisfy someone's curiosity, at worst, someone will cut off from me and do something hostile. Discrimination means applying for a job and leaving big chunks of things out, hoping the police check doesn't disqualify me. Discrimination means trying to rent a place, to work without being able to declare my income, give a job reference, or tell the landlord what I *really* intend to do there...¹⁴

Sex industry legislation routinely violates sex workers' basic human, civil and industrial rights.

Sex workers' daily and ongoing experiences of discrimination signal the crucial need for legislative reform. Areas in which sex workers experience discrimination are detailed below.

Anti-discrimination protections are ad hoc, inconsistent and under threat

Although some states protect sex workers from discrimination on the basis of 'lawful sexual activity' or 'profession, trade, occupation or calling', these protections are limited. Protections exist only in some jurisdictions (not at a federal level). Protection exists only in certain areas, such as the provision of goods and services, work, accommodation, education and training and club membership, and these areas of protection differ from state to state. In some cases exemptions exist for religious, educative or health institutions, or for domestic duties or the residential care of children. Candi Forrest notes that in Queensland this legislation only protects sex workers working lawfully, and does not cover street-based sex workers, private workers operating together for peer support and safety or sex workers operating out of unlicensed agencies or brothels.¹⁵ The continuing criminalisation of many aspects of sex work (for example, brothels) in other states renders the use of a 'lawful' sexual activity category inadequate. In addition, sex workers may be specifically singled out as an exception, so it could be lawful to discriminate against people engaging in *commercial* sexual activity. The piece-meal and ad-hoc development of anti-discrimination law across Australia means that there remains significant variation between jurisdictions and only partial coverage to protect sex workers. Sex workers need further anti-discrimination and human rights protections under state, territory and federal law that address our specific experiences.

We will insist on human rights for all, including for sex workers. Nothing else is acceptable as a matter of true public morality.

Anti-discrimination protection for sex workers is constantly under threat. In the 2012 Queensland case of *GK v Dovedeen Pty Ltd and Anor* [2012] QCATA 128, the Queensland Civil and Administrative Tribunal held that a motel that refused accommodation to a sex worker who had used the accommodation to provide sex

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

These examples illustrate the clear need for anti-discrimination protection at a federal level to protect sex workers from ongoing, systemic and historic discrimination. A protected ground should be introduced to protect people on the basis of 'profession, trade, occupation or calling'.

A human rights framework must be holistic, comprehensive, consistent and specifically protect sex workers

In April 2010 the federal Attorney General announced the intention to develop a national Human Rights Framework 'to encourage greater inclusion and participation in

our community.'¹⁶ The Framework originally aimed to promote greater understanding of human rights across the community, require all Bills introduced to Parliament to be accompanied by a statement of compatibility with international human rights obligations, combine federal anti-discrimination laws into a single Act to remove unnecessary regulatory overlap and make the system more user-friendly, and create an annual non-government organisation (NGO) Human Rights Forum.¹⁷

Scarlet Alliance provided submissions to the Government for the National Human Rights Consultation 2009, Baseline Study 2011, Human Rights Action Plan Exposure Draft 2012, Anti-Discrimination Consolidation Process throughout 2011-12, and the Exposure Draft of the *Human Rights and Anti-Discrimination Bill 2012*. Scarlet Alliance, like other organisations, anticipated this process as an exciting and historic opportunity to ensure that sex workers were protected from discrimination, harassment and vilification in Australia. The Government had unparalleled and unprecedented access to research and initiatives from around the country to inform this process.

The Government did not take on board any of Scarlet Alliance's recommendations. The final Baseline Study included zero references to 'sex work'. The only references were to the 'sex industry' (in relation to trafficking) and 'child prostitution' (in relation to child sex offences and child pornography). The Exposure Draft listed ten groups who are 'particularly vulnerable to disadvantage and human rights abuses'. There was no reference to sex workers. Furthermore, the term 'human rights' was not mentioned once in the Action Plan section on 'People Trafficking.' Despite UN Committees' recommendations for Australia to take a human rights approach to trafficking, the Baseline Study and Action plan paid lip service only to human rights. None of the Action Plan strategies included any preventative or human rights components.

The 2011 Australian Human Rights Commission consultation report on 'Addressing sexual orientation and sex and/or gender identity discrimination' states that the Human Rights Framework 'provides a timely opportunity to consider steps that might be taken to protect and promote the human rights of people of all sexual orientations and/or gender identities'.¹⁸ However, the protection provided on the basis of sexuality did not cover sex workers: the definition of sexual orientation in the Exposure Draft only covered orientation towards a person of the same sex, opposite sex, or either sex, and the definition of gender identity only covered people

Sex workers need further anti-discrimination and human rights protections under state, territory and federal law.

who identify as either male or female. Freedom! Gender Identity Association argue that coverage on the basis of 'sexual orientation' should include attraction, identity and also *behaviour*.¹⁹ Scarlet Alliance submitted that the definition of sexual orientation should explicitly include sexual *identity, activity and behaviour*, to expand coverage to sex workers who experience systemic discrimination on the basis of our sexual activity and sex worker status, rather than only sexual *orientation*.

Social Inclusion

Sex worker human rights are inextricably tied to social inclusion. When governments and the community systematically violate sex workers' human rights without being held into account, it reinforces the belief that sex workers are not worthy of human rights protections, which, in turn, perpetuates cycles of discrimination.²⁰ It is clear that discrimination harms sex workers, impedes health promotion and undermines regulatory objectives. Continuing discrimination against sex workers damages Australia's whole-of-government approach to Social Inclusion, which aims to ensure that all Australians will have the resources, opportunities and capability to connect with people, use their local community's resources and 'have a voice so that they can influence decisions that affect them.'²¹ This discrimination is exacerbated by media vilification of sex workers in television, films and newspapers and by some organisations, where sex work is perpetually portrayed as dangerous and sex workers as dead or degraded victims without families or support. These depictions hurt sex workers, wrongly inform public policy on sex work law reform and ensure our social *exclusion*.

Discrimination on the basis of occupation

In 1999 a National Survey was conducted by Scarlet Alliance and the Australian Federation of AIDS Organisations to identify discrimination in the employment conditions and personal lives of sex workers in Australia. Their subsequent report, *Unjust and Counter-Productive: The Failure of Governments to Protect Sex Workers From Discrimination*, found that sex workers experienced discrimination on the basis of their occupation in a number of areas.

Goods and services

Sex workers reported discrimination in their access to personal and professional goods and services, such as when attempting to access credit or loans, due to 'banks not applying the same business standards as they would

to other service industries.'²² Applications for credit cards often sought information about the applicant's occupation rather than their income, and sex workers reported having their applications refused despite no evidence of bad credit rating or unstable or low income. In loan applications banks often required business records covering a longer period for sex workers than other occupations.²³

Similarly, sex workers documented discrimination in securing home, contents and mortgage insurance against loss of income, despite proven good credit ratings. They reported being refused private health insurance or facing higher superannuation premiums due to an assumption they were at greater STI/HIV risk, despite evidence that sex workers enjoy lower rates of STIs/HIV than the general population. Mobile phone companies had denied sex workers applications for phones because their income and address was not considered stable.²⁴ These restrictions to banking and business facilities continue to prevent sex workers from access to small business opportunities and hinder the development of workplace safety mechanisms.

Advertising

Regardless of the legal status of our work, sex workers reported discriminatory advertising policies. Complaints included newspapers refusing to accept advertising for sexual services, publishers failing to place advertisements or making unapproved changes to pre-paid advertising, regularly changing policy, and creating special conditions applying to sex industry advertising such as advance payment, higher fees, limits on running length or having to place the advertisement in person rather than by telephone.²⁵ Despite often being small business owners and sole traders, sex workers are regularly charged disproportionately to advertise our services, facing fees that are much higher than if we were to advertise in other sections of the newspaper. Discriminatory advertising costs has been consistently raised as an issue at Scarlet Alliance annual National Forums, and in their investigation Triple J radio's Hack program have noted that the *NSW Daily Telegraph* was one of the papers that charged several times more for sex worker advertisements.²⁶ These arbitrary discretions and conditions appear to apply to sex workers solely by virtue of our occupation.

Housing and accommodation

When accessing housing or accommodation, the survey revealed that sex workers experienced difficulties in obtaining rent agreements or housing once their

occupation was known, regardless of whether they intended to be working from the premises. Sex workers had experienced eviction from hotels as well as private rental accommodation, rude treatment by accommodation staff, and council staff informing landlords about their occupation. The majority of respondents indicated they would 'never put my occupation because I feel sure my application will be rejected.'²⁷

Fly-In and Fly-Out and Drive-In and Drive-Out sex workers continue to face discrimination in housing and accommodation when working away from home. In their article 'Motel Sex Check: Scrutiny Insults Women', the *Townsville Bulletin* reported that women booking into motels were being asked to sign statements promising they won't be 'offering goods and services for sale' from their room. One operator in MacKay reported having a rule that 'people can't run businesses from their rooms,' and asks guests upon registering to sign a form agreeing they won't use the room 'as a place to conduct business.' Kelly Davidson, MacKay operator says, 'We can't say "you can't stay", but what we do say, is that you can't run a business from your room'.²⁸ Michele, Townsville spokesperson for United Sex Workers in North Queensland, says of accommodation operators, 'They throw sex workers out and make them homeless. Women fly in from all over Australia and from New Zealand thinking they have a room and when they get there they find there isn't one.'²⁹

Seeking other employment

Stigma surrounding sex work continues to affect the decisions of employers when recruiting and dismissing staff. A number of high profile cases illustrate that discrimination against sex workers, particularly in occupations such as teaching or policing, is ongoing. In 2011 a New Zealand teacher was de-registered after she appeared in Australian Penthouse magazine,³⁰ and in 2010 in the United States a teacher was charged with 'conduct unbecoming a teacher' and assigned non-teaching duties after writing about her former sex worker experience in an online essay.³¹ In November 2005, a high school teacher in Brisbane was 'caught' 'moonlighting' as a sex worker in a licensed Gold Coast brothel (Candi Forrest notes that both these terms 'infer illicit behaviour' even though the teacher's actions were lawful). The teacher had been seen by a colleague of hers, a male teacher, who was attending the brothel as a client.³² As Candi writes, 'In an astounding act of moral hypocrisy the prospective client informed the school principal what he had discovered about the woman's second job. Still more astounding, while both of the teachers were 'counselled' about the appropriateness of their behaviour, only the female

sex worker was penalised.'³³ Candi details the trauma imposed on the teacher, while in the meantime Premier Peter Beattie sought advice on whether the Government could require all its employees to be *approved* before taking another job:

[T]he teacher/sex worker was uprooted from her job and home, forced to change her name and asked not to resume sex work – a process that I have no doubt would have caused her a lot of trauma. The 'counselling' she received and her subsequent ostracism from her job constitutes the very type of discrimination [the Queensland Anti-Discrimination Act] was meant to counter.³⁴

- Candi Forrest

In Australia, information provided to Scarlet Alliance illustrates that when applying for jobs outside the sex industry, sex workers are reluctant to inform potential employers about our work history for fear of discrimination throughout the interview process. Navigating this discrimination means that sex workers may then have gaps on our resumes or have trouble explaining skills we have acquired during our working lives.

Seeking other employment may be particularly difficult where one has a criminal conviction because the place or nature of our employment as a sex worker has been deemed illegal. Criminal Record Discrimination is lawful federally, but unlawful in some states.³⁵ In their summary of the Discussion Paper on Criminal Record Discrimination, the then Human Rights and Equal Opportunity Commission wrote that 'Australians who have a criminal record often face significant barriers to full participation in the Australian community. Trying to find a job is one of the areas of greatest difficulty for former offenders.'³⁶ Sex workers are more likely to have a criminal record because vast sections of our industry are criminalised. Discrimination in seeking employment and during the course of employment remains a pertinent issue that disproportionately affects sex workers, and one which is ripe for legislative reform.

Access to justice

Discrimination and stigma against sex workers continues to impede our access to justice. Widespread prejudices, including in the legal and criminal justice system, act as barriers to sex workers reporting crimes to police or giving evidence at hearings. In Australian cases, judges

... Human rights and anti-discrimination

have stated it was less 'heinous' to rape a sex worker than it was a 'happily married' or 'chaste' woman.³⁷ Sex workers spoke at the 2011 Sydney and Melbourne Slut Walks about the institutional victim blaming of sex workers in sexual assault cases.³⁸ In 2009, a sex worker reported that during a session a United States marine had 'ripped off his condom', pushed her head into a pillow, started suffocating her, and had unprotected sex with her. Despite admitting to using a 'lock-down manoeuvre' to pin her to the bed when she said she wanted to stop, the marine was found 'not guilty' of sexually assaulting the sex worker.³⁹ Sex workers protested outside the courthouse, condemning the criminal justice system for failing to recognise or take seriously violence committed against sex workers. Janelle Fawkes commented to ABC news that for sex workers, 'sexual assault is not part of a sex worker's job.'⁴⁰

Sex workers also report that our profession is often taken into account in legal proceedings as a negative indication of our character.

About 10 years ago some girlfriends and I flew to the Northern Territory with the intention of earning mega bucks working as sex workers. We didn't know much about the legislative requirements of working in the NT and to our surprise discovered upon arriving in Darwin that brothels were illegal and escort work was the only legal form of sex service on offer. As there was only one escort agency in town we undertook interviews with the owner, only to discover that it was a legal requirement for escort workers to register with NT police... Although my girlfriends and I were hesitant to register, we were assured by the owner of the agency that our registrations would not be available to ordinary police and would not be included in a police computer data base.

Content in my belief that my registration application was gathering dust in the cop-shop basement, several years later I moved to Darwin and became involved in an activist group which attracted a great deal of police attention (i.e. harassment)... [On one occasion we were arrested]. After being released from the police station and given bail I was shocked to find that my bail papers stated my profession as 'prostitute', despite me stating my profession to police as a 'student' and not having worked in the NT sex industry for several years! Upon demanding an explanation from police, I was told that I had held a police file since registering as an escort!⁴¹

- Sex worker

Once in court, police witnesses stated that the author was a 'known and notorious prostitute!' She felt that the relevance of her sex work experience to the charges was 'questionable at best' and only mentioned 'in an attempt to discredit my character to the presiding magistrate.'⁴²

Sex workers protested outside the courthouse, condemning the criminal justice system for failing to recognise or take seriously violence committed against sex workers.

Sex workers report a culture of stigma that affects judicial decision-making – our profession negatively being taken into account in demonstrating what is considered a 'good' or 'bad' parent. In one family law case, the mother's 'history of involvement' in sex work was considered by the trial judge as a significant finding that bore upon the outcome of the case.⁴³ Although family law decisions are bound to take into account the best interests of the child, sex workers fear that where we disclose our work in parenting cases, we risk being discredited as witnesses or losing custody of our children. This also means that sex workers may be reluctant to seek assistance from child welfare services for fear of being deemed an unfit parent.⁴⁴ Having wider anti-discrimination protections for sex workers would send a symbolic message to the general community and have flow on effects for the ways sex workers are treated in wider society, improving our access to justice and encouraging our social inclusion.

The right to work, to free choice of employment, and to just and favourable conditions of work

Article 23 of the Universal Declaration of Human Rights provides that everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. The International Labour Organisation's Employment Policy Convention 122 provides in Article 1 that there is freedom of choice of employment and the fullest opportunity for workers to use their skills in jobs for which they are well suited.

Criminal laws and licensing of sex work have negative implications for the rights of sex workers to free choice of employment and to just and favourable conditions

of work. The research findings of *Unjust and Counter-Productive* 'strongly indicate that sex workers who operate under highly restrictive or criminalised frameworks have the least opportunity to utilise existing remedies to address discrimination.'⁴⁵ Where sex work is criminalised or licensed, laws may prevent sex workers from taking measures to protect our own safety. For example, where sex workers must choose between working for a licensed escort agency (and having our name recorded on a police register) or working privately (where we are prohibited from hiring drivers or security, or working with another person), we effectively bear the burden of balancing the risks of giving up our confidentiality or our safety. Either way, we are denied our right to free choice of employment and to just and favourable conditions of work. Sex workers therefore may have to break the law in order to protect our safety, which has other consequences throughout our lives (for example, where criminal records affect our ability to travel).

Although public health research consistently reveals that a decriminalised framework results in the best rights, health and safety for sex workers,⁴⁶ even in a decriminalised framework, discrimination against sex industry businesses by local councils can impact on the safety and working environments of sex workers. Local council discretion and prejudice means that sex work businesses often experience difficulty in gaining approval of premises, are subject to special council provisions to approve their location and face excessive costs to register their business.⁴⁷ Private workers may have to register our home-based services and participate in a Development Application process that involves placing a sign at the front of one's premise and advising neighbours that the land will be used for sex work purposes. Sex workers may be forbidden from working from home, and brothels may be forced by councils to operate in isolated, poorly-lit areas. Such requirements clearly impact on sex worker safety, confidentiality and the likelihood of experiencing harassment.⁴⁸ The discriminatory treatment of sex work businesses results in impinged rights for sex workers to achieve just and favourable conditions of work.

Sex workers may have to break the law in order to protect our safety.

Criminalisation and licensing continue to affect sex workers' working conditions, occupational health and safety and industrial rights. Scarlet Alliance assert in



their submission to the National Consultation on Human Rights that 'Discrimination and illegality creates a culture of self-censorship, shame, isolation and stigma.'⁴⁹ Sex workers often have limited legal remedies to address unfair work practices because criminalised legal settings have acted to 'erode relations with the police and judicial system.'⁵⁰ Experiences of police entrapment (posing as potential clients before charging sex workers for 'procuring' sex'⁵¹ as well as police violence, corruption, raids and harassment of sex workers had led to a fear of public retribution and a perception that crimes against sex workers are not taken seriously. In some states the positioning of police as industry regulators means that sex workers have limited access to legal remedies to address crimes of violence. Criminalisation means that sex workers may have difficulty organising and advocating for industrial benefits (leave entitlements, superannuation or worker's compensation), and are less likely to use available industrial remedies in cases of unfair dismissal for fear of being 'outed' as a sex worker.⁵² Sex workers may be discouraged from contacting police when a crime is committed if we are working in unlicensed places, so

as not to attract unwarranted attention to the business.⁵³ Similarly, the fear of being ‘outed’ may prevent sex workers from being candid with health professionals.⁵⁴ By contrast, the Prostitution Law Reform Committee in New Zealand found that the decriminalisation of sex work meant ‘the majority felt sex workers were now more likely to report incidents of violence to police’.⁵⁵ The continued criminalisation and licensing of sex work denies sex workers the human rights to free choice of employment, the full opportunity to use our skills in jobs to which we are well suited, and to just and favourable conditions of work.

The positioning of police as industry regulators means that sex workers have limited access to legal remedies to address crimes of violence.

The right to freedom of movement

Article 13 of the Universal Declaration of Human Rights stipulates that everyone has the right to freedom of movement and residence within the borders of each state and the right to leave any country. Discrimination against sex workers significantly affects our freedom of movement. Disclosing our profession may restrict sex workers when we seek to travel, study, work or become involved in community activities, limiting our mobility across employment, geographic and social spheres. At an international level, sex workers can be prevented from entering certain countries if we list our occupation on our visa or passport, while those who work in unlicensed/illegal sectors risk sex-industry related offences which creates a criminal record and may significantly restrict our movement between countries.⁵⁶

I have participated in many movements – peace and non-violence, environmental issues, feminism, queer visibility. However, sex work has been the reason for my criminal record; this can affect travel between countries and my ability to work in different areas.⁵⁷

- Whoretic

At a country level, laws restrict workers from moving across various sectors of the industry – prohibiting

advertising, sharing premises, street work or operating privately.⁵⁸ Meanwhile, anti-trafficking brothel raids, harassment of migrant sex workers and disruption to business has caused sex workers to move to private, escort and lower-profile work to avoid raid activity.⁵⁹ At a local level, street-based workers may experience pressure to relocate – we may be tolerated when working in more remote industrial areas but may be arrested when working on busy, well-lit or more public streets, which has consequences for our safety at night.⁶⁰

The right to freedom of association

Freedom of association is recognised by Article 20 of the Universal Declaration of Human Rights as well as International Labour Organisation Convention 87 on the Freedom of Association and Protection and the Right to Organise. Criminal and licensing laws prevent association between sex workers and restrict our capacity to organise and engage in political, industrial and collective advocacy. In some states, laws require private sex workers to work alone. These consorting laws, which prevent sex workers from working together or hiring drivers, receptionists or security, deny sex workers the right to freedom of association and have obvious impacts on the safety of sex workers and our access to mentoring, support networks and opportunities for advocacy and unionising. Reducing our capacity to come together to express, promote or defend our common interests denies us the right to freedom of assembly.

One friend was charged and convicted for attending a brothel when visiting for coffee.

Laws which prohibit ‘living off the earnings of prostitution’ have implications for families, partners and kin who are partially or wholly supported by the earnings of sex workers. The *Unjust and Counter-Productive* report revealed that sex workers’ partners had been threatened with ‘living off the earnings of prostitution’, and one friend was charged and convicted for attending a brothel when visiting for coffee.⁶¹ While sex workers may shield our partners from criminal prosecution or police attention by not disclosing our work, secrecy presents other obstacles to sex workers accessing support.

In 2010 the British Columbia Court of Appeal in *Downtown Eastside Sex Workers United Against Violence Society v. Canada (Attorney General)*, 2010 BCCA 439 examined a

challenge to provisions in the Canadian Criminal Code regarding keeping and being within a common bawdy house, transporting a person to a common bawdy house, procuring and living on the avails of prostitution, and soliciting in a public place.⁶² The argument was that these offences deprive sex workers, whose work itself is lawful, of the ability to conduct their work safely and in groups and were contrary to the Charter of Rights and Freedoms. The sex workers lost the case because the Court said they had no standing but the matter was then successfully argued before the Supreme Court of Canada. The ‘Bedford Decision’ repealed the three major provisions criminalising sex work in the Canadian Criminal Code.

Discrimination on the basis of race

Aboriginal and Torres Strait Islander sex workers are a particularly marginalised group within the sex worker community, working at the intersection of whorephobia and racism and experiencing stigma and discrimination on a variety of levels’, write the Scarlet Alliance Aboriginal and Torres Strait Islander Inclusion Working Party.⁶³ Aboriginal and Torres Strait Islander sex workers face specific barriers in accessing human rights, and are often marginalised, silenced or unrepresented. Aboriginal and Torres Strait Islander sex workers have different needs depending on a range of variables including location, history, and surrounding sex industry legal framework. Sex workers in regional and rural areas can experience isolation, discrimination and confidentiality issues at high levels, which act as barriers to accessing human rights. Sex workers also experience discrimination and stigma inside some Aboriginal and Torres Strait Islander communities. Similarly, Aboriginal and Torres Strait Islander sex workers also experience discrimination within the sex industry. The Working Party notes:

It is important to understand these discriminations within the context of the sex worker community... even if the individual does not identify as a sex worker. These discriminations stem from an array of intersecting issues relating to the sexual activity the person is engaging in. We believe all forms of discrimination against people engaging in sex work are unjust and a violation of our human rights.⁶⁴

The Working party notes that for Aboriginal and Torres Strait Islander sex workers it is not only police and laws that create barriers to health and human rights: ‘Aboriginal and Torres Strait Islander sex workers who are survivors of sexual assault often face discrimination when accessing justice: firstly for being a sex worker, and

secondly for being Indigenous.’ The Australian Centre for the Study of Sexual Assault, in a briefing paper on ‘issues of prevalence and disclosure’, highlights experiences of victim blaming by police and the courts when reporting cases of assault and rape – as well as complainants being charged with offences, or arrested for previous ones, after disclosing assaults occurring in the context of sex work.⁶⁵

There remains a significant gap in services tailored to Aboriginal and Torres Strait Islander sex workers, necessitating a needs analysis approach and support for increased peer staff and programs.

Despite the need for blood donors, the Red Cross prohibits potential donors from giving blood for a certain time after they have been a sex worker.

Discrimination on the basis of HIV status

Sex workers face discrimination in relation to assumed HIV risks based on occupation rather than actual risk behaviour. Policies for donating blood illustrate how sex workers are discriminated against on the basis of assumed health status. Despite the need for blood donors, the Red Cross prohibits potential donors from giving blood for a certain time after they have been a sex worker, despite evidence that sex workers have lower rates of STIs and HIV than the general population.⁶⁶ As Rachel Wotton writes, this discriminatory policy ‘perpetuates myths that current sex workers are vectors of disease... and that we are unable to perform our work activities safely, minimising all elements of transmission just like doctors, nurses and surgeons do every day.’⁶⁷

In some jurisdictions, sex workers are criminalised for working when we are HIV positive. Despite the fact that sex workers are more likely to undergo STI/HIV testing, have greater awareness of what constitutes risk behaviour, exercise safer sex practices and negotiate safe relationships, consensual sexual activity among non-sex workers is barely regulated, while sex workers suffer stringent mandatory testing requirements and have our activities criminalised. As Scarlet Alliance writes, ‘This creates a situation where sexual activities that are lawful within the wider community, become a criminal act when

performed by a sex workers (e.g. having sex without a condom, oral sex without a condom, or having sex while HIV positive).⁶⁸

Laws which criminalise sex workers living with HIV discriminate against us on the basis of our health status, without reference to whether individual workers practice safer sex, cater to specifically HIV positive clients or offer non-penetrative services. The National Needs Assessment for Sex Workers Who Live with HIV recommends that legislation for HIV positive sex workers reflect legislation relating to private sex.⁶⁹ The criminalisation of sex workers living with HIV impedes health promotion, marginalises workers, poses barriers to effective outreach and perpetuates discrimination against people who already suffer the dual stigma attached to sex work and HIV. Criminalisation is contrary to the National HIV and STI Strategies. This is discussed in greater detail in the chapter on STIs and HIV: Testing and Criminalisation.

The right to take part in government

Article 21 of the Universal Declaration on Human Rights states that everyone has the right to partake in government, directly or through freely chosen representatives. Yet sex workers are regularly excluded from debate, funding, policy and research in relation to sex work law reform. The exclusion of sex worker voices contributes to the creation of damaging policy that is divorced from experiences of those most affected. It perpetuates myths and stigmas around the sex industry and denies sex workers involvement in the processes that seek to protect our rights and freedoms. The final chapter on sex worker self determination, consultation and inclusion details systemic examples of sex worker

exclusion from government committees, drafting and reform processes, education and research.

Decriminalisation supports human rights, social inclusion and anti-discrimination protection

Decriminalisation of sex work is essential to a human rights approach. Removing police as industry regulators leads to improved relationships with police and judiciary and better access for sex workers to legal and industrial mechanisms to redress discrimination. Decriminalisation would grant sex workers the right to work across various sectors of the sex industry, enhancing our freedom of movement and association and increasing our opportunities to engage in peer education and health promotion. Providing anti-discrimination measures would hold banks, insurance companies and superannuation providers accountable for their policies and practices. Decriminalisation is the only sex industry model that is consistent with Australia's international obligations and whole-of-government approach to Social Inclusion.

In 2008 the Prostitution Law Reform Committee in New Zealand found, in their review of five years of decriminalisation, that over 90% of sex workers said they felt they had legal rights under the *Prostitution Reform Act*: 'The Committee concludes that the PRA has had a marked effect in safeguarding the rights of sex workers to refuse particular clients and practices, chiefly by empowering sex workers through removing the illegality of their work.'⁷⁰ For their effectiveness, such legislative amendments should be developed with the involvement and consultation with sex workers. Government should provide training for police, judiciary, local council, health providers and the community to address myths and stereotypes about sex work and reduce discrimination.

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Chapter 7 Migration, Mobility and Freedom of Movement

Recommendations for Law Reform:

- Migrant and Culturally and Linguistically Diverse (CALD) sex workers must be at the centre of decisions, laws and services affecting our lives. Migrant and CALD sex workers must be driving policy and research and be meaningfully engaged in law reform processes. Token consultation or representation is not enough. Migrant and CALD sex workers can speak for ourselves;
- Sex workers (including from poorer countries and sex workers living with HIV) must be able to access safe, legal channels and equitable, non-discriminatory access to migrate;
- Easy access to translated information on visas and conditions, industrial rights, human rights, justice mechanisms and relevant laws in multiple languages. This is a key step to enhancing the rights of migrant sex workers;
- Equitable access to industrial rights mechanisms and justice for all workers regardless of their immigration, visa or sex work status without risk of deportation or arrest;
- All governments must immediately ratify the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and adopt the provisions into domestic law;
- Criminal justice approaches to trafficking are ineffective and dangerous. They act to curtail sex workers' freedom of movement, restrict our choice of occupation, erode sex workers' rights, create stigma and discrimination against migrant and CALD sex workers, create barriers to migrant sex workers accessing essential services, undermine opportunities to negotiate suitable workplace conditions and impede access to outreach and community service providers;
- By viewing sex work as work, the majority of trafficking-related crimes can be covered within existing criminal laws and/or redressed within the labour framework. There should be no specific trafficking laws relating to sex work;

Recommendations for Law Reform (continued)

- The best approach to addressing labour exploitation across all industries remains through a focus on peer led, rights-based prevention, labour protections, occupational health and safety, civil remedies and statutory compensation;
- Law reform and research on labour exploitation should not unduly focus on the sex industry. Anti-trafficking laws and enforcement should not be used as an avenue to further criminalise and surveil migrant sex workers;
- Access to services and avenues for statutory compensation must be established to redress exploitative work conditions that do not require the worker's contribution to a criminal investigation and for those who do not wish to go to the police;
- Governments must increase funding and resources for multilingual peer education and culturally appropriate projects within sex-worker organisations to promote community engagement and strengthen the autonomy, agency, self-determination and human, civil and political rights of migrant sex workers;
- Anti-discrimination law must provide specific and nationally consistent protection for migrant sex workers at a state and federal level;
- Sex work must be decriminalised to create a supportive legal framework for improved migrant and CALD sex worker rights. Decriminalisation of sex work will assist in the prevention of circumstances that cause trafficking and reduce the legal barriers in accessing support and services.

Summary of Issues:

- Studies detailing the age, life experience, language skill, and education level of migrant sex workers in Australia show that we are diverse. Many have previously travelled and worked throughout the region. Some anticipate returning to Australia;
- The most comprehensive study of migrant sex workers in Australia found:
 - There were no measurable differences between migrant and non migrant sex workers in hours and days worked and number of clients seen.
 - Migrant and non-migrant sex workers evidenced high rates of condom use, high levels of workplace and income satisfaction.
 - Migrant and non-migrant sex workers were confirmed to be a highly educated group.
 - Migrant sex workers appear to be an older group with significantly lower number of migrant sex workers in the 15-24 age bracket compared to non-migrant sex workers, and higher numbers of migrant sex workers in the 30-24 bracket. There was a diversity of ages with a number of migrant and non-migrant sex workers represented in the 40-49 and 50 and over age brackets.
 - More non-migrants than migrants selected debt as a major expenditure.
- Extensive feedback from our member organisations and the Scarlet Alliance Migration Project Steering Committee reports that information, visa forms and even the visa stamps for travelling or migrating to Australia are mostly all written in English and not available translated. Although there has been an increase in translated materials, a number of useful documents still remain untranslated;
- In July 2012, the Australian Government reports having spent \$100 million on a whole-of-government trafficking strategy since 2003. There have been 15 successful prosecutions, 12 relating to the sex industry. ,These relating to nine schemes, seven of these in the sex industry;
- In the Australian finalised trafficking cases relating to sex work, all people had consented to sex work and knew they would be a sex worker. Some had sex worked previously. None of the cases involved deception or trickery of the fact they would be sex working;
- Anti-trafficking policies pose a significant threat to migrant sex worker rights, health and safety. International research demonstrates that anti-trafficking policies continue to have adverse impacts on all sex workers' human rights worldwide;

Summary of Issues (continued):

- Anti-trafficking raids and ‘rescue’ operations, harassment and detention of Asian sex workers in visible Asian brothels and massage parlours have forced sex workers to adapt and change the way they work and have acted to force the industry ‘underground’. Criminalisation approaches to trafficking rarely affect anyone other than individual sex workers. Raids are often culturally insensitive, create barriers to migrant sex workers accessing justice and essential services, hinder migrant sex workers’ opportunities to negotiate suitable workplace conditions and instil distrust in outreach workers and other community service providers;
- Trafficking debates in Australia conflate important terminology and fail to distinguish between trafficking and sex work. Moral hysteria about the sex industry, panic over the sanctity of the body, xenophobic views on migration and racial stereotypes have led to inflated figures of trafficking victims;
- Trafficking is exacerbated by Australia’s hostile immigration policies, including the favouring of specific ‘skilled’ migration from industrialised countries. Information on visas, forms and the actual visas themselves are mostly not available in languages other than English. Australia’s stringent and discriminatory migration policies disadvantage workers from ‘developing’ countries and create a lack of opportunities for sex workers to migrate to Australia legally. These policies and lack of appropriate language resources have led to a greater likelihood of dependence on third-party agents in order to travel, ultimately forming an opportunity whereby people may be more susceptible to deception and trafficking; and
- Upon her visit to Australia in 2012 the United Nations Special Rapporteur on Trafficking recommended that there is a need to move away from over-sexualising the discourse on trafficking, that Australia must commit to developing and maintaining strong pathways for safe and legal migration, and that Australia should remove the necessity for contribution to an investigation in order to access support.

Migration, mobility and freedom of movement

The first Thai visitor to come to Australia was 80 years ago, when a man came to buy horses for the King. Your most famous horse had a Thai name – “Phar Lap” – meaning lightning. I also have many good customers from Australia. So we are not really strangers! Every year about 400,000 Australians visit my country. 280,000 Aussie men and 120,000 Aussie women come looking for adventure, to study, visit friends, find cheap shopping, or do business. Many work illegally, like teaching English, or doing computer work, import, export, translation. Many also overstay their visa, and worry about the police catching them. And every year about 76,000 Thai people visit Australia. Around 40,000 Thai men and 36,000 Thai women come looking for adventure, to study, visit family or to do business. Like the Australians I know, some will work illegally as farm workers, domestic workers, cleaners, sex workers, cooks, or masseuses. Some will also overstay their visa, and worry about the police catching them. Same – same, but different? Most Thai women are return visitors, only about 14,000 are visiting Australia for the first time.¹ - Pornpit Puckmai

Migrant sex workers in Australia

Sex workers, like other workers, migrate internationally for a variety of reasons, including seeking improved working conditions and income. Labour migration within the Asia Pacific is common across a variety of professions and industries. Research demonstrates that migrant sex workers find Australia to be a profitable location with comprehensive support networks and outreach services and a largely tolerant environment, where sex workers enjoy some of the lowest rates of sexually transmissible infections (STIs) and HIV in the world. Anecdotal evidence suggests that a number of migrant sex workers in Australia travel from high-income western countries, such as New Zealand, the United Kingdom and the United States of America, for whom tourist and working visas are readily accessible. However, the migrant sex workers most readily identified and targeted by government policy are those from Asian countries, due to racial stereotypes and discriminatory and prohibitive immigration policies for people travelling from what are perceived as ‘developing’ countries. Evidence-based research with migrant sex workers demonstrates that our rights and wellbeing are best protected by multilingual peer education and policies focusing on prevention of exploitative conditions rather than increased surveillance and criminal laws.

A number of projects with migrant sex workers have generated valuable demographic data on the lives, backgrounds, experiences and needs of migrant sex workers in Australia.² The most comprehensive study on migrant sex workers in Australia, coordinated by Scarlet Alliance and funded by the Australian Institute of Criminology and conducted by migrant sex workers in 2010, engaged hundreds of migrant sex workers around Australia and looked at the actual situation for migrant sex workers in Australia in legal, licensed and illegal

working situations. It found that the most common reason given for coming to Australia was ‘to study’ followed by other reasons such as to support family, get married, get a higher paid job and travel.³ The data found that sex workers, including migrant sex workers, are overwhelmingly well educated, and are likely to have tertiary qualifications.⁴ The study showed a diversity of ages. Overall there tended to be fewer younger migrant workers in the survey than sex workers born in Australia.⁵

The study shows no measurable differences between migrant and non migrant sex workers in hours and days worked and number of clients seen, with no respondents working extreme hours and days. Migrant and non-migrant sex workers evidenced high rates of condom use, high levels of workplace and income satisfaction with over 90% stating they could refuse clients. More than a third of migrant sex workers who had completed secondary level education rated their English proficiency as ‘not well/don’t speak English’. This is contrary to the perception that people who do not speak English

More than a third of migrant sex workers who had completed secondary level education rated their English proficiency as ‘not well/don’t speak English’. This is contrary to the perception that people who do not speak English in Australia are also uneducated.

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in Australia are also uneducated. More non-migrants than migrants selected debt as a major expenditure (33% non-migrant vs. 19% migrant). This dispels the stereotype that debt is a characteristic of migrant sex work in Australia and the myth that most migrant sex workers incur a large debt in order to travel and sex work to Australia. Engaging an agent or third party agent in order to travel was not an indicator for exploitation, but pointed to the difficulties and barriers non-English speaking people face when applying for visas to travel to Australia. Migrant sex workers report that information, visa forms and even the visa stamps for travelling or migrating to Australia are mostly all written in English and not available translated. It is therefore not surprising that people with greater English proficiency are more able to travel independently.⁶

For Thai sex workers, studies show that they are 'coming to Australia at an older age, with more life experience, more likely to be married, divorced, or having had a relationship with an Australian man, and are more educated in recent years.'⁷ The Sydney Sexual Health Survey in 2003 showed the average age of Thai sex workers in 2003 to be 33, with 37% having a tertiary education.⁸ Research by the Global Alliance Against Traffic in Women (GAATW), Empower Foundation and the Sex Worker Outreach Project (SWOP) NSW in 2000 showed

Chinese and Thai migrant sex workers are enjoying their time in Australia, and seeing it as a profitable destination within our region... [their] age, life experience, language skills, and education level skills show that migrant sex workers are upwardly mobile and have an international outlook. They have previously travelled and worked throughout the region, and anticipate returning to Australia.¹⁶

- Elena Jeffreys

that Thai workers 'felt more confident to work as a sex worker here'.⁹ Empirical research demonstrates that 'Thai sex workers are experienced and knowledgeable', and, as Elena Jeffreys writes, 'When given the opportunity, Thai sex workers will pay for their own ticket and obtain their own visa almost all the time.'¹⁰

The 2010 Scarlet Alliance study results also consolidate findings from a 2006-7 study on Chinese language background sex workers in Australia. The 2006-7 study reveals that they are 'on average 30 or older, educated, have held professional jobs at home, had their own visa, and come from major capital cities in China.'¹¹ Throughout 2006-7, organisations Zi Teng, Scarlet Alliance, and member organisations SWOP NSW, Sex Industry Network (SIN) SA, Resourcing Health and Education in the Sex Industry (RhED) and SWOP ACT conducted the Australian research component of a trans-national study of Chinese language background sex workers from seven countries.¹² The study found that Chinese language background sex workers had a range of professions, including housewife, police officer, small business owner, student and farmer.¹³ No-one was aged 20 or below, and one respondent answered that they were fifty-one. Ninety-seven percent of Chinese language background sex workers reported that they used condoms with all clients¹⁴ and 75% answered they would come back to Australia to work.¹⁵

Migrant sex workers have similarly low rates of STIs and HIV and high rates of condom use as non-migrant sex workers.

Migrant sex workers have similarly low rates of STIs and HIV and high rates of condom use as non-migrant sex workers. A Sydney Sexual Health Centre study of Asian female sex workers surveyed in Sydney in 1993 and 2003 demonstrated that 92.5% of Thai sex workers had consistent condom use with clients for vaginal sex in 2003.¹⁷ In 2007, a survey by Zi Teng (a Hong Kong based sex worker organisation) and Scarlet Alliance of sex workers in simplified Chinese¹⁸ in Sydney, Adelaide, Melbourne and Canberra demonstrated that 97% of Chinese language background sex workers always use condoms.¹⁹ In 2010, a study from the National Centre in HIV Epidemiology and Clinical Research, Sydney Sexual Health Centre, UNSW Faculty of Law and School of Population Health at the University of Melbourne

demonstrates similar rates of condom use between Asian and non-Asian sex workers for vaginal and anal sex:

Condom use by the Asian women is now similar to resident sex workers (Figure 1) and the prevalence of sexually transmissible infections is at an historic low; for example, the incidence of gonorrhoea has fallen from 440 per 100 woman years in 1980-1981 to 0.24 per 100 woman years in 2004-2006 among brothel-based workers in Sydney. Less than 1% of these women arrive with HIV infection and to date there are no documented cases of HIV transmission to or from these women resulting in their work from Australia.²⁰

International role models in sex worker organising

Australia often looks to ‘developing’ country sex worker organisations as role models in sex worker rights, activism and organising. Sex worker organisations in Thailand and India represent some of the world leaders in best practice. In Thailand, the sex workers at Chiang Mai Empower Space offer ‘a drop in space for women, regular workshops on a range of topics, Thai and English language lessons, a thrice weekly radio show, twice weekly outreach, a video and book library, computer classes, and a beauty salon.’²¹ The Can Do Bar is a sex worker owned collective, offering employees fair and just working conditions and an option to enrol in the social security program.²²

Can sex workers own a bar? Can sex workers design it and set it up? Can sex workers employ bar workers under the labor law? Can sex workers be treated fairly? Can sex workers manage their own work? Can entertainment places have OH&S standards? Can a just and fair entertainment place make a profit? Can Do²³

-Empower Thailand

All profits from the Can Do Bar are split among the sex workers, 80 percent of whom are single parents aged 18 to 66.²⁴ Annamarya reports that ‘Unlike the country’s other sex work establishments, at *Can Do*, the industry’s “cut throat practices”, like being laid off for gaining weight, are eliminated.’²⁵ As Empower says, ‘The power we share, the power we have.’ Their website gives comprehensive information about Thai labour law, social security policy, staff facilities, physical safety and wellbeing.²⁶ They describe it as ‘a working model of an entertainment place with just, safe and fair conditions for bar staff and sex workers.’²⁷ Sex worker blogger Vi reports that the bar, run ‘by and for sex workers’ was established

All profits from the Can Do Bar are split among the sex workers, 80 percent of whom are single parents aged 18 to 66.

in 2006 where sex workers pooled their resources, and aims to be a ‘supportive’ environment ‘that operates under optimum OHS conditions’.²⁸ It provides free condom and lubricants and trains all sex workers in safer sex education. Staff may apply for one paid night off per month to attend meetings, courses or trainings relevant to their professional development:

The bar complies with all Thai Labour laws, including paying workers at or above minimum wage, enforcing a maximum eight hour shift and providing one day off a week and paid holidays, providing overtime, not withholding wages for any reason, encouraging staff to join unions, providing sick leave, and settling disputes in Labour Court. Those are better working conditions than many sex workers in Australia can expect, which certainly goes against the ‘poor exploited Asian sex workers’ stereotypes a lot of Westerners have of Thailand!²⁹

In India, the Durbar Mahalia Samanwaya Committee (DMSC) represents 65,000 sex workers and is ‘active in identifying and challenging the underlying socio-structural factors that help perpetuate stigma, material deprivation and social exclusion of sex workers.’³⁰ Based in Calcutta, Durbar advocates on respect (respect and dignity to sex work and towards sex workers), reliance (reliance on the knowledge and wisdom of the community of sex workers) and recognition (recognition of sex work as an occupation, and protecting sex workers occupational and human rights). Durbar involves the sex worker community in all decision-making processes.³¹

The Durbar Mahalia Samanwaya Committee (DMSC) represents 65,000 sex workers.

Conflating terminology – trafficking, sex work and racist media representation

There is a distinct lack of community understanding of migrant sex worker issues in Australia. This lack of awareness is exacerbated by ongoing inaccurate, sex worker-phobic and racist media representations of sex workers and sex industry raids.

Even when proven to be unrelated to trafficking, police raids are still reported by media as if they were uncovering trafficking cases without any distinction or clarification, giving the impression that trafficking is rampant, police attention is necessitated, and that ‘nothing is being done’. Trafficking cases in court have been portrayed without any balance regardless of whether they have been dropped because of lack of evidence.

In 2012, ABC’s Four Corners report ‘Sex Slavery’ won a Walkley Award despite presenting widely discredited figures, inaccurate research, misleading information, voyeuristic and non-consensual hidden camera footage taken by someone pretending to be a client and perpetuating stigma towards Asian sex workers.

Racist and anti-sex work media systematically implies that Asian women seeking to migrate to Australia to work in the sex industry could not possibly have any agency and must have been forced or deceived. Media representations that Asian ‘girls’ are ‘tricked’ into coming to Australia as students and ‘forced’ into ‘prostitution’ have no founding in evidence, and in fact are contrary to statistics that migrant sex workers are generally older than non-migrant sex workers and that trickery or deception that they would be sex working has never been found in any Australian trafficking case. In the past there have been a number of raids by the then Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) now Department of Immigration and Citizenship (DIAC) and the Australian Federal Police during which media accompanied these agencies during sex industry business ‘raids’. On most of these occasions people detained were detained for visa breaches or until their right to work was clarified. However, the resulting media gave the impression publically that raids were uncovering trafficking cases in the sex industry, and Asian sex workers were shown on camera, portrayed as sex slaves.

While mainstream media coverage has resulted in a high level awareness of trafficking in Australia, this awareness is dangerously based on misinformation, stereotypes

and sensationalist media and conflates sex work and trafficking. This level of misinformation is particularly dangerous from a policy point of view as there is high impetus to ‘do something’ but little interest in the evidence compared to the media-driven understanding of the issues and the people involved.

Some organisations, for whom victim narratives are central to their funding, have used anti-trafficking as a platform to call for increased criminalisation, including a renewed push for the Swedish Model, despite extensive evidence by United Nations bodies and epidemiology that such approaches actively harm sex workers and do not affect trafficking.

Some organisations, for whom victim narratives are central to their funding, have used anti-trafficking as a platform to call for increased criminalisation, including a renewed push for the Swedish Model.

Upon her visit to Australia in December 2011, United Nations Special Rapporteur on Trafficking, Joy Ngozi Ezeilo, states that ‘the issue of trafficking in persons in Australia is sexualized and often conflated... There is a need to move away from over-sexualizing the discourse on trafficking’.³² Current debates in Australia often conflate terminology such as trafficking, debt bondage, sexual servitude, deceptive recruitment and forced labour, and fail to recognise sex work as *distinct from* these concepts. Trafficking is a crime; sex work is work. As Maria McMahon writes, ‘media has created the “sex slave” stereotype.’³³ Advocates for the abolition of the sex industry continue to use these terms interchangeably in a way that suggests all sex work is tantamount to sexual exploitation, or that the term ‘migrant sex worker’ is synonymous with ‘victim’. In her work on migrant sex workers in Australia, Elena Jeffreys notes that this conflation as a result of ‘moral hysteria surrounding the sex industry generally’ has ‘tarnished’ responses and ‘undermined’ efforts to address trafficking effectively.³⁴

Such hysteria was highlighted in the media portrayal of Puangthong Simaplee in 2001, who was depicted as

If we were travelling from a rich country with documents, we could be tourists, experts, consultants, researchers, exchanged students or attending a meeting (just like me, I'm here today). But if we were from a poor country and have no documents we would become illegal migrants, smugglers, criminals or even terrorists. But if we are sex workers, it doesn't matter if we have document or not. We will be called victims, sex slaves or prostitutes and nowadays we are called 'victims of human trafficking'.³⁶

- A representative of the Empower Foundation in Thailand

living in sexual servitude since being sold by her parents and trafficked to Australia at the age of 12. Discovery of her high school diploma, proudly displayed in her family home, which was attained before she travelled to Australia aged 21, did little to ease moral panic about the extent or nature of trafficking. Nor did the evidence that Ms Simaplee gave her story under duress whilst suffering from pneumonia, before she died in the custody of Villawood Detention Centre after an overdose of the drug Largactyl, administered by Detention Centre staff.³⁵

Maria McMahon writes:

Extensive and distorted media coverage of the issue of trafficking, and the use of the term 'sex slave' to describe women working on contracts in the sex industry has made the issue very confusing. The terms 'illegal sex worker' (no work visa), trafficking and prostitution have become conflated by the media. This media has contributed to the construction of emotive and mostly unrealistic stereotypes that are used to fuel anti-trafficking debate. This has flowed on into the legislation, policy and practice within regulatory bodies. Worse still, it has increased the stigma and marginalisation of migrant sex workers within the sex industry and the wider community.

Incidence of trafficking is low: Anti-trafficking interventions are wildly disproportionate

Despite the significant financial resources invested into the detection and criminalisation of trafficking in Australia, consistently low government statistics show that the media estimated incidence of trafficking in Australia is inflated. In 2003, Chris Ellison, then Minister of Justice, said, 'no significant' sex slavery problem existed in Australia,³⁷ and the 2004 *Australian Government's Action Plan to Eradicate Trafficking in Persons* states that

the number of trafficking victims is 'well below' 100.³⁸ The Australian Crime Commission's Parliamentary Joint Committee noted in 2005 that migrant sex workers may see their situation as one in which they can improve their families lives.³⁹ Between January 2004 and December 2011, the Australian Federal Police Transnational Sexual Exploitation and Trafficking Team (TSETT) (now Human Trafficking Team) undertook over 327 investigations into allegations of trafficking-related offences. These assessments led to just over 40 matters being referred to the Commonwealth Director of Public Prosecutions for matters related to sexual servitude, slavery and other labour exploitation.⁴⁰ In 2012, the Australian Government reports having spent \$100 million on a whole-of-government trafficking strategy since 2003. There have been 15 successful prosecutions, 12 relating to the sex industry. These relate to 9 schemes, 7 of these in the sex industry.⁴¹

In the Australian finalised trafficking cases relating to sex work, all people had consented to sex work and knew they would be a sex worker. Some had sex worked previously. None of the cases involved deception or trickery of the fact they would be sex working.

In the Scarlet Alliance study, more than half of migrant sex workers stated they have never been on contract. Of the migrants that have been on contract for sex work in Australia, over a third said their working conditions are better or accurately reflect the terms in their contract. More than 98% of migrants and more than 99% of non migrant sex workers who were on contract found the contract conditions to be better, or accurately reflecting the terms they had been promised.⁴² The overwhelming stereotype that migrant sex workers see more clients than non-migrant sex workers was not backed up by this data,⁴³ and there were no differences between sex workers born in Australia or migrant sex workers in the days and hours worked.⁴⁴

Scarlet Alliance has heard it suggested that low numbers of arrests and cases in Australia represents difficulty in detection and policing and that in fact the issue is wider spread. This claim is not supported by the high level of input by migrant sex workers to our organisation and our membership, nor is it supported by the high level of outreach our membership conducts to sex industry businesses. Anecdotal evidence is that police and immigration compliance checking happens frequently for Asian sex workers. It is not our belief that

the low number of actual cases is due to difficulties in prosecution or laws being inadequate. What we know from anecdotal evidence and from our extensive contact with sex workers is that trafficking is not a widespread phenomenon in Australia.

Government attention to trafficking, as far as sex workers are concerned, has meant increased immigration raids on brothels, harassment of Asian sex workers in particular and disruption of their work. Three sex worker organizations providing outreach to migrant sex workers stated that non-trafficked migrant sex workers working legally in Australia have been wrongly detained in raids at workplaces under the suspicion that they are trafficked. Sex workers who are Australian citizens of Asian descent have also been subjected to increased harassment.⁴⁸

- Elaine Pearson, Global Alliance Against Trafficking in Women

It is often stated that one victim is one victim too many, and that the potential of assisting one victim justifies the entire anti-trafficking response. Instead Australia's current anti-trafficking framework increases risks, creates barriers, and poses danger for sex workers. To assist migrant sex workers, the Australian Government must provide safe migration, translated information and access to industrial rights mechanisms, rather than trying to fit labour exploitation into a trafficking framework.

Anti-trafficking policy puts migrant sex workers' rights at risk

The Australian Government anti-trafficking policy poses a threat to the health, safety and human rights of migrant sex workers in Australia. The Australian Government has primarily sought to combat trafficking as a transnational criminal issue, adopting punishment as a primary means of deterrence.⁴⁵ Yet the necessity of police involvement in cases 'has resulted in a set of insurmountable barriers'⁴⁶ for migrant sex workers. Increasing bodies of literature from international human rights organisations have reported on the significant human rights impacts of anti-trafficking campaigns worldwide. Research citing migrants in Mali and Cambodia supports conclusions that trafficking interventions, both at entry level and once in the destination country, 'often ignore the cultural context of migration and can increase migrants' risk of harm and exploitation.'⁴⁷

A Transnational Sexual Exploitation and Trafficking Team (TSETT) was created within the Australian Federal Police and a Federal Compliance team within the (then) Department of Immigration (DIMA).⁴⁹ They later changed their name to the Human Trafficking Team (HTT), to reflect contemporary research that shows that sex work is not intrinsically linked to trafficking practices. However state and territory policing of trafficking is yet to change focus.

Anti-trafficking raid and 'rescue' operations, and harassment and detention of Asian sex workers in visible Asian brothels and massage parlours, have forced sex workers to adapt and change the way we work and have acted to force the industry 'underground'. Studies with migrant sex workers found that in the early 2000's anti-trafficking responses in Australia were causing an increase in private, escort and lower-profile work to avoid raid activity in brothels.⁵⁰ The recent Scarlet Alliance data demonstrates migrant sex workers are for the first time being represented in equal proportion as non-migrant sex workers among private sex work, rather than in brothel settings.⁵¹

Nowadays there are laws about human trafficking. These laws, consequently, get us [sex workers] arrested. Because of these laws, we are put in jail and sent back to our home town. These laws don't help or respect us. On the other hand it is like a wall so we can't reach our dreams or access our rights.

It's good that they want to help us but I've got some questions for those people who think that they rescue us. How would you help us? Do you really help us to reach our dreams? Do you ever care about what happens to us after all?⁵³

- Empower Foundation

In the Scarlet Alliance study, majority of those who stated they had experienced threats of deportation identified the threats had come from police, DIAC or government agency staff, followed by boss/receptionist. The data suggests that people in positions of authority ('Government Agency Staff') are more likely to make threats to sex workers.⁵² Both HTT and DIAC officers are specifically trained to identify possible indicators of human trafficking during their compliance activities. Although only a small number of respondents answered this question, it does indicate there is still an identified need for effective training of agencies conducting compliance operations in sex industry workplaces. Numerous incidents have been reported to Scarlet

Alliance and our member organisations of agencies displaying a lack of knowledge of issues that affect sex workers and an absence of knowledge on how to relate to migrant sex workers. Agencies must be trained by migrant sex workers on sex worker and cultural sensitivities to facilitate appropriate and effective interactions with migrant sex workers.

Laura Agustin terms this international movement the ‘rescue industry.’⁵⁴ Attempts by Government bodies or other organisations to raise community awareness around migrant sex worker issues have been grossly offensive to both migrant sex workers and the broader sex work community. Requirements in Victoria for brothels to feature sexual slavery signage, for example, has not improved the lives or working conditions of migrant or CALD sex workers, has been ineffective in identifying trafficking victims, fails to recognise that migrant and CALD sex workers often fear police, and uses terms such as ‘sexual slavery’ unlikely to have currency or meaning to sex workers who may need assistance but do not identify themselves as a slave.

Police cannot continue to act as both protectors and prosecutors – the anti-trafficking approach places police simultaneously as regulators and as the lead trafficking support agency.

Research shows that criminal justice approaches to trafficking rarely affect anyone other than individual sex workers. Instead, they act to curtail sex workers’ freedom of movement, restrict our choice of occupation, create barriers to migrant sex workers accessing essential services, undermine opportunities to negotiate suitable workplace conditions and impede access to outreach and community service providers, who have far more difficulty gaining our trust.⁵⁵ Scarlet Alliance wrote in our Shadow CEDAW report in 2004, ‘Re-trafficking via forced repatriation by destination countries like Australia must stop!’⁵⁶ Maria McMahon points out that anti-trafficking policing is problematic for health promotion, because although STI and HIV rates among sex workers are low, they ‘depend on sex workers’ access to information and peer education to remain low.’⁵⁷

Evidence shows police are inappropriate regulators for the sex industry

Consistent and systemic evidence of corruption clearly demonstrates that police are inappropriate regulators for the sex industry. Increased policing and further criminalisation will severely affect sex 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.’⁵⁸ 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.’⁵⁹ In their study, Charlotte Woodward and Jane Fischer found that sex workers’ experiences of harassment included verbal abuse, racial insults, stalking, phone calls and requests for sexual favours.⁶⁰ Police cannot continue to act as both protectors and prosecutors – the anti-trafficking approach places police simultaneously as regulators *and* as the lead trafficking support agency. When police are entering sex industry workplaces conducting raids and visa compliance checks, sex workers do not identify police as the appropriate body to turn to for assistance.

Victim support remains conditional upon police assistance and contribution to investigation

Support for victims of trafficking is currently conditional upon a sex workers’ ‘contribution to a criminal investigation’. This means that migrant sex workers 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 is problematic – support is not conditional for other victims. 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 third parties and alternate, riskier avenues for future travel.

Migrant sex workers can only access support if they agree to cooperate with police.

WE ARE MIGRANT SEX WORKERS

WE DON'T NEED YOUR PITY - WE NEED OUR RIGHTS

성노동자

DON'T JUDGE US BECAUSE OF OUR OCCUPATION

งานบริการ

MIGRANT SEX WORKERS ARE WELL
TRAVELLED, EXPERIENCED,
EMPOWERED AND INDEPENDENT

CHOOSING TO TRAVEL AND SEX WORK GIVES
US FREEDOM, YOUR RACISM AND STEREOTYPES
CONFINES US

WE ARE STRONG AND CHOOSE WHEN, WHERE AND HOW WE WORK

MIGRANT SEX WORKERS INDEPENDENTLY TRAVEL AND CHOOSE TO WORK IN SEX WORK

性工作者

WE EARN A GOOD INCOME AND
HAVE WORKPLACE
SATISFACTION AND A GOOD
LEVEL OF KNOWLEDGE OF
SEXUAL HEALTH
SERVICES AND OUR
WORKPLACE RIGHTS

WE DON'T CROSS
BORDERS CROSS US
CROSSBORDERSYDNEY.ORG



MIGRATION PROJECT

Access to justice and support should not be conditional upon police assistance. The Australian government should increase avenues for statutory compensation and redress for exploitative work conditions that do not necessitate 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. This is supported by the UN Special Rapporteur on Trafficking who recommends as an action for Australia to remove the necessity for contribution to an investigation in order to access support.⁶¹

The continuing conditions of victim support make it clear that migrant workers are expendable to the Government unless useful to improve their prosecution statistics and international reputation.

Migrant sex workers experience inequitable access to industrial rights mechanisms

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 but are obliged to report any illegalities, including irregular migration status.

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. The criminal justice system is not the appropriate place to resolve migration and workplace issues. If given the option, people would opt for quicker, less invasive ways to access justice, such as through the Industrial Relations system and including compensation.

Funding misdirected towards surveillance, with no Commonwealth compensation scheme

There is still no Commonwealth accountability for reparations for trafficking offences. The large amounts of funding now being delivered towards surveillance could be spent far more effectively as part of a Commonwealth compensation scheme. Funding speaks as to the intention of Australia's anti-trafficking response and how seriously migrant workers and human rights are actually treated. If the Government is seriously concerned about human rights and ending labour exploitation, it is fundamental they invest in a Commonwealth compensation scheme that would have significant positive impacts on people's lives.

Australia is lagging behind international best practice in providing legal protection for migrant workers

The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families provides under Article 7 that State Parties must ensure the rights of all migrant workers without distinction of sex or race. Article 14 provides that no migrant worker will be subject to arbitrary interference or attacks upon their privacy, Article 16 provides that the State will effectively protect migrant workers against threats and intimidation (including by public officials), and Article 25 states that migrant workers shall enjoy treatment not less favourable than that applying to state nationals.⁶² Despite our lobbying, Australia is yet to sign or ratify the Convention.⁶³ On her visit to Australia the UN Special Rapporteur on Trafficking explicitly recommended that Australia ratify, without delay, this Convention.⁶⁴ Ratifying the Migrant Workers Convention would be a commitment by the Australian Government to proactively protect, rather than criminalise, migrant workers.

Increasing xenophobia provoked by recession and unemployment has also exacerbated hostilities against migrants.

Trafficking is exacerbated by Australia's discriminatory immigration policies

GAATW directly links the existence of trafficking to Australia's limited migration opportunities and hostile immigration policies.⁶⁵ Despite the repeal of the White Australia Policy in 1973, Elaine Pearson writes that 'an attitude of hostility towards migrants, particularly from non-white countries, still pervades.'⁶⁶ In their paper, *Identifying the Core Rights of Concern to Migrants*, the International Organisation for Migration notes that migrants often face discrimination and hostility: 'Often, migration is perceived negatively, by host governments and communities alike, potentially triggering a backlash against migrants and a denial of many of their basic rights. Increasing xenophobia provoked by recession and unemployment has also exacerbated hostilities against migrants.'⁶⁷ Citing the Department of Immigration and Citizenship's (then the Department of Immigration and Multicultural Affairs) 'dob-in line' (encouraging citizens

to report migrants suspected of working in Australia illegally) and an environment ‘carefully cultivated by the Howard Government’⁶⁸, Elaine Pearson states that ‘trafficking still does go on, because unskilled people from ‘developing’ countries find it difficult to obtain a work visa for Australia.’⁶⁹

Australia’s favouring of specific ‘skilled’ migration from industrialised countries has the effect of preventing differently skilled workers from ‘developing’ countries from entering Australia; 15 of the 19 countries with which Australia has a reciprocal working holiday arrangement are European countries.⁷⁰ In 2013 there is still no working holiday visa available for African, Pacific or Chinese migrants. Working holidays for Thai and Korean migrants are only available if applicants are under 30 years old. There is no visa available to migrate for the purposes of sex work, and sex workers are not eligible for a business sponsorship visa. Anecdotal evidence collected by sex worker organisations in Thailand and Australia demonstrates that sex worker visa applicants are routinely discriminated against – sex workers report being refused visas at the Australian embassy when they disclose their occupation.

These stringent and discriminatory migration policies disadvantage workers from ‘developing’ countries and ensure a lack of opportunities for sex workers to migrate to Australia legally. There are very limited options for sex workers to work legally in Australia. Information on visas, forms and the visas themselves are mostly not available in languages other than English. Although DIAC have begun translating some information into some languages, there are a number of useful documents that still remain untranslated. This has been an ongoing and longstanding issue. In order to gain a visa, some migrant sex workers enter into ‘contracts’ with people who will sponsor and assist our entry into Australia. These debt

There are very limited options for sex workers to work legally in Australia. Information on visas, forms and the visas themselves are mostly not available in languages other than English.

contracts act as an alternate entry means to those trying to travel for work.⁷¹ By creating a need to engage third-party agents in order to travel and failing to providing adequate language resources, Australia’s migration policies have produced an environment where people are susceptible to deception and trafficking.⁷² Trafficking laws place blame upon people creating opportunities to travel, rather than on restrictive migration laws that prevent travel.

Australia must commit to developing and maintaining strong pathways for safe and legal migration.

The 2010 Scarlet Alliance study shows, for example, that New Zealanders were more likely to gain access to entry to Australia via the work or individual sponsorship programs, while sex workers travelling from Thailand were greatly overrepresented within the groups who got married and enrolled in an education course and are underrepresented within those who were sponsored by an individual or workplace.⁷³ Consultation with the Scarlet Alliance Migration Project Steering Committee found that there is a fear that the requirements to obtain a visa to work in a developed country are so high that the best way to ensure that the form is filled in correctly is to pay a third party to do so.⁷⁴

The United Nations Special Rapporteur on Trafficking Joy Ngozi Ezeilo stated that ‘Australia must commit to developing and maintaining strong pathways for safe and legal migration’.⁷⁵ Providing legal channels for sex workers to migrate to Australia would reduce the need for migrant sex workers to rely on traffickers in order to travel for work like other professionals. In a context where sex worker visa applicants are routinely discriminated against (experiencing increased immigration scrutiny), providing genuine migration opportunities for sex workers – and recognising sex workers as *skilled* workers – must be a key step in addressing trafficking.

The United States TIP Report –creating vulnerabilities to trafficking

One of the biggest influences on anti-trafficking policy internationally is the annually released United States Trafficking in Persons (TIP) Report. In October 2001, the US President George W Bush, created a bureau in the

State Department – the Office to Monitor and Combat Trafficking in Persons – as a result of the passing of the *Trafficking Victims Protection Act* (TVPA) of 2000. The Office produces an annual report card for countries called the *Trafficking in Persons Report* or the TIP report. The TIP report divides nations into tiers based on their compliance with standards outlined in the TVPA. This rating creates political pressure for countries to ‘combat trafficking’. Governments of Tier 3 countries ‘... may be subject to certain sanctions, whereby the US government may withhold or withdraw non-humanitarian, non-trade-related foreign assistance.’ In addition, countries on Tier 3 may not receive funding for government employees’ participation in educational and cultural exchange programs.

Consistent with the TVPA, governments subject to sanctions would also face US opposition to assistance (except for humanitarian, trade-related, and certain development-related assistance) from international financial institutions such as the International Monetary Fund (IMF) and the World Bank.

Brazil turned down 18 million US dollars of HIV/AIDS funding, rather than accept sanctions on what they could offer to their own people and sex workers in particular.

The TVPA recommends the criminalisation of the sex industry as an effective means to combat trafficking. In 2003, a Prostitution Pledge was introduced as a National Security Presidential Directive by George W Bush, stating that any organisation receiving anti-trafficking funding must subscribe to anti-sex work philosophy. Later, conditions were added that organisations could not refer people for abortions or provide information on contraception. In effect, this has eliminated organisations from funding who do important health promotion work, including sex worker organisations. This direct political bullying is not related to trafficking at all, but continues to influence policy globally. Maria McMahan notes that United States has prohibited funding non-government organisations (NGOs) who do not explicitly oppose sex work: ‘Brazil turned down 18 million US dollars of HIV/AIDS funding, rather than accept sanctions on what they could offer to their own people and sex workers in particular.’⁷⁶ The United States Supreme Court is to

examine the Prostitution Pledge in 2013.⁷⁷

Many countries in the region have criminalised sex work in response to direct pressure via the US TIP report. These often violent crackdowns on the sex industry and active criminalisation of sex workers has created the push for sex workers to migrate out of their home countries in order to work in their chosen profession. The US anti-trafficking solution in the form of criminalisation of sex work has been a major factor in causing a situation where vulnerabilities to trafficking can occur.

For example, the Korean Government enacted anti-sex work laws in 2004 as a result of direct pressure from the US TIP Report. Increased law and order crackdowns targeting sex workers, including police forcibly and violently shutting down workplaces, has meant that more Korean nationals are migrating to work in countries such as Australia.

The Korean Government recently sent its special ambassador for overseas Koreans, Moon Hayong to Canberra with view to obtaining support from the Australian Government in tracking down and locating Korean sex workers in order to prosecute them. Sex work is illegal for Korean nationals, both within Korea and internationally, and Jin Soo Kim, the Sydney Consul General for South Korea, requested the Australian Government to advise them immediately of any information on Korean nationals involved in sex work, as a worker or client. This has led to campaigns to ‘kick Korean prostitutes out of Australia’ among Korean residents in NSW. There have been allegations printed in Korean local press in Australia stating that the Australian government is cooperating and providing names of Korean sex workers so they could be arrested upon return to Korea. Korean sex workers have reported to sex worker organisations being too afraid of going to work for fear of identification and prosecution.

Demand reduction represents a new and dangerous policy direction

Emerging calls for a ‘demand reduction’ approach to anti-trafficking represents a disturbing policy shift in relation to sex industry law reform. The call for a ‘demand reduction’ approach to anti-trafficking blames clients for wider systemic injustices in law, policy and immigration. A ‘supply’ and ‘demand’ model shifts focus away from rights-based approaches, sex worker access to industrial rights mechanisms and migration law reform.

A supply and demand model is an inappropriate lens with which to understand migration and labour exploitation.

Sex workers, like other professionals, actively seek to travel for work. Sex workers, like other workers, migrate internationally to seek improved working conditions and income. Labour migration within the Asia Pacific is common across a variety of professions and industries. Research demonstrates that migrant sex workers find Australia to be a profitable location with comprehensive support networks and outreach services and a largely tolerant environment, where sex workers enjoy some of the lowest rates of sexually transmissible infections (STIs) and HIV in the world. Sex worker experiences of migrating for work do not fit with a supply and demand model that paints clients as perpetrators and sex workers as victims: as GAATW write, ‘Demand-based discourses appear to recognise migrant workers only as ‘product’ to fit simplistic economic analogies, rather than as persons with rights and aspirations.’⁷⁸

GAATW’s 2011 report *Moving Beyond Supply and Demand Catchphrases: Assessing the Uses and Limitations of Demand-Based Approaches in Anti-Trafficking* states that the term ‘demand’, as it is used in the anti-trafficking sector, is ambiguous and uncritical. Instead GAATW identify two separate kinds of demand that appear to be conflated anti-trafficking platforms – a demand for sex work, and a demand for exploitative labour practices.⁷⁹

They write that the focus upon clients and consumers within a ‘demand reduction’ model can ‘mask significant structural factors that need to be addressed, including poverty and restrictive immigration measures.’ They suggest that ‘problems about “demand” would be best met with ‘supply’-side solutions (i.e. strengthening workers’ rights).’⁸⁰

[GAATW] write that the focus upon clients and consumers within a ‘demand reduction’ model can ‘mask significant structural factors that need to be addressed, including poverty and restrictive immigration measures.’

There is no evidence of demand for trafficked sex workers. A ‘demand reduction’ focus shifts the attention away from proactive steps that could be taken to

improving the rights and working conditions of migrant sex workers. There are a range of strategies that could be implemented to reduce exploitative labour practices, including: creating legal migration channels for working-class migrant workers; decriminalising migration and protecting migrants’ rights; enforcing labour standards and improving working conditions; and reducing discrimination against migrants.⁸¹

There is no evidence clients are seeking out trafficked women in Australia. The demand-reduction approach has been used as a thinly veiled attempt to introduce criminalisation of clients. This is contrary to Australian Government’s best-practice position in regards to sex industry legislation, HIV and STI prevention. The *Sixth National HIV Strategy* states as a priority action to identify and address the legal barriers to evidence-based prevention strategies across jurisdictions. The strategy recognises that criminalisation creates barriers to justice, support, health and human rights for sex workers. This is especially so for migrant sex workers who already face marginalisation and stigma. The employment of a ‘demand reduction’ approach to the sex industry is a definite legal barrier that will serve to alienate and distance sex workers, including those affected by trafficking. A demand reduction approach will undoubtedly result in sex workers, on a large scale, being unwilling to engage with police and Government, and have an irreparable impact on these pivotal partnerships.

The focus of anti-trafficking law and policy continues to be on sex industry and migration compliance, instead of preventing exploitation or providing human rights

The focus of anti-trafficking law and policy in Australia continues to be misplaced. When the federal Government released its Human Rights Action Plan in 2012, it contained a large section on ‘People Trafficking’ without mentioning any prevention strategies or commitments to strengthen human rights. There were no strategies for visa reform to allow for safe migration and eliminate the need to engage third-party agents to travel. There were no initiatives to translate visa conditions and important resources into multiple languages. There was no plan to improve migrant workers’ access to industrial rights mechanisms. There was no reference to existing remedies available that provide better outcomes for victims. Under the National Human Rights Action Plan, the only support available to migrant sex workers remained conditional upon police assistance and contribution to a criminal investigation. There was no recognition that police are inappropriate regulators for the sex industry. Instead, the Action Plan invested heavily in a criminal justice approach

which has been demonstrated to curtail the human rights of migrant sex workers and hinder our access to essential health and support services. The failure to mention sex work in the Baseline Study and Human Rights Action Plan aside from references to ‘people trafficking’, ‘child prostitution’ and ‘child pornography’ illustrates a fundamental misconception that sex work is not work, and that sex workers are not deserving of positive rights. This is particularly evident in the provisions that support criminal justice and police intervention into migrant sex workers lives, the failure to provide any ‘workers rights’ protections and an explicit *refusal* in the Baseline Study to ratify the *Migrant Worker’s Convention* ‘because it considers that the existing protections for migrant workers are adequate’.⁸²

The same year the federal Government introduced the *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012*, which increases police powers, introduces heightened surveillance, lowers the thresholds of offences, lowers burdens of proof, criminalises more activities and people, funds law enforcement instead of victim compensation, and increases the federal Government’s abilities to boost prosecution statistics. Similarly, the Bill made no attempt to improve the rights of migrant workers or address underlying structural, systemic, or state-sanctioned causes of labour exploitation. The Bill in all its aspects intends to increase the numbers of prosecutions rather than actually assist people experiencing exploitative working conditions in Australia.

The Bill made no attempt to improve the rights of migrant workers or address underlying structural, systemic, or state-sanctioned causes of labour exploitation.

In doing so, the Government removed consent as a relevant factor in proving a trafficking offence, contrary to the International Labour Organisation (ILO) *Convention No 29 on Forced or Compulsory Labour*. This means that a person’s consent or acquiescence to travel for work will be of no relevance when proving a trafficking offence. The Amendments enable law enforcement agencies to obtain warrants to intercept communications of persons of interest, meaning government agencies will be able to

intercept, spy on, and tap communications of ‘persons of interest’ and ‘third persons’. This could include drivers or security of sex workers, and potentially also services (including sex worker organisations, NGOs or health services) and will deter migrant workers from making phone calls that may be necessary for support or safety. The Amendments explicitly limit the right to privacy. New harbouring offences will criminalise people who are peripherally involved, or caught up unknowingly or unintentionally, or who are intending to assist migrant workers. And changes to definitions of coercion, threat and business mean that receptionists, drivers, support staff or colleagues of sex workers can also be targeted. A bank could be prosecuted for loaning money to a sex industry business, newspapers for printing sex worker advertisements, or receptionists working for a sex service provider. Slavery offences now apply to conduct where a person is not yet a slave, but where a person is (at any later point in time) ‘reduced to slavery’. This means that if a person gives someone a job, refers them to a friend, introduces them to an acquaintance, supports their marriage that results in another person being reduced to slavery (even ten years later- no time limit is prescribed in the legislation) the original person may face 25yrs imprisonment. Because there is no requirement for knowledge or intention, this could include airlines, travel agents or migration agents.

Civil remedies, labour protections and statutory compensation are more effective than criminal justice approaches

The criminal justice approach to trafficking and labour exploitation has been ineffective and expensive. The skewed focus on the sex industry has meant that, as Elaine Pearson argues, ‘there is a failure by police and immigration officials to investigate labour abuse cases as trafficking in industries other than the sex industry.’⁸³ As GAATW notes, ‘despite the fact that irregular workers are far more commonly found in sectors such as hospitality, agriculture, manufacturing, retail trade and construction than in the sex industry,’⁸⁴ criminalisation has singled out the sex industry for surveillance. Fiona David, in her report *Labour Trafficking* for the Australian Institute of Criminology agrees that ‘While the body of literature on trafficking for the purpose of sexual exploitation has grown steadily, much less is known about trafficking where the exploitation occurs outside the sex industry.’⁸⁵ This inequity does not warrant further criminal justice approaches to labour exploitation across other industries. Rather, criminal justice approaches have driven sex workers underground, inhibited sex workers’ access to basic services, consumed significant (financial

and labour) resources, and have been unsuccessful in improving working conditions for sex workers.

We should have the right to travel and reduce the gap between rich and poor countries so every single one of us in the world can travel equally and safely.

In her analysis of the Australian Government's response to trafficking, Sarah Steele notes that targets of anti-trafficking policy are constructed as victims needing protection from harm rather than as individuals deserving of positive rights.⁸⁶ In her presentation for the Asia Pacific Network of Sex Workers in Calcutta in 1998, Lin Chew noted that women who leave their home, or 'migrate', go against traditional female roles, yet are often 'punished for this (political) act by further marginalisation and stigmatization.'⁸⁷ She argues that instead of a 'repressive' model, governments should adopt an 'empowering model', aimed at enhancing and restoring the rights of migrant sex workers, provide support and assistance in an enabling environment and increase autonomy and self-determination. As Chew argues, such an approach would include understanding sex work as a legitimate occupation, recognising the agency of women and girls, strengthening the political and civil rights of sex workers, increasing access to resources, training and jobs, and mobilising for self-representation and participation at all levels.⁸⁸ As the Sex Worker Outreach Project recommends, this includes removing the need for contracts: 'the way to end "slavery" is to "free" the "slaves" by providing them rights and legal status through legislation which will increase their power to [travel lawfully and] reject slave-like contracts and conditions.'⁸⁹

The majority of trafficking-related crimes can be covered within existing laws and/or redressed within the labour framework

The best approach to addressing labour exploitation across all industries is through a focus on prevention, labour protections, civil remedies and statutory compensation. The majority of trafficking-related crimes can be covered within existing criminal laws and/or redressed within the labour framework. Experts attending an international consultation in Prague on the Human Rights Impact of

Anti-Trafficking Measures (including trafficking advisors to the UN High Commission, lawyers from the Council of Europe, representatives from the ILO and IOM as well as academics and specialist organisations in the field of trafficking from the US, EU and Asia) agreed that sex workers do not need a separate set of trafficking laws.⁹⁰

Migrant sex workers are a significant proportion of sex worker populations in our cities. The Sex Workers Outreach Project (SWOP) in NSW provided nearly 1,000 occasions of service to Non English Speaking Background (NESB) sex workers in the year to June 2005, and visited about 150 workplaces predominantly employing these sex workers. Up to 25% of brothel and massage parlour sex workers in NSW are of non-English speaking backgrounds. [These] sex workers have a wide range of migration or residential status, from second generation Australian-born residents, to permanent residents (spouse, family reunion), through to those recently arrived visas issued under Australian immigration laws (students, tourists) with all of the women having arrived legally in Australia.⁹³

- Maria McMahon

Contract law, migration law, employment law, occupational health and safety law, fair work law and criminal law already cover offences such as sexual assault, unpaid wages, breach of contract, false imprisonment, fraud, falsification of documents, usury (lending money at exorbitant rates), minimum wage, underage sex work, underage marriage, sham marriages, domestic violence, and allowing a non-citizen to work in breach of a visa. Under these laws existing remedies are available which involve less court time, less cost, and better outcomes, for victims and government. Industrial rights mechanisms such as the Fair Work Ombudsman provide remedies regardless of a persons' citizenship status. Legislative focus should be directed towards preventing labour exploitation by supporting the human and labour rights of migrant sex workers, and providing civil remedies and statutory compensation for all victims of exploitative working conditions.

Government must invest in prevention: Safe migration channels, access to visas, funding multilingual peer education and translating resources

There is no need for trafficking to occur in Australia. Trafficking can be prevented by providing equal access to industrial rights, better access to visas, migration information and quality translated materials. The

Australian migration system requires reform in order to allow for safe migration. As Thai sex worker organisation Empower Foundation say, ‘We should have the right to travel and reduce the gap between rich and poor countries so every single one of us in the world can travel equally and safely.’⁹¹

The gains made for migrant sex workers have been achieved because of a strong community development base created by the multicultural projects of sex worker organisations, translated resources, community engagement and employment. Maria McMahon writes that SWOP NSW’s activities include ‘providing culturally appropriate outreach services, with Thai, Korean and Chinese speaking staff to NESB sex industry workplaces; the production of resources in appropriate languages; and referral to immigration, legal and multicultural services and partnership support services.’⁹²

The data from the Scarlet Alliance study illustrates a willingness by sex workers to attend services generally. However, migrant sex workers identified more difficulties than non-migrant sex workers. These difficulties include not actually knowing about the service and not having access to language-appropriate services.⁹⁴ Significantly, over 80% of non-migrants could easily access services and information. By contrast only 58% of migrants have easy access to information and services.⁹⁵

Bilingual peer educators providing outreach services to migrant sex workers in a support and educational capacity are the best placed to offer support and appropriate referrals. Migrant sex workers are significantly more likely to trust and turn to sex worker peer educators that speak their first language for support. It is difficult for sex workers to equate police, immigration or council officers conducting visa and sex industry compliance as the people to turn to for support. This is exacerbated by the fact many sex workers come from countries where sex work is actively criminalised and sex workers are routinely harassed and arrested by authorities.

Despite the success of peer education in reaching migrant sex workers, funding for culturally and linguistically diverse (CALD) peer education is severely under resourced. There is also inadequate funding for production and translation of materials by and for migrant sex workers. Scarlet Alliance Migration Project have produced resources that were identified as needed by migrant sex workers and CALD peer educators. These were translated into three key languages and include information on laws, visas and a guide to dealing with immigration, police and taxation officers in the workplace all of which have proved to

be incredibly popular. Despite the obvious need for the resources, no funding exists to update the information and to fill further, identified resource gaps.

Elena Jeffreys writes that ‘If the aim of Government is to decrease reliance on debt contracts by those coming to Australia for work, there are methods that will provide these outcomes *without* criminalising the target group who are pushed into unfair work situations.’⁹⁶ These measures respect the right to freedom of movement under Article 13 of the 1948 Universal Declaration of Human Rights and Article 12 of the 1966 International Covenant on Civil and Political Rights and the rights afforded to migrant workers under the 1990 Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Sex worker-initiated research leads to evidence-based policy

Studies of and for migrant sex workers that have been initiated, directed, monitored and evaluated with and by migrant sex workers have generated valuable data about the lives, experiences and needs of migrant sex workers in Australia. Importantly, these studies reflect the principle that sex workers should be at the centre of consultation – driving research initiatives, asking questions, monitoring policy and implementing law reform – on matters that affect our lives. Many of these studies have included multi-lingual sex worker peer educators involved in the design, interviews and/or survey collection. Evidence reveals that the best practice approach to trafficking involves a focus on the prevention of conditions conducive to trafficking rather than a focus on surveillance of sex workers. Supporting sex-worker led, community-driven research leads to reliable evidence-based policies which are effective in reducing disadvantage *by* supporting the rights of migrant sex workers.

Community awareness campaigns cannot be effective without meaningful consultation with migrant sex workers. Without appropriate consultation, awareness campaigns will only serve to alienate and offend the intended target group.

A rights-based approach is the best way to prevent trafficking and exploitation

A rights-based approach to migration and the promotion of evidence-based prevention strategies is the most effective way to combat trafficking. 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.

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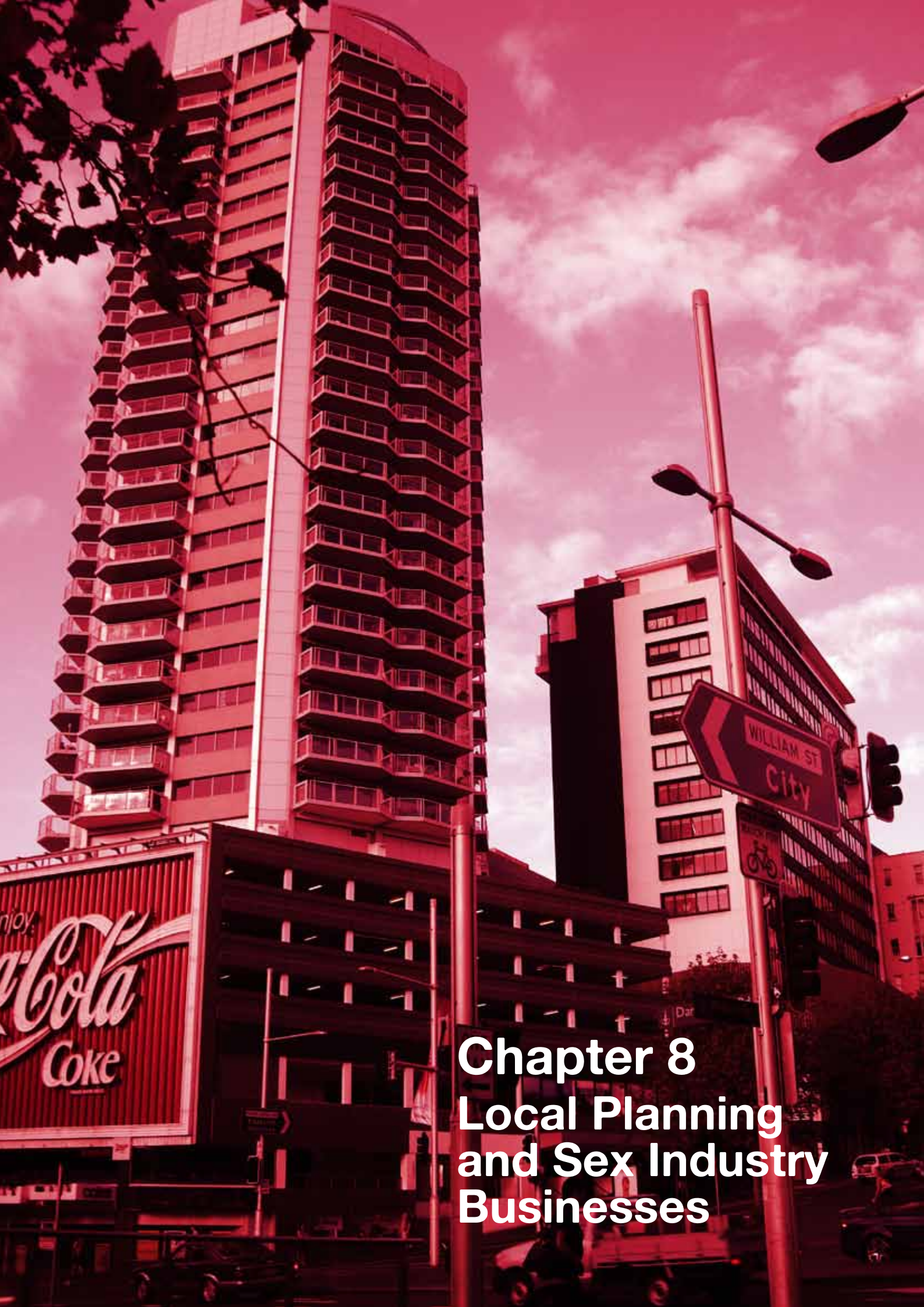


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- 89 *Sex Workers Outreach Project, Response to the Criminal Code Amendment (Slavery and Sexual Servitude) Bill, 1998*, accessed at <http://www.scarletalliance.org.au/library/swop98> 17 May 2011.
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WHORE 
POWER





Chapter 8
Local Planning
and Sex Industry
Businesses

Recommendations for Reform:

- The complete decriminalisation of sex work is necessary in all jurisdictions;
- Sex work should be treated as legitimate work and sex industry businesses should be treated as legitimate businesses by states and local councils;
- Local councils should be guided by the planning principle of equity;
- Sex workers and sex work businesses should not be subject to special provisions that set them apart from other businesses. There must be consistency and continuity in local authority planning decisions;
- Local councils must provide reasons and evidence why a business is not suitable in a certain locality based on pre-determined criteria that apply to all enterprises;
- Sex industry businesses should be permitted in all business zones where other commercial premises are;
- Private sex workers should be permitted as exempt development in all zones where other home occupations are permitted to avoid discrimination and protect safety of sex workers;
- Councils should not have excessive zoning restrictions or anti-clustering references in their plans;
- Councils should support the location of brothels or parts of brothels at ground floor level to ensure they are accessible to people with disability;
- A sex industry liaison officer should be appointed within state and territory planning departments to assist local councils to abide by the Guiding Principles agreed to by a range of stakeholders contained within the NSW Sex Services Premises Planning Guidelines; and
- State governments should support and fund the development of an education program to inform local councils of the rationale and evidence behind decriminalisation; explain the legislative and regulatory frameworks; explore the impact on OHS, competition and economic outcomes for the sex industry; explore the reality of amenity issues; review councils' range of controls, remedies and powers; review case law and costs relating to court cases; provide resources in multiple languages; and educate on best-practice approaches to sex industry planning.

Summary of Issues:

- In decriminalised and licensed settings, local councils continue to unfairly discriminate against sex workers and sex industry businesses;
- Local councils have been unable to make consistent and fair decisions regarding development applications for brothel locations. They usually apply discriminatory, restrictive and stringent planning requirements upon sex industry businesses that they do not apply to other commercial businesses;
- Inappropriate council policy may require sex industry businesses to relocate to industrial zones, which isolates workers and clients by segregating the sex industry into poorly lit, under-resourced and unsafe areas;
- Inappropriate council policy may prohibit private sex workers from working from residential areas or require us to go through a Development Application (DA) process that publically 'outs' us to our neighbours. As this can lead to the harassment of individual sex workers in our homes, workers are driven underground;
- Councils may require sex industry businesses to be less visible by approving premises above ground level. This makes sex services less accessible to people with disability;
- Anti-clustering laws, which forbid sex industry businesses from being located close to one another, act to limit networking and support among sex worker businesses;
- Discriminatory council practices make it difficult for brothel owners to operate legally. Appeals to the Land and Environment Court because of discriminatory local council decisions are wasteful of resources and place high expense on the tax payer and sex industry business owners;
- Local council fears are unjustified and founded on stereotype. There are little to no amenity impacts of sex industry businesses on surrounding communities; and
- A number of local councils in NSW provide evidence that significant numbers of sex industry businesses can be regulated and integrated effectively when planning and zoning considerations permit various types and scales of sex industry premises in their natural locations.

Principles for Model Sex Work Legislation

Local Planning and Sex Industry Businesses

The local council I live in is trying to ban private sex workers. I work from my home and my home is not a brothel. When I heard about it, I wrote a letter as a submission to the planning review and contacted the Council to speak at the consultation meeting. I wanted the Councillors to look at me as they tried to take my rights away. I attended under a pseudonym. After the meeting I contacted the Council again to speak at the next general Council meeting. I emailed the Councillors with more concerns I had. Some were sympathetic and said they agreed with my views, but it was frustrating because they were not in a position to actually change the outcome. Two people spoke before me about the so-called evils of 'prostitution'. It was strange because I had made small talk with one of them prior to the meeting. I think afterwards they were shocked they had been unable to tell I was one of 'those people'. One of them interrupted and tried to shout me down. Others at the meeting stayed silent and wouldn't look at me at all.¹ - Private sex worker, Marrickville

In decriminalised or licensed systems, sex work is regulated via local planning provisions. Successful instances of local council planning exist in New South Wales, where the work of the Sydney City Council illustrates that local councils can effectively manage sex industry businesses through innovative and effective strategies such as the establishment of safe houses and brothel regulation. However evidence shows that majority of local councils have been unable to make consistent and fair decisions regarding sex industry businesses from as far back as 1999.² Penny Crofts writes that despite the 1995 reforms decriminalising sex work in NSW and bestowing legal status upon brothels, brothels continue to be 'perceived as outlaws' and 'regarded as inherently awful, disorderly, and hence warranting and requiring exclusion from the community.'³

Sex industry businesses face discriminatory planning requirements

Local councils often apply discriminatory, restrictive and stringent planning requirements upon sex industry businesses that they do not apply to other commercial businesses. Penny Crofts writes that these regulations include strict parking requirements, operating hours, notification requirements and zoning restrictions.⁴ They may require sex industry businesses to relocate to industrial zones as a means of 'controlling' the perceived proliferation of sex industry businesses, which makes workers physically isolated by geographically segregating sex work into poorly lit, under-resourced and unsafe areas. Councils may prohibit individual private sex workers from working from our homes or require us to go through a Development Application (DA) process that publically 'outs' us to our neighbours. This can lead to the harassment of private sex workers in our homes. Councils may require sex industry businesses to be less visible by

approving premises above ground level. This makes sex services less accessible to people with a disability. In 2007 in NSW, the *Brothels Legislation Amendment Act* expanded the powers of the Land and Environment Court (LEC) and local councils to close 'disorderly and unlawful brothels'.⁵ Penny Crofts notes that brothel closure laws are effective within five working days rather than the previous twenty-eight days, and no longer require 'sufficient complaints' but only one complaint.⁶ The LEC and local courts can then direct water, electricity and/or gas to be switched off from premises failing to comply with the closure order.⁷ These amendments, along with persistent discrimination against sex industry businesses by local councils, treat sex work as a public nuisance in need of strict control, and undermine the intended outcomes of decriminalisation, such as health promotion and reducing the stigma and discrimination towards sex workers.

Local councils misunderstand and overstep their role in regulation and enforcement

Local councils regularly misunderstand their role in relation to regulation. Regulatory problems have occurred when councils have overstepped their roles in relation to regulation of the sex industry. Hornsby Council Mayor has indicated that they aim to investigate organised crime, illegal immigrants and corruption in the sex industry rather than referring those matters to the appropriate body. Janelle Fawkes notes that addressing organised crime is the role of police, addressing migration compliance is the role of DIAC, and addressing corruption is the role of ICAC.⁸ Speaking on Penny Croft's academic work on the regulation of disgust at the Australian Institute of Urban Studies 2012 Seminar Series on Planning and Brothels, Fawkes cited a repetitive cycle of council discrimination in which:

Councillors see opposing sex industry business applications as a vote winner; development applications are refused on moral grounds; non-compliant sex industry businesses are created; council staff must act on non-compliance (unethical behaviour = private investigation/corruption); local media play up the concept of non-compliant brothels being less safe and providing unsafe services.⁹

As part of a crackdown on unlicensed brothels in Victoria, local councils have hired undercover private investigators to solicit sex from sex workers, and then shut down their brothels.¹⁰ Operators of brothels in 'leafy, residential' streets such as Fairfield have faced civil and criminal charges for operating without a permit.¹¹ In 2008, the Victorian state government assisted local councils in discriminating against sex industry businesses, by introducing new laws to allow councils to close down unlicensed brothels where they could prove sexual services were *offered*, regardless of whether they were actually provided.¹² As *The Age* suggested, 'Instead of entering a suspected illegal brothel, council officers or hired investigators could sit across the road from a premises and note the number and gender of visitors' to draw their conclusions.¹³ In 2009 the Victorian *Consumer Affairs Legislation Amendment Bill* proposed that people entering or leaving buildings suspected of being illegal brothels could be forced to answer questions by investigators or risk hefty fines up to \$1000.¹⁴ The Bill proposed to double the maximum penalty for operating an illegal brothel to more than \$140,000 and meant operators could face five years imprisonment.¹⁵ Contrary to all epidemiology and evidence, Consumer Affairs Minister Tony Robinson said these 'tougher penalties' were aimed 'to protect the community from the health and safety risks of unregulated sex work'.¹⁶

Council officers or hired investigators could sit across the road from a premises and note the number and gender of visitors to draw their conclusions.

Christian Vega writes that campaigns to close down 'illegal brothels' are misguided, and 'take advantage of the confusion and lack of understanding of the sex

industry'.¹⁷ He writes that what is considered an 'illegal brothel' in a licensing framework is largely arbitrary:

The law only allows for a small number of opportunities to do sex work... If it doesn't occur in a licensed brothel, escort agency or as a registered private worker going to a client's premises, then sex work is considered illegal... There are many circumstances that would be considered an illegal brothel...

It seems ridiculous that it is perfectly legal for a private escort to see a client in a hotel room, but if that same hotel room is booked in the name of the escort, it is suddenly considered an illegal brothel.¹⁸

- Christian Vega

Vega writes that local council concern over 'illegal brothels' could be eliminated with 'simple amendments to legislation and planning regulations' that make it easier for sex industry businesses to operate.¹⁹ Instead, the stringent requirements imposed upon sex industry businesses under Victoria's licensing model effectively *create* illegal brothels and then support local councils in closing them down.

Amenity impacts of sex industry businesses are minimal to nil

Council restrictions on sex industry businesses often have no evidential basis. Amenity impacts on the community such as noise or nuisance rarely manifest or justify council bias. In their 2010 Submission to the Shadow Attorney General on Sex Industry Regulation in NSW, Scarlet Alliance and Nothing About Us Without Us (NAUWU) note that there are low or no amenity impacts from sex services premises.²⁰ Research from 2008 demonstrates that after 13 years of decriminalisation in NSW, only one brothel owner had been ordered to cease operation due to amenity impacts, and there had been no complaints relating to amenity impacts for private sex work.²¹ As Penny Crofts states, citing research from the City of Sydney, 'Most people are unaware that they have been living next to a home occupation (sex services). [Private sex workers] need to be discreet – to keep clients and also for personal safety'.²² Saul Isbister notes that in Marrickville Local Council, town planners checked with neighbouring Councils and Police Local Area Commands in 2002, covering a population of half a million people, and found that 'No complaints had been recorded in any police area command and corresponding council'.²³ Sex work has little to no amenity impacts on its surrounding

areas or neighbours – rather, a central aspect of the job description is maintaining discretion and to ensure the confidentiality of ourselves and our clients.

Research by Crofts and Prior in 2010 suggests that brothels have a neutral or positive effect on neighbourhoods.²⁴ Prior and Crofts' study illustrates that of 400 residents living in close proximity to commercial sex services in City of Sydney and Parramatta, 43.1% were unaware they lived within 400m, and of those who did know, 48.2% believed the business had no overall impact in the local area, and 24.1% rated it positively.²⁵ The NSW Better Regulation Office has supported that 'negative impacts were felt most commonly late at night, on weekends, and for less than an hour.' Residents also believed that other local businesses have similar amenity impacts.²⁶ Prior and Crofts' research suggests that communities come to accept sex services premises as they become more familiar with them and the longer they are in the neighbourhood: 'residents become more accepting of a nearby sex premises the longer they are familiar with its presence.'²⁷ Importantly, the findings suggest that where individuals or community groups put in submissions about a council's proposed land use, the planning process tends to attract participation by those who have negative views.²⁸ Many brothels are also small-scale – those visited by the LASH team for their 2012 report had an 'average of seven workers per brothel, with about four workers employed on day shifts and up to six during evening shifts'.²⁹

Local council fears are unjustified and based on unfounded stereotype

Despite a lack of demonstrable evidence of any negative amenity impacts of sex industry businesses, local councils through their policies and decisions continue to perpetuate misconceptions that brothels have, as Penny Crofts says, a 'corrupting' effect in generating criminality: 'The assumption is that people who work in or go to a brothel are immoral and engaging in unlawful activities, and are thus likely to break other moral and legal codes.'³⁰ In *Hang v Strathfield Municipal Council* a petition by residents asserted that the brothel 'would attract persons with a criminal record' and in *Huang v Parramatta City Council* the Strategic Crime and Corruption Officer believed that 'typical crimes experienced within and around brothels' included armed robbery, assault, illegal drug use, extortion payments, drive-by shootings, illegal immigrants and people trafficking.³¹ Such unjustified fears continue to be borne out through laws that prohibit brothels from operating within view of a school, church or hospital, or places frequented by children or cultural

activities. These laws are unjustified and unfounded, and curtail sex workers' freedom of movement and choice of work. The assumption remains that the mere *visibility* of brothels leads to crime, disease and corruption: 'the legislation reinforces the conception of brothels as polluted and polluting.'³² These prohibitions create a need for invisibility that poses difficulties for outreach workers when sex workers are forced underground.

Research by Crofts and Prior in 2010 suggests that brothels have a neutral or positive effect on neighbourhoods.

Stereotypes associating the presence of sex industry businesses with increased criminality are clearly illogical. Sex workers and businesses are rendered illegal by restrictive legal and political frameworks, which force us underground to protect our confidentiality, rights and safety. Council practices of imposing onerous requirements on sex industry businesses do not protect communities from criminality or violence, but ironically put sex workers in more dangerous working environments, with negative effects on our health, safety and rights. NAUWU note that in *Martyn v Hornsby Council*, the Senior Commissioner of the LEC noted that 'there is no evidence that brothels in general are associated with crime or drug use.'³³ Evidence clearly illustrates that it is sex workers who are in need of protection (from bad planning decisions), not communities in need of protection (from sex work).

Discriminatory decision-making results in low compliance, danger and discrimination

Brothels

Discriminatory decision-making by local councils has a number of negative effects. Sex industry businesses may be unwilling to make applications for approval to legally locate fearing they will be rejected by the local council. If their application is rejected, to avoid closure they must embark on expensive and lengthy appeal procedures in the LEC with no guarantee of success. SWOP NSW has advised the Private Workers Alliance that most of the larger, 'authorised' brothels in NSW have won their DA through the LEC, with costs ranging from \$15,000 - \$100,000.³⁴ As Penny Crofts writes, 'these highly

restrictive regulations do not encourage brothel owners to seek authorisation, particularly if they have been operating without authorisation and without complaint. A development application would draw attention to their existence. This compels many brothels to operate outside the law.³⁵ Discriminatory council practices provide no incentives for sex work businesses to comply with the law; rather, they necessitate businesses breaking the law so they can protect their livelihoods, leaving them vulnerable to corruption by council officers and other standover tactics.

When the government gloats about shutting down illegal brothels ... who are these efforts helping? The police should be there to protect us in case something goes wrong. Casting police as enforcers against 'illegal sex' has the potential to stop sex workers reporting rapes because they fear the police will turn around and charge them.³⁶

- Christian Vega

Despite the intention of decriminalisation to make brothels a legitimate land use, the NSW Ministerial Taskforce on Brothels in 2001 noted that restrictive planning and zoning regulations mean instead that 'it can be difficult for brothel operators to operate legally.'³⁷ Some local councils prohibit brothels from existing in commercial zones and require them to re-locate to industrial areas, which can be an expensive, inconvenient and dangerous burden upon sex workers and sex industry businesses. Some may have operated in mixed-use and commercial zones without amenity impacts for many years and find they are unable to submit a DA as this land use is no longer permissible in the zone they are located in. As Scarlet Alliance and NAUWU say, 'These businesses, due to limited suitable zoned and available land, coupled with the perceived dangers of locating their businesses in industrial zones and the prohibitive cost of fit-out former warehouse spaces; remain outside of the regulatory system.'³⁸ In Queensland, the Prostitution

The Land and Environment Council noted that there is no evidence that brothels in general are associated with crime or drug use.

Licensing Authority Annual Report for 2010 shows that 204 towns have legally been granted the right to refuse Development Applications for brothels by the Minister for Police.³⁹

Julie Bates and Saul Isbister note that when local councils fail to consult with the sex industry when developing planning controls, there are harmful implications:

What happens when it is set up so most sex industry premises... find themselves in an industrial wasteland devoid of activity and a magnet for theft? What happens then when you operate without appropriate consent and know that condoms will be used as part of the evidence to prove you are a [sex industry business]?⁴⁰

Private sex workers

For private, independent sex workers, local planning laws can have significant effects on our anonymity and security. Individual sex workers offering sex services from our homes may still be classed as a 'brothel' by law and may find our business prohibited in residential zones. Where we are allowed to work from home, we may be required to apply for a DA to operate our business by placing signage outside our home, and the publication of our name in local papers, which leads to further harassment and stigma. In September 2011, all other types of home occupations were permitted as exempt developments across all councils in NSW. This means that they did not require development approval from council.⁴¹ As Crofts notes, this process of requiring a DA from home-based sex workers can put these workers in further danger:

[M]any councils require applicants to place a sign outside the front of their property, explaining the nature of the proposed development... [this can] excite a great deal of community opposition and may well place the sex worker in danger. These kinds of planning requirements make it virtually impossible for [private sex workers] to apply for, let alone receive, development consent. This is problematic because it is estimated that [private sex workers] make up at least 40% of the sex industry (Brothels Taskforce, 2001). Accordingly, these planning regulations and principles ensure that a large proportion of the industry remains outside the law; that is, outlaws.⁴²

- Penny Crofts

Touching Base Inc and Urban Realists, Planning and Health Consultants, note that ‘there are no known advantages in requiring a DA from private sex workers, only disadvantages.’⁴³ They cite the Sex Services Premises Planning Guidelines that ‘there is no evidence that a home-based sex worker has any more impact than other home occupations, e.g. an architect working from home, and accountant, tax agent, photographer, etc.’⁴⁴ Feminist sociologist Eva Cox supervised students at the University of Technology, Sydney, surveying residents in blocks in Marrickville and Woolhara which ‘showed quite clearly that local residents were unaware of home based sex workers in their immediate neighbourhood.’⁴⁵ Yet where private sex work is prohibited, evidence from the Private Workers Alliance and the Sex Workers Outreach Project reports men posing as council officers demanding free sexual services in return for not disclosing their home business.⁴⁶ Saul Isbister and Erica Red state that ‘the decriminalisation process in NSW has been both consciously and inadvertently undermined, resulting in a policy that favours large sex establishments and drives small-scale and home-based businesses underground.’⁴⁷

Touching Base and Urban Realists note that ‘many clients with disability prefer to access the services of home-based sex workers.’⁴⁸ Touching Base is an organisation that assists people with disability and sex workers to connect. It is lead by sex workers and people with disability and supported by organisations like People with Disability Australia Inc, Cerebral Palsy Alliance, Family Planning NSW, Multiple Sclerosis Limited and Scarlet Alliance.⁴⁹

A strong incidence of councils preparing controls which are overly restrictive on sex services premises, again not particularly based on significant planning grounds, nor equitable in nature. Examples of this include requirements for development applications from home occupations where the home occupation involves sex work, prohibiting commercial sex services premises from some commercial zones, restricting locations of sex services premises through use of unjustified anti-clustering provisions, applying unjustifiable separation distances and distances from public transport, etc. Restricting types of premises available for such activity reduces options for workers and also for their clients and increases underground activity with implications for adequate access to health services.⁵¹

- Confidential Report to the NSW Minister for Planning on the Sex Services Premises Planning Guidelines

Supporting private home-based sex workers supports the rights of people with disability to access sexual services. This is crucial to eliminating the range of discriminatory practices against people with disability, from the availability of facilitated sexual services, the accessibility to wheelchair users of adult shops and sex industry businesses, and wider issues about social inclusion.⁵⁰

Health, safety, access and choice

Discriminatory decision-making among local councils creates a multi-tiered system which undermines the intention of wider sex industry legislation. As the previous chapters detail, when sex industry businesses operate illegally there are implications for sex workers’ access to health, safety and human rights. By failing to recognise sex industry businesses as legitimate businesses, local council practices hinder occupational health and safety (OHS) supports and sex workers’ access to services. Instead, they force sex workers and our workplaces into unsafe and isolated locations. In their final report to the Minister of Planning, the Sex Services Premises Planning Advisory Panel noted that local council decisions act to increase underground activity while reducing sex workers’ access to health services:

Local council policy acts essentially as a form of social engineering, by which bureaucrats control the behaviour and choices of minority groups, discouraging, punishing and invisibilising behaviour, people and sexual practices they view as undesirable.

Julie Bates and Saul Isbister note that there has been insufficient monitoring of local government policy by the health sector. They state, ‘A failure by the health sector to adequately monitor local council policies has led to a failure to address deficits in the implementation of better practice public health principles and policy at the local government level.’⁵²

Local council policies force sex workers into specific kinds of working environments and models, for example

Residents were unaware of home based sex workers in their immediate neighbourhood.

away from street-based work and towards brothel work. This means reduced options for sex workers over the style of work they do and reduced control over working environments and safety. This intention is made obvious by the NSW Better Regulation Office, who state that ‘Sex workers make choices about which parts of the industry they will work in and their decisions are affected by the incentives provided by the regulatory environment.’⁵³

Anti-clustering laws

Sex industry businesses are further treated differently by anti-clustering laws, which forbid sex industry businesses from being located close to one another. Anti-clustering provisions are rarely based on evidence of any amenity impacts, and act to limit networking and support among sex worker businesses. The NSW Sex Services Premises Planning Guidelines state that ‘It is inappropriate to apply an anti-clustering provision unless genuine impacts emerge from the clustering of commercial sex services premises.’⁵⁴ The Guidelines identify a number of disadvantages of anti-clustering controls. They note that clustering creates a level of tolerance and understanding in the community, allowing sex workers to access other local businesses such as pharmacies, doctors and shops. Anti-clustering laws mean that ‘like’ businesses cannot congregate. This minimises opportunities for sex industry businesses to have similar opening hours that support safety objectives by providing casual surveillance. The Guidelines further note that the numerical separation distances are arbitrary and often do not relate to the impact of a use upon the surrounding area.⁵⁵

Successful examples of local planning

The City of Sydney and Newcastle Councils in NSW provide evidence that significant numbers of sex industry businesses can be regulated and integrated effectively when planning and zoning considerations permit various types and scales of sex service premises in their natural locations (for example, brothels in commercial and mixed-use zones and home-based services in residential zones).⁵⁶ Armidale Dumaresq council in 2008 adopted the planning principle of equity.⁵⁷ Crofts notes that the City of Sydney council, which includes ‘red-light district’ Kings Cross, has nuanced planning principles that cater to various kinds of sex industry businesses and permit individual private sex workers to work at home without development consent:

The planning principles differentiate between sex services premises types based on size, nature and potential amenity impacts rather than the ‘catch-all

category’ of brothel. Specific regulations are developed for different business types of brothels, safe house brothels, sex on premises venues, swingers’ clubs, bondage and discipline parlours and sex services (home occupations) premises.⁵⁸

The LEC has supported sex industry businesses where they have been refused DAs or permits on the basis of a moral objection (for example in NSW, *Sunny SK Liu v Fairfield City Council* No 10384 of 1996; *Linda v Cameron Willoughby City Council* 10603 of 1996; *Cherie Finlay v Newcastle City Council* No 10385 of 1997.)⁵⁹ In the case of *Cresville Pty Ltd v Sutherland Shire Council* the LEC refused to apply the council’s regulations separating brothels from ‘facilities that serve alcohol’ by a distance of 50 metres because there was no link to adverse amenity impacts.⁶⁰ Sex services premises have co-existed in neighbourhoods including proximity to licensed premises without incidence, and there is no evidence to suggest there is a case to regulate the distance between the two.⁶¹ Appeals to the LEC because of discriminatory local council decisions are wasteful of resources and place high expense on the tax payer. Janelle Fawkes and Saul



Isbister cite the areas of cite the City of Sydney, Canada Bay and Armidale Dumaresq and note that ‘A significant number of sex workers operate lawfully, discreetly and most importantly – anonymously, as exempt and complying developments in various and diverse local government areas.’⁶²

Implementing the Sex Services Premises Planning Guidelines

Treating sex work as legitimate work and planning appropriately for sex industry businesses has a number of tangible positive effects on the community. As Penny Crofts writes, perceiving sex work as legitimate ‘imports an existing legal framework, with associated accountabilities, rights and responsibilities. This shift in conception results in people viewing sex services premises differently, experiencing them differently and regulating them differently.’⁶³ Recognising sex work as legitimate work reduces stigma and improves the health, safety and rights of sex workers. A decriminalised system lessens police corruption, increases transparency, maximises compliance, minimises cost and comprises a holistic approach that is consistent with the whole-of-government approach to social inclusion. When sex workers are treated as legitimate workers we have greater autonomy in our workplaces, and sex industry businesses are in a better position to implement OHS guidelines and security measures.

State governments must show leadership to local councils in best practice planning for sex industry businesses. Julie Bates and Saul Isbister write that an ‘absence of guidance leads to councils behaving badly’.⁶⁴ Where states do not provide guidance for local councils on best practice sex industry planning, councils introduce development control plans that make it impossible for sex industry businesses to survive. Julie Bates and Saul Isbister cite Sutherland Council’s admission of how they deliberately create barriers to sex industry businesses gaining approval:

[T]he LEP may permit a form of development that the council opposes (e.g. brothels) so the council will make development control plan provisions that are so restrictive that no proposal could satisfy the requirements. Should an applicant choose to submit an application obstacles would be created to frustrate the applicant. Should the proposal then come before the council it would be refused so that the applicant was forced to appeal to the Land and Environment Court.⁶⁵

In 2004 the NSW Sex Services Premises Planning Advisory Panel developed the Sex Services Premises Planning Guidelines, aiming to assist local government decisions and outline what constitutes better practice – ‘achieving occupational health and safety objectives and minimising the potential for corruption and the impact of premises upon neighbourhood amenity and the environment.’⁶⁶

The Sex Services Planning Guidelines state:

- **Appropriate planning for [sex industry businesses] can provide councils with greater control over their location, design and operation;**
- **Planning regulations and enforcement actions have direct implications for the health and safety of workers and their clients;**
- **[Sex industry businesses] should be treated in a similar manner to other commercial enterprises, and planning provisions should acknowledge a types of [sex work] and ensure that controls relate to the scale and potential impact of each [kind];**
- **Reasonable, rather than unnecessarily restrictive, planning controls are likely to result in a higher proportion of [sex workers and sex industry businesses] complying with council requirements, with corresponding benefits to council, the local community and health service providers;**
- **Provision and consideration of sound information enables appropriate policy and decision-making processes; and**
- **Engaging the community, including the sex industry, and developing professional strategies can assist the community and professionals to understand the nature of [sex work and sex industry businesses] and recognise that they are a legitimate land use to be regulated through [state and territory] planning systems.’⁶⁸**

- Sex Services Premises Planning Advisory Panel

The Guiding Principles in this document include a recognition that planning regulations and enforcement have direct implications on the health and safety of workers, and that reasonable, rather than restrictive, planning controls are likely to result in compliance.⁶⁷ The Guiding Principles are relevant to all states and territories to assist in local government decision-making.

In 2011 the NSW Department of Planning and Infrastructure announced a major review of the planning system. In

... Local Planning and Sex Industry Businesses

2012 the Independent Pricing and Regulatory Tribunal (IPART) commenced a review of Local Government Red Tape. However, Scarlet Alliance was not invited to be represented on the roundtable. During review processes it is necessary for governments to listen actively to sex workers, the key stakeholders in this overhaul. Scarlet Alliance and NAUWA argue that across all states the appointment of a sex industry liaison officer within state planning departments is necessary to assist local councils in abiding by the Planning Guidelines.⁶⁹ They recommend the development and funding of an education program to inform councillors of the rationale behind decriminalisation; explain the legislative framework explore the impact on OHS, competition

and economic outcomes for the sex industry; explore the reality of amenity issues; review councils' range of controls, remedies and powers; and review case law and costs relating to LEC cases.⁷⁰ Touching Base and Urban Realists suggest that governments should be providing factsheets for council websites, advising people why council is involved in planning for sex services premises and educating on the benefits of council involvement.⁷¹ Such resources should be available in multiple languages to reflect the multi-cultural nature of sex work.⁷² These measures would assist in sex work being viewed and treated as a legitimate form of work and eliminating discrimination against sex industry businesses by governments, councils and communities alike.



- 1 Private Sex Worker, Marrickville, NSW.
- 2 Christine Harcourt (1999) 'Whose Morality? Brothel Planning Policy in South Sydney' *Social Alternatives* 18:3. 32-27.
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Chapter 9
Sex Workers as Experts:
Consultation, Inclusion and Self-
Determination

Recommendations for Reform:

- Governments, researchers, academics and feminists must recognise that sex worker involvement in leading policy development, research and theory is valuable, necessary and essential;
- Listening to and learning from sex workers is essential in developing policies that are evidence-based, transparent, accountable and effective; and
- The Australian Government must protect the rights of sex workers to self-determination to freely pursue our economic, social and cultural development as provided in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural rights. Sex workers must be included in government drafting committees, consulted by local governments and treated as key stakeholders. The decriminalisation of sex work is necessary for sex workers to participate in formal process of law reform.

Summary of Issues:

- The right to self-determination is protected under the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and includes the right to pursue economic, social and cultural development;
- Sex workers are rarely treated as experts on our own lives and professions. Sex worker voices and experiences are erased from legal, political, academic and theoretical spaces;
- History has shown that when others speak for sex workers, the result is policies that injure and endanger sex workers;
- The systematic erasure of sex worker voices is akin to the social exclusion faced by other marginalised groups worldwide. Ongoing stigma, discrimination, criminalisation and social exclusion means that sex workers are denied the right to self-determination, and denied the right to represent ourselves;
- There remain structural and cultural impediments to including sex workers in government, feminist and academic spaces, including ongoing discrimination and stigma, the involvement of police in government committees to draft legislation, and the criminalisation and licensing of sex work;
- Sex workers have regularly been excluded from consultation in law reform processes. In any other industry, workers would be included in discussions on structural and legislative change that affects them. Sex workers are not recognised as stakeholders, excluded from drafting committees, refused face-to-face meetings, and excluded from human rights forums relevant to us;
- Anti-sex work feminisms have vehemently excluded sex worker experiences and understandings from feminist spaces in Australia. Sex workers' positive experiences are often misrepresented, excluded and disbelieved. This means that sex workers own feminist understandings of our work – our working knowledge of gender performativity, sexuality, desire and bodily diversity – is silenced and marginalised;
- Research that is perpetrated upon sex workers by outsiders often objectifies and demeans sex workers, misrepresents our voices, excludes representative samples and treats us as victims. Pivotal feminist scholarship that informs government policy is often based on serious methodological flaws. This research is then used to justify crackdowns on our workplaces that criminalise us, discriminate against us and reduce our access to services;

Summary of issues (continued)

- Strong partnerships between government and community sector have been at the forefront of Australia's response to HIV prevention. The longstanding success of this partnership approach illustrates that including sex workers in government processes is sustainable and imperative;
- There is an evidence gap in national data, awareness, knowledge and projects on Aboriginal and Torres Strait Islander sex workers. Most sex worker organisations are not resourced to provide direct peer education or outreach to this part of our community. Aboriginal and Torres Strait islander sex workers are experts in our own experience and are best placed to inform efforts that address our own education and support needs;
- There are many successful examples of sex worker-driven research resulting in effective policy and progressive law reform. Research into migrant sex workers in Australia has been conducted by sex workers, in multiple languages, with sex workers involved at all stages, from inception and management to analysis. Having sex workers involved as data collectors invites trust and candid discussion from respondents and allows researchers unparalleled access into sex worker communities. This research recognises sex workers as experts on our lives and professions; and
- Sex workers have a long history in feminism; educating clients about safer sex, challenging heteronormativity, exercising agency and autonomy, asserting boundaries and ownership over our bodies, representing queer, polyamorous and alternative sexualities and genders, reclaiming femininity from patriarchy and condemning misogyny and sexism in our workplaces. Feminist discourse that includes sex worker voices illustrates that consultation and inclusion are central to productive dialogue.

Sex Workers as Experts: Consultation, Inclusion and Self-Determination

The resourcing of sex worker organisations and projects is still well below an acceptable level throughout Australia. Sex workers have again this year had to dip into (already stretched) personal and organisational reserves to continue to maintain basic human rights for sex workers. It comes as both a shock and yet no surprise that as a community we are still fighting the same battles and still without the resourcing necessary to do so.

There is the sense that while we contribute in strong ways toward public health outcomes through the partnership (between sex workers and government) that underpins Australia's response to HIV, other arms of government are eagerly using any opportunity to drive forward sex industry law reform with blatant disregard for the voices of sex workers - the group most affected by such changes.¹ - Janelle Fawkes

The right to self-determination is protected by Article 1 of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). These treaties state that 'all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.'² Ongoing stigma, social exclusion, criminalisation and discrimination mean that sex workers are unable to freely pursue our economic, social and cultural development. The denial of sex worker self-determination extends to linguistic and visual levels – we are often denied the right to *represent ourselves*.

History has shown that when others speak for sex workers, the result is policies that injure and endanger sex workers.

Sex workers are rarely treated as experts on our own lives and professions. Legal, political, academic, media and feminist discourses regularly exclude sex worker voices when conducting research and developing policy. This erasure means that legislation, media and research affecting sex workers are largely divorced from our daily experiences and fail to address our key needs and concerns. History has shown that when others speak *for* sex workers, the result is policies that injure and endanger sex workers. When governments allocate resources without listening to sex worker-driven research, it means that funding for both research and services is misplaced and ill-informed. When media, film and television vilify sex workers, our voices are marginalised and silenced.

The systematic erasure of sex worker lived experiences is akin to the social exclusion and oppression faced by other marginalised groups worldwide. This oppression prevents sex workers from participating in processes to effectively determine our own futures.

Listening to and learning from sex workers is essential in developing policies that are evidence-based, transparent, accountable and effective. Involving sex workers as partners, consulting sex workers as experts and putting sex worker experience at the centre of research, program design, implementation and evaluation is vital to sex workers' social inclusion and self-determination. The National Strategies on HIV and sexually transmitted infections (STIs) recognise that a partnership between governments and affected communities has been central to Australia's response to HIV. Research by and with sex workers illustrates that including sex workers is easy, important and results in accurate data and effective policies. Feminist discourse that listens to and learns from the voices of sex workers illustrates that consultation, inclusion and self-determination are fundamental to productive dialogue and positive social change.

I wasn't prepared for the strength of the anti-sex and anti-sex work rhetoric in feminist spaces nor the disempowerment that comes from what I now many years later identify as an active exclusion of sex workers and their positive experiences from feminist debates and feminist spaces in Australia. The re-writing and misinterpretation of our positive sex work experience is the main strategy used against us.²³

- Janelle Fawkes

Sex workers experience systematic exclusion from policy development, research and theory

Sex worker exclusion from government consultations

Sex workers are regularly excluded from consultation in law reform processes. In 2002 sex worker project Phoenix asserted that sex workers were being excluded from government consultation in the drafting of Western Australian sex work legislation which proposed to force sex workers into dangerous and isolated industrial areas and carry identification cards. Janelle Fawkes noted that in any other industry, workers would have been included in discussions on structural and legislative change that affected them, yet 'There has not been consultation with the sex worker industry.'³ Earlier that year sex workers asserted that consultation with the WA Government should have occurred *during the drafting* of new sex work legislation rather than when the bill was released for public comment. As Sex Worker Action Group spokeswoman Chantal Caruso said, 'In what other industry would the government dare to introduce sweeping reforms without first consulting stake-holders?'⁴ Sex workers reported that the WA Government planned to introduce a Prostitution Control Board to register sex workers, but had informed them that sex workers would not be represented on the Board because it was not 'appropriate.'⁵

In what other industry would the government dare to introduce sweeping reforms without first consulting stake-holders?

In 2010, sex worker organisations repeatedly contacted the Western Australian Attorney General Christian Porter to arrange consultation meetings in the lead up to draft legislation in 2011 which prohibited sex workers working from home, required sex work businesses to display a license featuring our legal name and legislated the fingerprinting of sex workers.⁶ The Attorney General never scheduled a face-to-face meeting, and instead established a separate committee, the 'Senior Officers Group', representatives at which included police and the Department of Racing, Gaming and Liquor. When he was questioned in the Legislative Council, the Attorney General admitted that no sex worker organisations were represented in the committee and that there was no consultation with local sex worker organisations SWOPWA or Magenta during the drafting of the bill.

Several sex workers say that they feel used by politicians, feminists and the media. They think that sex workers are only listened to and being paid attention to if they say the correct things, i.e. that they find prostitution appalling, that they are victims, that they have stopped selling sex and will never go back, and that they are grateful to the current prostitution policy and to the policy makers.¹⁷

- Petra Östergren

The Attorney General instead referred to sex workers as 'external stakeholders' who would not be allowed to comment until after the WA Government had considered the model.⁷

Sex workers further report being excluded from conferences, forums and discussions about sex work – correspondence from the Australian Human Rights Commission (then HREOC, the Human Rights and Equal Opportunity Commission) in 2005 informed Scarlet Alliance that an anti-trafficking meeting focusing on capacity building among national human rights organisations was 'not really relevant to you.'⁸ In their administration of the Women's Human Rights Court (entitled 'Women Taking Action Locally and Globally') in 2005, HREOC did not invite Scarlet Alliance to participate but instead facilitated the involvement of an organisation with anti-sex work policies. This was despite the fact that Scarlet Alliance had raised sex worker human rights issues with HREOC on a number of previous occasions. Only after much lobbying and advocacy were sex workers included in this Australian human rights space. The same year, sex worker Ms Pornpit Puckmai from the Thailand Empower Foundation was awarded the first annual human rights award for defending the rights of women by the National Human Rights Commission of Thailand,⁹ once again illustrating that sex workers in developing countries have led the way with strong sex worker representation; Australia is trailing behind.

Listening to and learning from sex workers is essential in developing policies that are evidence-based, transparent, accountable and effective.

Obstacles to consultation, inclusion and self-determination

Sex workers continue to face obstacles to inclusion in political, academic and feminist processes. At the international conference on Legal Constraints and Possibilities in Protecting the Rights of Sex Workers in Hong Kong in 2004, Janelle Fawkes noted that there remain a number of ‘snags in the stockings of Australian sex workers’ perpetuated by ongoing structural impediments to sex workers informing law reform debates with issues of relevance to us. She writes that the area of government handling the drafting of legislation is often problematic – for example, where the Attorney General seeks the involvement of police in government committees on sex work, despite proven police corruption when police act as regulators of the sex industry.¹⁰ In other jurisdictions where powers to regulate the sex industry are held by local government, sex workers are rarely consulted, and in NSW and Queensland the majority of local governments have developed policies that effectively ban the industry.¹¹ In Queensland, the Prostitution Licensing Authority Annual Report for 2010 shows that 204 towns have legally been granted the right to refuse Development Applications for brothels by the Minister for Police.¹² Further obstacles affect the ability of sex workers to participate in processes of law reform – for example, where sex workers are criminalised, we are unlikely to be able to participate in formal processes of law reform.¹³ Rather than ‘being treated as key stakeholders’, Fawkes writes, ‘In effect sex workers are forced to react.’¹⁴

Sex worker organisations are not treated as experts in our field. Our submissions in policy-making processes are

To summarise, the Australian experience of [sex industry] law reform is that sex workers are often provided with little more than tokenistic opportunities to participate; invited too late; provided with little incentive to participate when they have contributed to time-consuming working parties only to find that the resulting recommendations are not taken up by government, such as AGSPAG (Attorney General’s Street Prostitution Advisory Group, Victoria, 2002); are targeted as ‘difficult’ when reaching agreement is hard or deemed politically risky (changes to Disorderly Houses Amendment Act); described as too vocal when raising sex worker issues as women’s issues (such as during the Women’s Convention, Western Australia, 2002).¹⁵

- Janelle Fawkes

often given the same weight as other organisations that have moral agendas and limited access to sex workers.

Exclusion from feminist spaces

Janelle Fawkes writes that anti-sex work feminists have actively misrepresented, excluded and disbelieved the experiences of sex workers and seek to ‘re-write our experience and our history to suit an abolitionist agenda.’¹⁶ Fawkes cites Swedish sex work researcher Petra Östergren in 2004, whose research illustrates the ways in which sex workers are exploited – not by virtue of our profession, but – by politicians, feminists and the media.

[E]very single oppression we face is a part of the whorephobic, anti-sex, abelist, anti-drug use, racist, sexist, trans-phobic, species-ist, size-ist, colonialist, English-speaking, war-mongering society that we live in. But there is one extreme oppression that we face that cannot be attributed to the military industrial complex – the oppression that anti-sex work feminisms have fraught upon our workplaces.²²

- Elena Jeffreys

The Melbourne Feminist Collective’s Feminist Futures conference in May 2011 scheduled a workshop by Sheila Jeffreys on ‘why prostitution is violence against women.’¹⁸ Although the workshop was eventually cancelled following complaints from sex workers,¹⁹ an alternative conference entitled ‘Real Feminist Futures’ was organised by anti-sex industry feminists featuring sessions on ‘The sick and twisted joke that is contemporary “feminism”’ and ‘Wake up! The sex industry is not “empowering” for women.’²⁰ This emphasis on who is a ‘real’ feminist excludes sex workers from spaces that have tangible effects on our lives. As South Australian Sex Industry Network manager Ari Reid says, ‘It is not ok for sex workers to be the whipping girls of feminism.’²¹ Yet anti-sex work feminism has been instrumental in Australian policy development and government approaches to sex work legislation.

The exclusion of sex workers from feminist spaces means that sex workers’ own feminist understandings of our work – our working knowledge of gender, sexuality, desire and bodily diversity – are silenced and marginalised. As Janelle Fawkes writes, she initially approached feminist circles ‘naively... with a sense of pride and urgency’, but: In a letter of protest to Spinifex Press and Melbourne University following the publication of Mary Lucille

Sullivan's book *Making Sex Work: A Failed Experiment with Legalised Prostitution*, forty sex workers asked, 'Is it fair that those with access to academic structures use academic institutions to publish material about sex work that deliberately silences sex workers' voices and presents an anti-sex work moral agenda?'²⁴ Spinifex Press and the University never furnished the sex workers with a reply.

[A]s sex workers we also face deep-seated stigmas which mean that if we don't disclose to you our stories of tragedy and the demeaning experiences we have faced we run the risk of not being believed by you. This is what we call 'tragedy porn': A desire in the feminist movement to hear tragic stories of hardship from sex workers, and when we don't tell them, we face the accusation that we are covering up the 'truth' about sex work... We are expected to 'perform' stereotypical tragedy porn for feminist audiences and when we don't we are disbelieved. Well I am going to tell you something that you may not have considered. We don't want to perform for you. We shouldn't have to use arenas such as this as a public counselling or debrief space... just so that you will believe us when we say we want human rights.²⁶

- Elena Jeffreys

While sex workers have been a highly researched community, Janelle Fawkes writes that we have 'rarely been afforded the level of engagement or involvement in research necessary to ensure data collection and interpretation can be successful.'²⁵ These practices mean that sex workers continue to be denied self-representation and self-determination.

Exclusion of sex workers results in inaccurate research, misinformed policy and harmful laws

Research upon sex workers uses unethical methodology and has inaccurate results

When sex workers are excluded from political, academic and theoretical spaces, the research, methodologies and policies that develop are flawed. Denzin and Lincoln write in *The Sage Handbook of Qualitative Research* that research 'is one of colonialism's most sordid legacies', and has historically been used as a way 'of controlling the foreign, deviant or troublesome Other'.²⁷ One sex worker in Australia writing a university thesis on sex work reported to Scarlet Alliance that her supervisor had resigned when he discovered that she was a sex worker.

Research into the sex industry often represents what Elena Jeffrey's calls 'tragedy porn': a fetishised obsession with the victimhood of sex workers.²⁸ Despite criticising the 'objectification' and 'degradation' of sex workers, much of this research *acts to* objectify and demean sex workers, denying our agency, misrepresenting our voices, excluding representative samples and treating us as 'brainwashed' victims of 'false consciousness'. This research is often exploitative, unethical and methodologically flawed.²⁹ As sex worker rights activist Carol Leigh writes, 'I wish it weren't so, but my library is full of books about misguided campaigns to end women's sexual exploitation and to preserve women's purity.'³⁰

Research is one of colonialism's most sordid legacies.

Ronald Weitzer writes that ideologically based research is particularly rampant in the sex industry. He states that 'In no area of the social sciences has ideology contaminated knowledge more pervasively than in writings on the sex industry.'³¹ In his analysis of prominent anti-sex work literature, he finds serious methodological flaws; authors failed to describe how and where they contacted their research subjects, made no attempt to sample a broad range of workers, failed to include comparison groups and drew conclusions from 'snowball samples' that were not 'properly qualified.'³² In studies about the 'victimisation' of sex workers, the sample groups often consisted of 'people who contacted service agencies, were approached on the street, or were interviewed in jail,'³³ or in another study, the interviewers were all prostitution 'survivors' and the respondents 'prior associates'.³⁴ In a study purporting to gather information on 'men's attitudes and treatment of women in prostitution', not one client was interviewed.³⁵ While the study claimed to include 'victims of sexual exploitation', there was no information provided on 'where [the researcher] located the women, how she gained access to them, how

In no area of the social sciences has ideology contaminated knowledge more pervasively than in writings on the sex industry.

diverse or representative they are, and whether they saw themselves as victims.³⁶

Academics in the United Kingdom have criticised government-funded research into brothels that was conducted without ethical approval and without acknowledgement of evidence, co-authored by a journalist known for producing anti-prostitution findings. The academics assert that the research built a 'damning picture of indoor sex work on the basis of data whose reliability and representativeness is extremely doubtful and a methodological approach that would be considered unethical by most professional social researchers.'³⁷ Despite serious methodological and ethical flaws, these studies continue to actively affect government policies, media and feminist responses to sex work.

Flawed research hurts sex workers and generates bad policy

Unethical and flawed research has long-lasting, unintended and tangible effects on the lives of sex workers. While this research informs law reform, affects popular consciousness and gives its authors speaking privileges in public and political spaces, it is sex workers who feel the effects of this research most harshly. When researchers 'present the worst examples of abuse as typical',³⁹ research results in the criminalisation of our workplaces, stringent legal frameworks that prevent sex workers from accessing essential services and the perpetuation of harmful myths and stigmas.⁴⁰

I'm sick of hookers being portrayed as disposable murder victims. I'm sick of real murder victims being described as hookers, instead of somebody's mother or son or partner. I'm sick of articles calling me a 'prostitute' when I specifically referred to myself as a sex worker throughout the interview. I'm sick of terms like 'touting for trade', 'prostituting herself' and 'selling her body', and hearing about 'turf wars', 'Asian sex slaves' and 'the proliferation of suburban brothels'. I'm sick of every positive sex worker comment being negated by a 'but...', or an excuse, or an insinuation that the sex worker was probably too psychologically damaged to understand what she was saying. I'm sick of never being considered an expert on my own life. And, quite frankly, I'm sick of bashing my head against a brick wall, trying to get them to change their attitude.³⁸

- Sex worker

Such research often polarises the experiences of sex workers and reinforces reductive stereotypes of 'good' and 'bad' sex workers; as Elena Jeffreys writes, 'labeling those of us who live with STIs and blood-borne viruses, drug use, HIV, on the streets, or working in unregulated or illegal sectors – as "bad."⁴¹ Laura Agustin asserts that people who sell sex do not fall into two neat categories – 'the strong and enlightened versus the weak and neurotic.'⁴² Research that demonises specific communities of sex workers does nothing to improve our working lives, health, safety, industrial and human rights. Rather, it contributes to further stigma and increased policing.

Elena Jeffreys writes that lives can be 'ruined' when research is 'perpetrated upon the sex worker community by outsiders'.⁴³ Janelle Fawkes writes that at the International AIDS Conference in Bangkok in 2004, unethical research upon sex workers featured as a major concern to sex workers worldwide:

Unethical research on sex workers was identified as a key issue affecting most of the 20 sex worker communities represented at the conference, and many examples were provided of research conducted on sex workers which does not seek to either improve conditions for sex workers or respect those involved. In particular, examples of studies in India, which include the forced testing of sex workers, contribute to the communities' feeling of mistrust and vulnerability.⁴⁴

At the Sex Worker Research Think Tank in Bali in August 2009, 21 sex worker leaders from around the world discussed their experiences with research. In some cases, sex workers had experienced 'church groups giving out food vouchers to sex workers in brothels and then using it as "proof" sex workers were malnourished'.⁴⁵ In other cases, research resulted in breaches of confidentiality, arrest, media attention and increased policing. The Think Tank identified ongoing negative outcomes from unethical research including:

...total exposure of one's confidentiality and exposure of the location of working areas of sex workers. When research with this information is released negative impacts for sex workers include increased policing, arrest and media attention, with the damaging research impacting on the reputation of sex workers or sex worker organisations associated with the research. Another area of contention is sex worker collectors being poorly paid by researchers. Such phenomena lead to mistrust of researchers with sex worker participants experiencing feelings of exploitation. Such

research was characterised as typically resulting in sex workers being subjected to poor policy as a result of policy and legislative decisions based on incorrect or incomplete information contained in poor research.⁴⁶

In relation to migrant sex work research, where studies are designed, research is collected and data interpreted by non-sex workers, it leads to a paternalistic international ‘rescue industry’⁴⁷ that overlooks nuanced and individual experiences of sex work and acts against sex workers’ best interests.

There are significant benefits of sex worker involvement in policy, research and theory

A partnership approach is international best practice

Strong partnerships between governments and communities have been at the forefront of Australia’s response to HIV Prevention. Successful lobbying of governments resulted in the funding of our early sex worker organisations, which enabled us to formalise our organisations, recruit and train staff, and extend our outreach capacity. The early work of sex worker collectives in developing peer structures lead to the establishment of a national body, Scarlet Alliance. In 2011, the CEO of Scarlet Alliance, a sex worker, was represented on the Australian Government Delegation to the United Nations High Level Meeting on HIV in New York. This consultation and collaboration between governments and affected communities has allowed sex workers to be represented in working parties and instrumental in the formulation of policies and law reform.

In some cases, sex workers had experienced ‘church groups giving out food vouchers to sex workers in brothels and then using it as “proof” sex workers were malnourished’.

The Sixth National HIV Strategy 2010-2013 recognises that ‘a partnership approach has been central’ to the development of HIV prevention strategy, and has included ‘significant consultation with, and input from, community organisations’.⁴⁸ The strategy supports

‘partnership between governments and the community sector, representing people with the infections and their communities’ as the best practice approach to consultation.⁴⁹ Similarly the Gallop Government’s State/Local Government Partnerships agreement in 2002 recognised the importance of ‘consultation, communication, participation, cooperation and collaboration’ between state and local governments.⁵⁰ The ABC documentary *Rampant: How a City Stopped a Plague* details how Australia’s response to HIV and AIDS made us world leaders in controlling the virus, because of the involvement of sex workers, drug users and gay men.⁵¹ The longstanding success of a partnership approach illustrates that including sex workers in government processes is sustainable and valuable.

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Sex worker involvement in research results in effective policies

Sex-worker driven and evidence-based research results in effective policy and progressive law reform. When sex workers ask the research questions, monitor the research process and analyse the research results, research is more reliable, comprehensive, meaningful and useful. Instead of inviting comment after legislation is drafted or research papers have been published, Elena Jeffreys writes that sex workers, ‘prefer to take the fight into the academic realm of ethics approval, research planning, question formulation, methodology development, data collection, analysis and promotion.’⁵²

Research into migrant sex workers in Australia reveals that sex-worker driven research is successful and necessary. In 2010 Scarlet Alliance, with the Australian Institute of Criminology, expanded on a survey conducted by Chinese sex worker organisation Zi Teng and Scarlet Alliance in 2006/7.⁵³ The survey was conducted across Australia in Chinese, English, Thai and Korean. Sex workers were involved in all stages of research, from its inception and management to its analysis. Having sex worker representation meant the project maintained integrity and ensured ‘the interests of sex workers would

always be represented'.⁵⁴ Because the research was carried out by Scarlet Alliance (who has an affirmative action policy of only hiring past or present sex workers), it enabled the researchers to tap into existing resources and networks of sex workers. This meant the researchers had 'unparalleled access' to workers and workplaces, particularly culturally and linguistically diverse (CALD) sex workers, and places outside the licensed sectors. Having sex workers involved in positions of leadership and trained as data collectors invited trust and candid discussion from respondents 'by virtue of relationships built over many years and the camaraderie of peers with analogous experiences'.⁵⁵ This trust in the motivations of researchers meant sex workers were more likely to answer honestly and openly. It also meant researchers were already understanding of complexities regarding workplaces and sex workers, ensuring better efficiency.⁵⁶

The survey was conducted across Australia in Chinese, English, Thai and Korean. Sex workers were involved in all stages of research, from its inception and management to its analysis.

Sex worker involvement in research is imperative to good policy development. It is a pre-requisite to effective law reform, vital to the development of strong partnerships and essential to sex worker self-determination. Furthermore, including sex workers in processes that affect our lives can validate people's lived experiences. Academic Ulrika Dahle explores the benefits of collaborative research methods and the process of researching one's own community in her writings on queer femme-inist ethnography. She writes that academic distinctions between the researcher and the subject consolidate colonialist notions of who *has* knowledge and who is an *object* of study. This 'false dichotomy'⁵⁷, she says, is a reminder of 'hierarchies that have been central to the making of a particular knowledge/power regime which excludes women, queers and non-Western subjects'.⁵⁸ Instead she argues, study should be 'about seeing research as part of, not outside of, social movements, and seeing the research process itself as something that works towards the formulation of community'.⁵⁹ Research then can be an important process of building sex worker communities, supports and networks.

Sex workers have a long history of involvement in the feminist movement

Sex workers have much to contribute to feminist dialogue, and the writings of sex workers, porn stars, strippers, masseuses, adult models and peepshow workers illustrate that we have a long history of involvement in sex-positive feminism, detailing the ways in which our work can be healing, educative, subversive, activist and revolutionary.⁶⁰ Zahra Stardust details the long history of sex-positive feminism within the sex industry in *Feminist Stripper: Convention and Counter-Practice in Erotic Performance*.⁶¹ Madison Young used the funds from her work in pornography to fund a feminist art gallery. Carol Queen and Candida Royalle produced erotica aimed specifically at representing women's voices. Scarlet Harlot and Annie Sprinkle combine performance art with sex worker activism to discuss gender politics. Debby Doesn't Do It For Free is Australia's leading sex worker performance art group. In Jill Nagle's book *Whores and Other Feminists*, sex workers from various sectors of the sex industry illustrate the multi-faceted ways in which we exercise agency; educating clients about safer sex, challenging the normalisation of heteronormativity, representing lesbian, polyamorous and alternative sexualities, asserting ownership and boundaries over our bodies, reclaiming femininity away from patriarchy, and condemning misogyny and sexism in our workplaces.⁶² Julie Bates was awarded an Edna Ryan Award by the Women's Electoral Lobby in 2009 for making a difference in improving conditions for sex workers in the workplace. The Workforce Awards 'acknowledge women who are prepared to make their lives political and who have made a feminist difference.' All of these examples show sex workers engaging in social dialogue, feminist activism, and raising the profile of sex worker voices.

Scarlet Alliance Treasurer Jane Green said at the 'Sex Workers Self-Determined Analysis of our Work' workshop at the Feminist Futures Conference: 'I do not sell my body. I sell my attention span for finite units of time. There are boundaries within that exchange. I set all of the boundaries'.⁶³ In her speech, she noted that the major interferences and constraints on her autonomy at work were 'state intervention' and 'whorephobia'. She noted that sex work has allowed her to be financially independent, self directed, pursue higher education, value and spend time with family, to live out her dreams, and be politically active: 'Let me make this clear – I like my job. Any negative impacts from my sex work, any abuse that I suffer, comes from the stigmatisation and vilification informed by people who believe that I do not have the basic human right to a) have that job,

or b) enjoy that right. That is called *whorephobia*.⁶⁴ Elena Jeffreys writes that sex work can be a feminist act because it exposes the 'free labour that the nuclear family structure extracts over the life time of a woman' and because sex workers have acute consciousness of gender performativity (constructing and de-constructing normative gender roles). She argues that sex work is queer because it is 'dangerous to heterosexuality', involving multiple partners, sexualities and desires.⁶⁵ Sex workers have vast experience and knowledge to offer and continue to be valuable allies to and protagonists of the feminist movement.

I do not sell my body. I
sell my attention span
for finite units of time.
There are boundaries
within that exchange.
I set all of the
boundaries.

Sex workers are experts: achieving sex worker self-determination

Sex workers as experts

An essential part of sex worker involvement in policy development, research and theory is the recognition of sex workers as experts on our lives and professions. Elena Jeffreys cites Roberta Perkins and Francis Lovejoy's 2007 book *Call Girls* as significant for its 'use of sex workers voices as *having the same research status and validity* as statistical data'.⁶⁶ Sex workers in Australia have consistently been at the forefront of community health initiatives, acted as pioneers in peer education programs, enjoy one of the lowest rates of HIV/STIs in the world, and are widely recognised as the safer sex educators of our clients.⁶⁷

Currently, funding allocations do not adequately reflect the expertise of sex workers and the success of peer-based community initiatives. In our submission to the Attorney General on the Criminal Justice Response to Slavery and People Trafficking, Scarlet Alliance noted:

In the history of anti-trafficking responses in Australia, the main groups to receive funds to work on addressing

these issues in the community have been Police, Immigration, Prosecutors and (by default) the Judiciary. This is an unfair distribution of resources that could otherwise be devoted to the affected communities... Scarlet Alliance strongly recommends focusing on community based prevention rather than policing, prosecuting or immigration measures in relation to those perceived to be affected by trafficking. This means focusing on the migrant communities affected, working with their representatives in their country of origin, enabling a community based response (i.e. not Government) and listening to their needs.

Similarly, research partnerships with sex workers have been 'grossly underfunded'⁶⁸ – Elena Jeffreys writes that where researchers tried for best-practice inclusive approaches, 'their budget and infrastructure were not sufficiently informed for the resources necessary to make it happen effectively'.⁶⁹ Former Scarlet Alliance President Alina Thomas spoke at the Scarlet Alliance National Symposium in 2009 about Scarlet Alliance's struggle to obtain funding for sex worker targeted health programs in Tasmania. Scarlet Alliance's proposals had been rejected by Commonwealth bodies on the basis that sex worker health was a state responsibility, yet the state Minister for Health suggested it was not the responsibility of governments to fund a targeted sex worker program.⁷⁰ In its report 'Sex Worker Health and Rights: Where is the funding?' the Open Society Institute calls for donors to take a rights-based approach to funding sex worker health and rights programs, learn from current progressive public health thinking, adopt a non-judgmental attitude about sex workers and support capacity-building expenses. Ally Daniel writes:

The most liberating and empowering experience I've had in applying for a job was recently when I was able to apply for a position at SWOP (Sex Workers Outreach Project). Part of the criteria for this position was 'sex work experience', so for the first time I was able to include my skills as a sex worker in my resume and covering letter; for the first time I did not have to hide who I was or how I gained some of those skills; for the first time in a job application I could be 'me'!⁷¹

Scarlet Alliance's membership, leadership, staff and volunteers are all sex workers. Scarlet Alliance member organisations and projects have the highest level of contact with sex workers in Australia of any agency, government or non-government. Our projects have very high access to sex industry workplaces in the major cities and many regional areas. At the Scarlet Alliance National Symposium in 2009, Alina Thomas noted that Scarlet

... Consultation, inclusion and self-determination

Alliances' affirmative action policy was a crucial part of effective programming.

We believe that sex workers' needs are best met by other sex workers who have worked as sex workers and therefore have knowledge and understanding of the issues faced by this special community... Sex workers can run their own organisations, and in fact, they can run them in a way that is more relevant, and more accountable, than their non-sex worker counterparts.⁷²

-Alina Thomas

Including the voices, experiences and representations of sex workers is central to sex worker self determination. The Australian government must protect sex workers' right to freely determine our political status and freely pursue our economic, social and cultural development as provided in the ICCPR and ICESCR.

In her presentation at the Feminist Futures conference, former Manager of South Australian Sex Industry Network Ari Reid posed a challenge to policy writers, law

makers, researchers, academics and feminists:

If you write about or research the sex industry or sex workers, examine your reasons for doing so. Write about or study something that will be useful to sex workers, not just to satisfy your or the public's curiosity... When reading about sex issues in the media, or anywhere, always look for the sex worker voice, credit sex workers with being the authority on their lives and the sex industry, not academics or law makers who have never worked in the industry. Write to editors asking why the sex workers themselves or the national peak body for sex workers were not included in the writing... When discussing social issues with friends and family, challenge them about their negative stereotypes about sex workers.⁷³

There are ample opportunities to increase the involvement of and consultation with sex workers in Australia in legal, political, academic, feminist and media spaces. Governments, researchers and non-sex workers in the community must step up and take responsibility to ensure the social inclusion and self-determination of sex workers.



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demanding an end to discrimination



A person dressed as a cheerleader in a red outfit with white stripes on the skirt and red and black striped socks is holding a large red umbrella. The scene is set in a red-tinted environment, possibly a store or a display window, with a trash can and a sign visible in the background. The word "Bibliography" is overlaid in white text on the umbrella.

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