

**Scarlet Alliance, Australian Sex Workers Association Shadow Report to Australia's CEDAW Review
2018**

As highlighted in the 2014 *Convention on the Elimination of All Forms of Discrimination against Women's (CEDAW) NGO Shadow Report* 'Australian sex workers continue to experience pervasive barriers to claiming their human rights, including restricted access to health services, stigma and discrimination and a range of legal and regulatory issues including criminalisation, licensing, registration and mandatory HIV testing in some jurisdictions.'¹ Sex workers' daily and ongoing experiences of discrimination, harassment and stigma signal the crucial need for legislative reform. Sex workers need access to comprehensive and consistent anti-discrimination protections and sex worker driven, rights-based approaches to sex work. Although the sex industry in Australia has a diversity of genders, a significant majority of sex workers identify as women. Given that the majority of sex workers are women and that many come from LGBTI communities, protecting sex workers' rights is imperative to achieving gender equality as defined under CEDAW.² Sex workers still face significant barriers in accessing political, economic, social, cultural, and civil rights and inclusion. Sex workers are subject to systemic, personal and legislative discrimination that "violates the principles of equality of rights and respect for human dignity".³

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. Formed in 1989, Scarlet Alliance is the national peak body representing a membership of individual sex workers, and sex worker networks, groups, projects and organisations from around Australia. Scarlet Alliance is a leader when it comes to advocating for the health, safety and welfare of workers in Australia's sex industry. Through our projects and work and that of our member organisations, we have the highest level of contact with sex workers in Australia of any agency, government or non-government.

**Sex workers in Australia need access to consistent and adequate anti-discrimination protections.
(Article 2,3 and 5)**

Many studies have documented the stigma, discrimination and human rights violations that sex workers face in healthcare, legal, social and employment settings.^{4,5} The *Unjust and Counterproductive: The Failure of the Governments to Protect Sex Workers from Discrimination report (the Unjust and Counterproductive report)*, an Australia wide study documenting sex workers' experience of stigma and discrimination, highlight that stigma and discrimination on basis of sex work employment is perpetuated in a vast number of interconnected ways in Australia. Sex workers experience a range of direct and indirect, personal and systemic discrimination. These include, but are not limited to:

¹ YWCA Australia. (2014). *2014 CEDAW Shadow Report A non-government perspective on Australia's implementation of the United Nations Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)*. Retrieved from https://www.equalityrightsalliance.org.au/wp-content/uploads/2017/01/YWCA_CEDAW_Main-Report_final.pdf p31.

² NSWSP, Global Network of Sex Work Projects (2017). *Policy Brief on Sex Work and Gender Equality*. Available at http://www.nswsp.org/sites/nswsp.org/files/policy_brief_sex_work_and_gender_equality_nswp_-_2017.pdf (accessed 11 June, 2018)

³ UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, available at: <http://www.refworld.org/docid/3ae6b3970.html> [accessed 11 June 2018]

⁴ Amnesty International. (2016). *Amnesty International policy on State obligations to respect, protect and fulfil the human rights of sex workers*. Retrieved from <https://www.amnesty.org/en/documents/pol30/4062/2016/en/> on 07/2/18.

⁵ Network for Sex Worker Projects (NSWP). (2015). *Stigma and Discrimination Experienced by Sex Workers Living with HIV*. Retrieved from <http://www.nswsp.org/sites/nswsp.org/files/Stigma%20and%20Discrimination%20Experienced%20by%20Sex%20Workers%20Living%20with%20HIV%2C%20NSWP%20-%20December%202015.pdf> on 07/02/18

- when advertising sex industry services;
- when purchasing goods and services;
- when securing housing and accommodation;
- when accessing health services;
- criminal record discrimination;
- in custody disputes;
- in legal processes;
- in policies and practices;
- discrimination against friends, family and partners of sex workers
- in employment; and
- counterproductive police practices.⁶

Despite this, there are currently no federal anti-discrimination protections for sex workers. Likewise, sex workers in the Northern Territory (NT), South Australia (SA), New South Wales (NSW) and Western Australia (WA), do not have access to state based anti-discrimination protections. In Queensland (Qld), Victoria (Vic), and Tasmania (Tas), some sex workers in particular circumstances can access anti-discrimination protection under the 'lawful sexual activity' category. However, the criminalisation of large sections of the sex industry in Qld, Vic and Tas exclude many sex workers from being covered under this category.

In Queensland, the high-profile discrimination case involving GK, a sex worker from Queensland, who sued her accommodation provider highlights a positive example in which a sex worker has used legal mechanisms to exercise her anti-discrimination rights. GK sued her accommodation provider for breaching the *Anti-Discrimination Act 1991* (Qld) and the courts ultimately found the conduct by the motel to have constituted direct discrimination on the basis of 'lawful sexual activity'. However, following GK's successful utilisation of the *Anti-discrimination Act 1991* (Qld) to redress discrimination by an accommodation provider, amendments were made to the Act to explicitly allow accommodation providers to lawfully discriminate against sex workers. That is, the *Anti-Discrimination Act 1991* (Qld) now states:

It is not unlawful for a person (an "**accommodation provider**") to discriminate against another person (the "**other person**") by—

- a) refusing to supply accommodation to the other person; or
- b) evicting the other person from accommodation; or
- c) treating the other person unfavourably in any way in connection with accommodation;

if the accommodation provider reasonably believes the other person is using, or intends to use, the accommodation in connection with that person's, or another person's, work as a sex worker.⁷

Although GK's successful utilisation of anti-discrimination legislation highlighted that Qld sex workers are protected against discriminatory conduct by accommodation providers and are able to successfully utilise existing legislation to redress discriminatory treatment, the amendments made to the *Anti-Discrimination Act 1991* (Qld) worked to effectively undermine and restrict *all* Qld sex workers' access to anti-discrimination protection. It also exposes the State's lack of comment to protecting the anti-discrimination rights of sex workers.

⁶ Scarlet Alliance, & AFAO. (1999). *Unjust and Counter-Productive: The failure of government to protect sex workers from discrimination*. Retrieved from <http://www.scarletalliance.org.au/library/unjust-counterproductive>

⁷ *Anti-Discrimination Act 1991* (Qld), section 106C

In the ACT, whether sex workers are protected against discrimination under the category 'profession, trade, occupation or calling' in the *Anti-Discrimination Act 1991* (ACT) depends heavily on the current regulatory and legal environment surrounding sex work in that particular jurisdiction. While the category 'profession, trade, occupation or calling' has the potential to cover sex workers more broadly than the 'lawful sexual activity' category, what is actually covered under the 'profession, trade, occupation or calling' category is left undefined. In a political or judicial climate that does not consider sex work to be work, 'profession, trade, occupation or calling' would not be considered to cover sex workers and the ACT *Discrimination Act 1991* does not provide a definition to contest otherwise.

Additionally, sex workers are not specifically protected against vilification in any of the states and territories. Anti-discrimination law defines vilification as a public act that could incite or encourage hatred, serious contempt or severe ridicule towards a person or a group of persons because of a protected characteristic, such as race, religion, sexuality, gender or HIV status. A public act can include remarks in newspapers, journals, radio, television and materials on the internet. There has been a number of high-profile cases^{8,9} of vilification that has signalled the crucial need for anti-vilification protections for sex workers. The limited availability of legal avenues to redress vilification remains a significant barrier for sex workers and allows derogatory and harmful public acts against sex workers to continue unchecked.

Recommendations:

- Scarlet Alliance recommends that each Australian state and territory and the federal government amend their anti-discrimination and anti-vilification legislation to include the categories 'sex work' and 'sex worker' to ensure sex workers will be protected. Having 'sex work' and 'sex worker' as a protected attribute will ensure coverage irrespective of the type of sex work they are engaging in or if they identify as a sex worker and regardless of whether the person making the complaint is operating in the regulated or unregulated sex industry. It will also allow for protections for sex workers against discrimination, vilification, harassment, and stigma regardless of regulatory, political and judicial environments, and viewpoints around sex work.

The Australian government must pursue sex worker driven, human rights-based approach to sex work. (Article 6,7,11, 12)

Sex work in Australia is governed by a complex matrix of laws that differs at the state and territory level and differs within states for types of sex work. Victoria (Vic), Queensland (Qld), Tasmania (Tas), the Australian Capital Territory (ACT), and the Northern Territory (NT) are regulated by licensing and/or registration regimes, sometimes broadly referred as legalisation, with varying degrees of criminalisation. In jurisdictions where licensing and registration is implemented, there are specific sex industry laws and policies that allow some legal ways of working in the sex industry while creating an inevitable underclass of sex workers and sex industry operators who are unable to comply with restrictive registration and licensing systems. In NT, ACT and Vic, where registration is in effect for sections of the sex industry such as escorts and private workers, sex workers are required

⁸ Jerga, J. (2009). *Sex workers storm Salvos appeal launch*. The Sunday Morning Herald. Retrieved from <https://www.smh.com.au/national/sex-workers-storm-salvos-appeal-launch-20090522-bhwr.html>

⁹ Hennessy, J. (2016). *So why are sex workers protesting against the salvation army today*. Retrieved from <https://www.pedestrian.tv/dating/sooooo-why-are-sex-workers-protesting-against-the-salvation-army-today/>

to register their legal names and address on a permanent register, interfering with privacy, limiting ability to travel, and affecting access to justice in court.

Licensing has been a costly failure to governments and impedes the health and human rights of sex workers. Licensing requires a high level of police involvement in regulation of the industry, maximising corruption risk. The NSW model of regulation was decriminalised in response to high levels of police corruption and is recognised to have reduced corruption. From the jurisdictions where sex work is licensed, Scarlet Alliance has consistently received complaints from sex workers about police treatment. In Victoria, sex workers are subject to invasive and unnecessary mandatory health checks. Further, licensing in Victoria has created a group of 'clandestinas', who fall outside health interventions and miss targeted health programs.¹⁰ The LASH (Law and Sexual Health) report in 2012 recommends that the licensing of sex work should not be regarded as a viable legislative response as licensing is a 'threat to public health'.¹¹

South Australia (SA) and Western Australia (WA) have criminalised most activities associated with sex work, such as keeping and managing a brothel or escort agency, street-based sex work, working in pairs and the use of condoms as evidence against sex workers. It is well documented the significant barriers faced by sex workers who are excluded from the 'legal' sex industry in claiming their human rights. Criminalisation:

- reduces sex workers access to justice mechanisms as sex workers fear that reporting crime will result in surveillance, being exposed as a sex worker, charge, harassment, incarceration, or deportation.¹² For example, in the *WA Law and Sex Worker Health (LASH) Study*, a large study investigating the impact of WA laws on sex workers health and welfare, found that 25.5% and 23.4% of sex workers surveyed respectively responded that they felt 'not comfortable' or 'very uncomfortable' when asked about their level of comfort of contacting the police in relation to complaints such as sexual assault, threats, theft, unpaid services;¹³
- forces sex workers to operate covertly, creating significant barriers to accessing essential services, such as health, support and legal services, in fear that it will result in stigma and discrimination or being reported to the authorities;¹⁴
- reduces sex workers access to work health and safety protections;¹⁵
- brothel licensing and criminalisation in Australia has resulted in poorer access to health promotion and support;¹⁶
- impedes Australia's best practice, human rights-based HIV response.¹⁷ For example, where condoms are used as evidence, sex workers are discouraged from carrying condoms. In addition, as highlighted above, criminalisation creates significant barriers to accessing essential support and health services;

¹⁰ Harcourt, C., Egger, S., Donovan, B. (2005), 'Sex Work and the Law', *Sexual Health* 2(3) 121–8 at 125.

¹¹ Donovan, B., Harcourt, C., Egger, S., Watchirs Smith, L., Schneider, K., Kaldor, J., . . . Tabrizi, S. (2012). *The sex industry in New South Wales: a report to the NSW Ministry of Health*. Sydney: Kirby Institute, University of New South Wales. Recommendation 2.

¹² Amnesty International. (2016). *Amnesty International policy on State obligations to respect, protect and fulfil the human rights of sex workers*. Retrieved from <https://www.amnesty.org/en/documents/pol30/4062/2016/en/> on 07/2/18.

¹³ Selvey, L., Hallett, J., Lobo, R., McCausland, K., Bates, J., & Donovan, B. (2017). *Western Australian Law and Sex Worker Health (LASH) Study. A summary report to the Western Australian Department of Health*. School of Public Health, Curtin University, Perth. Pg 22.

¹⁴ UNAIDS, UNFPA, & UNDP. (2013). *Sex work and the law in Asia and the Pacific*. United Nations Development Programme. Thailand.

¹⁵ Donovan, B., Harcourt, C., Egger, S., Schneider, K., O'Connor, J., Marshall, L., . . . Fairley, C. K. (2010). *The sex industry in Western Australia: a report to the Western Australian Government*. National Centre in HIV Epidemiology and Clinical Research. Sydney, Australia.

¹⁶ Harcourt, C. et al (2010). *The decriminalisation of prostitution is associated with better coverage of health promotion programs for sex workers*. *Australian New Zealand Journal of Public Health*. 2010 Oct;34(5):482-6. doi: 10.1111/j.1753-6405.2010.00594.x.

¹⁷ Department of Health. (2014). *Seventh National HIV Strategy 2014-2017. Commonwealth of Australia*. Retrieved from <http://www.health.gov.au/internet/main/publishing.nsf/content/ohp-bbvs-hiv>.

- violates sex workers basic human rights. For example, criminalisation denies sex workers right to free choice of employment, favourable conditions at work, equal protection of the law, and freedom of association.¹⁸

Despite claims that the criminalisation of clients, also known as the Nordic Model, will protect sex workers while driving down demand for commercial sexual services and human trafficking, research conducted in countries where similar legislation to the Nordic model has been introduced reveals that the model has:

- hindered sex workers' ability to report crime to the police.¹⁹
- forced sex workers to operate in more isolated settings or via the internet.²⁰
- not reduced the number of sex workers.²¹
- rushed sex workers' client negotiations and screenings of potentially dangerous clients.^{22,23,24}
- made sex workers more vulnerable to violence.

The decriminalisation of sex work, combined with comprehensive anti-discrimination protections for sex workers, is central to supporting the human rights of sex workers. Decriminalisation will mean sex workers can report crime to the police without fear of prosecution. In NSW, decriminalisation has brought:

- Exceptionally good public health outcomes and low rates of STIs and HIV;^{25,26}
- No evidence of organised crime;²⁷
- Better access to OHS. In NSW, WorkCover and NSW Health worked with sex workers to create the *Health and Safety Guidelines for Brothels*, which has been translated to Thai, Chinese and Korean;²⁸
- Little to no amenity impacts;^{29,30}
- No increase in the size of the sex industry³¹;
- More transparent operation of sex industry businesses; and
- increased access to support for all sex workers, reducing the opportunity for exploitation.

¹⁸ United Nations General Assembly. (1948). *The Universal Declaration of Human Rights*. Retrieved from <http://www.un.org/en/universal-declaration-human-rights/>.

¹⁹ Bail, H. L., & Giametta, C. (2018). *What do sex workers think about the French prostitution act: a study on the impact of the law from 13th April 2016 against the 'Prostitution System' in France*. <http://www.medecindumonde.org/sites/default/files/ENGLISH-Synth%C3%A8se-Rapport-prostitution-BD.PDF>.

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

²³ Landsberg, A., Shannon, K., Krüsi, A., DeBeck, K., Milloy, M., Nosova, E., . . . Hayashi, K. (2017). *Criminalizing sex work clients and rushed negotiations among sex workers who use drugs in a Canadian setting*. *Journal of Urban Health*, 94(4). pg 569.

²⁴ Krüsi, A., Pacey, K., Bird, L., Taylor, C., Chettiar, J., Allan, S., . . . Shannon, K. (2014). *Criminalisation of clients: reproducing vulnerabilities for violence and poor health among street-based sex workers in Canada—a qualitative study*. *BMJ open*, 4(6). pg4.

²⁵ Department of Health. (2014). *Seventh National HIV Strategy 2014-2017*. Commonwealth of Australia. Retrieved from <http://www.health.gov.au/internet/main/publishing.nsf/content/ohp-bbvs-hiv>.

²⁶ Basil D et al. (2012). *The sex industry in New South Wales: A report to the NSW Ministry of Health*. Kirby Institute, University of New South Wales. Sydney.

²⁷ Minister for Innovation and Better Regulation. (2016). *NSW Government Response to the Legislative Assembly Inquiry into the Regulation of Brothels*. Retrieved from <https://www.parliament.nsw.gov.au/committees/listofcommittees/Pages/committee-details.aspx?pk=185#tab-governmentresponses>.

²⁸ NSW Department of Health, & WorkCover NSW. (2001). *Health and safety guidelines for brothels in NSW*. WorkCover NSW.

²⁹ Hubbard, P., Boydell, S., Crofts, P., Prior, J., & Searle, G. (2013). *Noxious neighbours? Interrogating the impacts of sex premises in residential areas*. *Environment and Planning A*, 45(1).

³⁰ Donovan, B., Harcourt, C., Egger, S., Watchirs Smith, L., Schneider, K., Kaldor, J., . . . Tabrizi, S. (2012). *The sex industry in New South Wales: a report to the NSW Ministry of Health*. Sydney: Kirby Institute, University of New South Wales. pg43.

³¹ Ibid. pg 7.

Decriminalisation is also endorsed by Amnesty International, World Health Organisation, International Labour Organisation, Global Alliance against Traffic in Women, Global Network of Sex Work Projects, Global Commission of HIV and the Law, Human Rights Watch, Open Society Foundation and Anti-Slavery International. Decriminalisation was also endorsed by the *2014 Australian CEDAW NGO Shadow Report* which highlighted the 'legal empowerment of sex worker communities underpins effective HIV responses and that better public health and human rights outcomes have been achieved in jurisdictions that have decriminalised sex work, compared to those adopting regulatory models.'³²

Recommendations

- Scarlet Alliance endorses the recommendations made in the *2014 CEDAW NGO Shadow Report* that still requires action:
 - o 'Provide adequate funding and resources for community led sex worker organisations to deliver peer-based advocacy and programs that support sex workers to claim their human rights'.³³ In particular funding is urgently required for adapting successful peer based programs for Aboriginal and Torres Strait Islander and migrant sex workers.
 - o 'Work collaboratively with State and Territory counterparts to encourage a consistent legislative and policy approach to the decriminalisation of sex work in Australia using a gender sensitive human rights framework.'³⁴

³² YWCA Australia. (2014). *2014 CEDAW Shadow Report A non-government perspective on Australia's implementation of the United Nations Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)*. Retrieved from https://www.equalityrightsalliance.org.au/wp-content/uploads/2017/01/YWCA_CEDAW_Main-Report_final.pdf pg 32.

³³ Ibid.

³⁴ Ibid.