



Australian Sex Workers Association

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SUBMISSION TO THE NATIONAL CONSULTATION ON HUMAN RIGHTS IN AUSTRALIA – JUNE 2009

Which human rights and responsibilities should be protected and promoted?

1a) Who are we?

- Scarlet Alliance, Australian Sex Workers Association, is the peak body of sex workers and sex worker organisations in Australia. Formed in 1989, we have membership in all states and territories and an affirmative action policy requiring all our volunteers, members, staff and executive committee to be current or former sex workers.

1b) What is the general situation with discrimination against sex workers in Australia?

- In all states of Australia, sex work itself is lawful. Sex workers freely choose to engage in their occupation. Each state has different laws dictating who can work as a sex worker, how a sex worker can operate, who can profit from the business and where the business can be located.
- Scarlet Alliance conducted a major project on discrimination against sex workers in Australia in 1999 in partnership with the Australian Federation of AIDS Organisations. The main theme of the research was that Governments were doing little to counter the discrimination faced by sex workers and that in some states and territories, policies and legislation actually directly contribute to the discrimination sex workers face. You can link here to access that full document: <http://www.scarletalliance.org.au/library/unjust-counterproductive>
- 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.

1c) Why do I think human rights are important?

- Sex workers human rights are intrinsically linked to our ability to negotiate with our clients. We are universally recognised as a community affected by HIV. Increased human rights translate to better health and wellbeing in the sex worker community.
- When Governments and the community systematically violate sex workers' human rights without being held to account, it reinforces the belief that sex workers are not worthy of human rights protections which, in turn, perpetuates cycles of discrimination.
- Sex industry legislation, which routinely violates sex workers' basic human, civil and industrial rights, is often the result of moral panic and political point-scoring. A human rights-based approach to sex work policy and legislation would draw the debate away from 'moral' issues and promote a health and wellbeing focus.

***1d) Which human rights do I think should be protected and promoted in Australia?
What are the most immediate issues in my life or the lives of the people I work with?***

- The right to equal treatment under the law, regardless of occupation.

Certain occupations (eg. police, teaching, real estate) will not employ former sex workers and/or will automatically dismiss employees when sex work experience is discovered. Financial institutions often deny loans or credit to sex workers, even where a pattern of income and savings has been established. Police and the judicial system are reluctant to prosecute crimes committed against sex workers - in cases where crimes are investigated, sex workers are often regarded as party to the crime, rather than the victim. Sex workers are routinely discredited as witnesses in criminal proceedings.

- The right to equal treatment under the law, regardless of HIV status.

In many states, people living with HIV are explicitly excluded from working in the sex industry; irrespective of whether they practice safe sex, cater specifically to HIV positive clients, or offer non-penetrative services.

- The right to freedom of association

Partners of sex workers can be charged with 'pimping' offences, creating a barrier to sex workers establishing and maintaining loving relationships. WA and SA have 'consorting' laws which discourage sex workers having contact with other sex workers. In some states sex workers are lawfully allowed to work on their own, but are not allowed to work for a third party (eg. brothels or agents) and are unable to hire receptionists, security or drivers.

- The right to freedom of movement

Known street-based sex workers are accused of soliciting when going about their daily business (eg. walking to the shop). In some states, street-based sex work is lawful or tolerated on one street, but moving to a lighter/safer/busier street may result in arrest. In WA, it is illegal to allow a sex worker onto licensed premises or to serve a sex worker alcohol. Anti-trafficking and slavery laws have severely impacted on migrant sex workers' ability to move between countries for work.

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

Sex work is a legitimate occupation. Governments should not remove this employment option (by criminalising sex work), nor limit the ways in which sex workers can perform this work (by allowing some aspects of sex work, but criminalising others). Many state laws also prevent sex workers from taking measures to protect their own safety, such as those which require sex workers to work in their own homes alone (WA), or work as escorts (NT), or add their personal details to public, police or council registers (most Australian states).

- The right to has the right to take part in the government, directly or through freely chosen representatives

Sex workers are often actively excluded from sex industry law reform debate, formal reviews of sex industry legislation and sex industry Occupational Health and Safety policy development.

Are human rights sufficiently protected and promoted?

2a) What is my experience of human rights in Australia? Have I witnessed or heard about what I think is a human rights problem in Australia?

- Scarlet Alliance has collated a number of examples and first person stories of lack of human rights for sex workers in Australia (see Appendix 1).
- Areas of discrimination faced by sex workers in Australia include: advertising, entrapment, mandatory testing, discrimination against people living with HIV, stigma, vilification in the media and discriminatory treatment by commercial and financial institutions.
- Without access to anti-discrimination, anti-vilification, industrial or human rights protections, sex workers have limited ability to address entrenched stigma and discrimination.

2b) Do I live in a community where there are human rights problems, for example, limited access to education or healthcare? What would make a difference to my community?

- Mandatory testing creates a culture of fear amongst sex workers and overburdens the health system. Doctors are less likely to engage with sex workers on other health matters, as the clinic visit becomes more about getting a clearance certificate than actual healthcare. See Scarlet Alliance briefing paper on Mandatory Testing
http://www.scarletalliance.org.au/library/briefingpaper_mandtest/
- Due to increased stigma, distance and limited service availability, sex workers in rural, regional and remote areas experience particular barriers to accessing health and other support services.
- The perception of sex work as a ‘women’s issue’ can create barriers to male and transgender sex workers accessing health and support services, eg. some services are located in women’s health centres or women-only ‘safe spaces’.
- Where people living with HIV are excluded from engaging in sex work, HIV positive sex workers can be isolated from health and support services and even the sex worker community itself. The dual stigmas of sex work and HIV impact heavily on access to services, as well as personal wellbeing. See Needs Assessment of Sex Workers Living With HIV
<http://www.scarletalliance.org.au/library/hiv-needsassessment08/>

- Entrenched stigma and a fear of persecution and/or prosecution creates barriers to sex workers accessing legal support, industrial support and welfare support (eg. a sex worker may be reluctant to seek assistance from child welfare services, for fear of being deemed an ‘unfit parent’ and having their children removed).
- Sex workers working in unlawful or unapproved workplaces may be discouraged by their employers from contacting police when a crime is committed against them, so as not to attract unwanted attention to their business.
- Internalised stigma can also lead to sex workers believing they are ‘not worthy’ of protection or equal treatment under the law, encouraging them to simply accept discrimination, violence or abuse when it occurs, rather than seek assistance.

2c) Do I know of situations where there has been no effective solution to a human rights problem?

A primary difficulty faced by sex workers is the question of what actually constitutes ‘human rights for sex workers’. For Scarlet Alliance and other sex worker groups and associations around the world, ‘sex worker rights’ includes equal access to services and legal recourse, industrial and anti-discrimination protections and the overarching right to choose sex work as an occupation and be treated like any other employee in any other industry.

However, due to entrenched stigma and stereotypes, others in the community believe that ‘sex worker rights’ means the right to be *protected* and/or *removed* from the sex industry.

This conflict has created a vicious cycle where anti-sex work campaigners advocate for measures to limit, contain or abolish the sex industry, which in turn forces sex workers to find alternate ways to work in safety (often violating the laws in doing so), which in turn leads to the creation of *more* restrictive legislation. This ‘stalemate’ must be addressed in order for the basic human rights of sex workers to be progressed and upheld.

2d) Are there laws or policies which affect my life (or people I know) but that don’t seem to match up with their human rights?

- The sexual behaviour of sex workers is highly regulated, yet consensual sexual activity between other adults is largely unregulated. This creates a situation where sexual activities that are lawful within the wider community, become a criminal act when performed by a sex worker (eg. having sex without a condom, or having sex while HIV positive).
- Under the *Prostitution Act 2000* in Western Australia, sex workers are presumed guilty until proven innocent, do not have the right to remain silent, are subject to searches (including cavity searches) without warrant or arrest, can be held

‘indefinitely’ without charge and can be given a Move-On Notice or Restraining Order on ‘*suspicion of intent* to commit an act of prostitution’. Police are lawfully able to commit a crime when pursuing a prostitution conviction (eg. pose as a sex worker or client, or have sex with a sex worker), secure a remote warrant ‘after the fact’ and collect personal details and add them to a criminal register of sex workers, even though sex work itself is not a criminal offence in WA. There is no process for sex workers to appeal. See Scarlet Alliance Submission <http://www.scarletalliance.org.au/library/wa-pcsub03> pg 55 for more information.

- People with HIV are unfairly discriminated against under sex industry legislation. In 2008, an HIV positive male sex worker was discovered working in the ACT. It is lawful to work as a sex worker in the ACT, but illegal to work with HIV. Although the trial uncovered *no* evidence of transmission, this sex worker had his name, location, photograph and HIV status published in media around Australia and New Zealand, and was jailed for acting as a sex worker while HIV positive. See article by Kane Matthews http://www.scarletalliance.org.au/issues/hiv-strategy/mathews_08a/ for more information, and Needs Assessment of Sex Workers Living With HIV <http://www.scarletalliance.org.au/library/hiv-needsassessment08/>
- Migrant sex workers, particularly those from SE Asian countries, have been particularly affected by anti-trafficking responses and inherent racism and stigma in the wider community. Along with regular raids by the AFP and DIAC on ‘Asian’ brothels around Australia, migrant sex workers have also been the target of local policing strategies. In North Queensland, two sex workers of Asian background were encouraged by undercover police to agree to oral sex without prophylactics over the phone. The women did not speak English as a first language and it is uncertain whether they fully understood what the police were asking for. The women were fined and their identities published in the local media. See http://www.cairns.com.au/article/2009/05/19/43065_local-news.html for news coverage of the issue.
- Local Councils treat sex industry businesses differently to other businesses, which directly results in marginalisation and decreased access to legal recourse. In NSW, for example, sex workers are required to register their home-based business on a public register and participate in a Development Application process that other small business are not subject to. Sex workers often choose to opt out of this process to protect their privacy, leaving them working outside of the law and more vulnerable to further discrimination or abuse. When an ‘unapproved’ sex worker is assaulted or harassed, rather than going through the usual channels (police complaint, Human Rights Commission, Industrial Relations Tribunal, etc) the sex worker fears attention from the Local Council and may choose simply to move house, put up with the harassment or be more covert in the future. Discrimination and illegality creates a culture of self-censorship, shame, isolation and stigma. See http://www.scarletalliance.org.au/library/ssppg_04/ “Sex Services

Premises Planning Guidelines” for a best practice model of Local Council approaches to sex work.

- The media routinely marginalises the sex industry and trivialises human rights abuses perpetrated against sex workers. Television dramas, movies, newspapers, and charity campaigns portray sex work as dangerous and sex workers as degraded victims with no access to legal recourse. These depictions make sex workers especially vulnerable to violence, sexual assault, theft, blackmail, extortion and murder.

2e) What would be the difference in my life (or people I know) if human rights were better protected and promoted?

- If sex workers human rights were better protected and promoted, sex workers would be able to contribute, participate and enjoy the same support and protections that everyone else has access to, including better access to health, welfare, industrial support, financial services, justice and complaints processes when our rights are violated.

How could Australia better protect and promote human rights?

3a) Do I think that human rights should be comprehensively protected by law in Australia? Do I think Australia should have a Human Rights Act? What are the main reasons why I think a Human Rights Act would make a positive difference in Australia?

- Sex workers rights are paramount and central to sex worker health and wellbeing.
- When sex worker laws are created, sex workers must be consulted and sex worker organisations resourced to run consultations and advocate to Government and Legislators.
- Government departments should consider and respect sex worker human rights when they develop policy and make decisions. In particular the Ottawa Charter, UNGASS Statement on HIV, GIPA Principle and the Jakarta Statement must be taken into account in all sex worker law reform.
- Not discriminating against a person the basis of their occupation should be included in all anti-discrimination law.
- A Human Rights Act must take into account the particular needs of communities affected by HIV/AIDS: sex workers, HIV+ women, gay men, injecting drug users.

3b) If you think that Australia should have a Human Rights Act, what are your ideas about how this law should work?

- A Human Rights Act must take into account a person's right to do sex work and to do sex work without facing discrimination or vilification, or being stigmatised through the media.
- A Human Rights Act must take into account that any specific marginalised community has a right to have a say about their own issues ie prisoners having input into the justice system, Aboriginal and Torres Strait islanders having input into land rights and reconciliation issues, sex workers having input into sex industry laws.

3c) If Australia does adopt a Human Rights Act, what should happen next?

- An education campaign to raise the profile of the Act. The diversity of the Australian community needs to be represented in this campaign.

APPENDIX 1:

ADVERTISING

WORDING: Sex workers are limited in the wording we can use in advertising. In many states and territories we are forbidden by either the advertiser or advertising regulations from describing our age, our ethnicity, the services we offer, our website address, and other sometimes arbitrary restrictions that are at times determined by the person on the end of the phone where ads are placed.

PHOTOS: Sex workers are restricted from showing parts of our body in advertising. For example, in Victoria, we are only able to show our face, head and shoulders in photos. This is a risk to our confidentiality (for sex workers who do not want to show their identity in photos) and an illogical restriction. Sex workers are happy to be restricted by all standard advertising restrictions – but not to be overly restricted more than other advertisers. For example, in NSW it is illegal to advertise sex work at all (however this is unprosecuted).

ADVERTISING FOR STAFF: In Victoria and Western Australia it is illegal to advertise for sex workers or auxiliary staff at brothels. This means that there are no transparent and accountable methods of recruitment at brothels – it is only word of mouth. This discriminatory practice stops the sex industry from using standard recruitment practices like any other industry.

COST: The Daily Telegraph in NSW charges sex workers with a minimum 5 day advertising package, at a price of more than \$400 per week. This places an unfair financial burden on sex workers. It is cheaper and more flexible for other industries. In states and territories where sex workers are covered by anti-discrimination law (ie Queensland), advertising rates are equal for sex workers and other industries.

SEX WORKER EXPERIENCES

First Person Anecdote One:

A mobile phone salesman, after signing me up with a new mobile contract (with a massage parlour listed as my current employer), phoned me the following weekend and asked if I would provide the after-party entertainment for his mate's bucks night. When I said no, he apologised for taking the liberty...and then asked how much I'd charge to just see him, alone!

First Person Anecdote Two:

The car salesman offered me a discount on my new car, in exchange for 'a few freebies'. Unfortunately for him, I've bought new cars before. He was offering to knock money off in exchange for sex, when I knew full well that I qualified for that particular discount automatically. Sadly, I know a few girls who have actually fallen for this ploy.

First Person Anecdote Three:

Advertising everyone gets hit by. Main one that sticks out to me is cracker. They went from free no picture listings that sit for one month and \$20 premium listings that showed first and stayed for a month - which was consistent with their site - to charging \$2 for what was free listings to apparently reduce all the spam ads, just for the adult section. Then they doubled the premium ad cost for adult section to \$40 and then again a few months ago to \$80. Giving some reason about economic downturn from memory - despite it all being php script and automated, so its never actually costing them anything extra and the price hike was just for the adult section.

Also all the fly by night escort directories - not cost so much - but where people plagiarise from you website and put up ads for you, which then you don't have control over. I have ads with odd bits of info all over and I can't track them to keep them up to date and I have a standard ad content which is not just a cut and paste section from my site, so I know it's not mine when I put it up. One site has been nice enough to list my central coast suburb which I don't otherwise list to avoid incall vs local council issues, if they get google happy. They remove web addresses from my images - which they don't have redistribution or edit rights to. Sometimes they remove the photocredit and depending on the photographer, I don't always have use beyond my website in the release forms. Free advertising should be all good, but when it's not controlled it weakens one's brand with inconsistency and out of date information.

First Person Anecdote Four:

The Virgin store in Pitt Street mall had an advertising type slogan on the wall behind the counter - it's painted on the wall, not just a small sign. I made a complaint about it, but I don't know what happened. The wall read "Voicemail is like sex, you shouldn't have to pay for it". I complained because I felt it was wrong for Virgin to basically write of an entire industry.

First Person Anecdote Five:

The Blood Bank people. Why is being a sex worker higher risk, when the health department research shows we have less STI rates than the average population? Their little questionnaire should reflect more the sexual health clinics - what sort of risky activity have you done, not did you get paid. I got seven years of tests, at very regular intervals, yet because I made money - my blood, which was tested not that long before, is a higher risk than some club skank who did all sorts for free when off her face and said "I'm on the pill so we don't need condoms". It should ask how many different people have you been with and what percentage of that was protected. It annoys me most because it's not founded on any research - it's contrary to it if anything. It's that some close minded people when they were making it up went "ooh, make sure they aren't whores...they seem like the people who would have diseases".

First Person Anecdote Six:

Department of Immigration was not as extreme as it could have been - ie I wasn't just chucked out of the building. However, as a self employed sex worker sponsoring her husband to stay in the country, we had to both justify why we felt sex work did not go

against the genuine nature of our relationship. I had to explain why sex work is different to just screwing around, and my husband had to explain that he did know about it and was ok with it. Escort is my listed occupation on our marriage certificate and we put it on all the relevant forms. The Immigration officer wanted to know if I did full service or if I was solely a companion. I explained to him that sex work is just a form of acting and if they were to have issue with a sex worker not being part of a genuine relationship based on activities performed, then they should be rejecting any actors who do intimate scenes as well. Also, their definition on their form of a spousal relationship is one to the exclusion of all other interdependent or spousal relationships. I hardly see how any short term interactions would be seen as a spousal relationship any way, and even clients I've known longer than my husband, the money bit - quite clearly business relationship.

First Person Anecdote Seven:

I've had some issues of late with the odd teller person at a Westpac branch not looking at my account details well and when clients make a deposit to my trading account, not checking the 'trading as' field and then giving out my real name. It's happened twice and it was regulars so not that big of a deal, but it is against Australian privacy laws for banks to give out or confirm or deny any details. The complaints department is very good about dealing with it, they know the tellers are wrong and understand the extra issues with it because of the nature of my business and the teller gets in big trouble.

First Person Anecdote Eight:

Rental -I didn't want to risk saying what my actual occupation was when applying for a new place, so I had to work for someone else for a little-bit-sorta-pretend so I had payslips for office work. But I imagine even if I'm not working from home, having escort listed as my occupation would not get us much priority in competing rental applications.

First Person Anecdote Nine:

I have recently received some updated info on my life insurance and being the diligent consumer I am (not) decided to have a read through the contract they sent me. Lo and behold there exists a clause that states I (or anyone else) who has worked as, or engaged in sexual intercourse with a prostitute is ineligible to be covered by said organisation. Their rationale being HIV transmission and the alleged increased risk. I had not disclosed and have not yet decided if I am going to. I'm in SA but I'm pretty sure the company is Australia wide. They recently made changes to their policies re: Hep C, after doing some research they now insure clients who have had or currently have Hep C under their full life insurance package. So they were willing to make changes regarding Hepatitis, will they be willing to make changes regarding sex work?

First Person Anecdote Ten:

We flew into Perth on a late flight and arrived at the Mantra Hotel at around 10.30pm. We had booked a two bedroom apartment on my credit card three weeks before we left Sydney. Upon arrival we checked in, we were allocated a room and went straight to bed.

The next morning we both got up to go and buy food for the week we would be staying. We were leaving the room just as the room service lady was coming around to service the

rooms. The room service lady walked into the apartment with a caustic look on her face, walked around the apartment once and walked out remarking she'd come in once we had left. We left the apartment and arrived back 90 minutes later. Within two minutes of arriving back in the apartment, I received a phone call from the Manager of the Hotel who stated "I know how you are and I know what you are and you will leave the Mantra Hotel immediately or I will have the Police escort you from the building". I asked him who he thought I was and he replied "You are a prostitute and we do not allow your sort in Mantra Hotels and we do not condone what people like you do. You have three minutes to get out".

He said "Hotel staff have reported men coming in and out of your apartment all night and all morning and have found prostitute paraphernalia all over the apartment". We hadn't done a single job from the room, so I assumed when we went out, the hotel cleaner came into the room, went through our bags, found our condoms, stilettos, etc and put two and two together and came up with 'prostitute'.

I called the Manager back and said I'd be checking out but I'd need an hour to pack up and leave because I had no where to go and had to organize other accommodation before I could leave. He replied "You have 20 minutes which will be the time it takes me to call every Hotel and Serviced Apartment in Perth and get you banned from there as well".

I had booked the hotel for 10 nights and was charged the full 10 nights even though I had only stayed 1 night. Unfortunately, we were kicked out the week the International Tourism Expo was on in Perth, so there wasn't a single hotel room available in Perth until the next night. None of the local ladies would help us, so we called all the touring ladies. We found two ladies working from a skanky 1 bedroom in a backpackers. They let us crash on their floor for the day and night but we had to go out when they had jobs, so we spent 20 hours of the 24 walking the streets of Perth asking every hotel if they had rooms.

The next day I found a hotel I could move into for one night, but when I went to check in, they had my name and I had been banned because Mantra had called them and told them about me. I had no money to get back to Sydney and nowhere to stay, so I put my hooker clothes on, went to a bar, picked a business man, charged him for a bonk and slept in his room for the night. I continued to do this for the next four days until I had enough money to get home and pay off the price of the Mantra Hotel I was charged for. I arrived home with no money.

I have since tried to book into other Hotels using Wotif. My payment goes through and I think I am able to stay until I get to the Hotel and find out I am banned from it because it is one of the Mantra Chain of Hotels. The last time this happened I spent three days in Brisbane with nowhere to stay, because I was not told I was banned from all Mantra Hotels and all of their sister hotels under different names when I arrived to check in. I end up having to sex work for money, but do it in dangerous conditions because I cannot secure a safe work space to work from. I know of eight other ladies this is happening to.