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# Protecting sex worker human rights in Australia

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2014 will be a pivotal year for sex workers around the globe. With increasing international visibility, the movement for sex worker rights is rapidly gaining momentum. Simultaneously, regressive laws, discrimination and abolitionist agendas pose real dangers to our communities, our work, our health and our safety. We are witnessing an international commitment to ending stigma and discrimination. However, every win for our human rights has been an uphill battle and significant barriers face us ahead. This article outlines the human rights issues affecting sex workers in Australia and makes recommendations for reform.

## Sex worker human rights are of international concern

Australia, as a signatory to the 2011 UN Political Declaration on HIV and AIDS (the Declaration), has committed to protecting and promoting human rights, and the elimination of stigma and discrimination for sex workers as critical elements in combating the global HIV epidemic. The Declaration also commits Australia to 'intensify national efforts to create enabling legal, social and policy frameworks'.<sup>1</sup> The UNAIDS Guidance Note on HIV and Sex Work 2009 (UNAIDS is the Joint UN Programme on HIV/AIDS) recognises that criminalisation

poses substantial obstacles in accessing HIV prevention, treatment and support.<sup>2</sup> The UN Population Fund, the UN Development Fund and UNAIDS support the decriminalisation of sex work, and note that legal empowerment of sex worker communities underpins effective HIV responses.<sup>3</sup> UN Secretary-General Ban Ki-Moon calls for change in countries where discrimination remains legal against sex workers.<sup>4</sup> Former Australian High Court Judge, the Hon. Michael Kirby, insists upon rights for sex workers as a matter of public morality.<sup>5</sup> At a national level, Australia's Department of Health's *Sixth National HIV Strategy 2010–2013* recognises the protection of human rights to be 'essential' to the effective protection of public health.<sup>6</sup> The legal and discrimination subcommittee of the Commonwealth Ministerial Advisory Committee on Blood Borne Viruses (BBV) and Sexually Transmissible Infections (STI) (MACBBVS) recommends aligning sex work laws with human rights and evidence.<sup>7</sup>

## Sex workers experiences of discrimination

In 1999 a national survey was conducted by Scarlet Alliance assisted by the Australian Federation of AIDS Organisations to identify discrimination in the employment conditions and personal lives of sex workers in Australia. The 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 (applying for credit or loans), advertising (discriminatory advertising policies and fees), housing and accommodation (eviction, refusal of accommodation, unfavourable treatment), seeking other employment (particularly in teaching professions) and access to justice (barriers to sex workers reporting crimes, giving evidence at hearings, work taken as evidence of bad character).<sup>8</sup> Discrimination comes from private, public and government spheres. Anti-discrimination laws for sex workers in Australia remain inconsistent and ineffective. In 2012 a sex worker won an anti-discrimination case after being evicted from a hotel, but in response the Queensland Attorney-General amended the anti-discrimination act to expressly permit discrimination against sex workers in providing accommodation.<sup>9</sup>

In 2009 the UN Human Rights Committee reported that it was ‘concerned that the rights to equality and non-discrimination are not comprehensively protected in Australia in federal law’.<sup>10</sup> That same year the Australian Human Rights Commission recommended that Australia’s anti-discrimination laws need to be overhauled as their failure sends a poor message to the Australian community.<sup>11</sup>

### Limitations of Australia’s response

In 2009 former Prime Minister Kevin Rudd announced a national human rights consultation for Australia, leading to a Human Rights Action Plan in 2012 and the consolidation of Australia’s anti-discrimination laws through the Human Rights and Anti-Discrimination Act 2012. The discussion paper sought guidance on how anti-discrimination law could be improved, what best practice anti-discrimination protection would look like, and new ideas and visions for a better anti-discrimination framework. Scarlet Alliance advocated that the Australian Government introduce federal anti-discrimination protections on the basis of occupation, decriminalise sex work, and address barriers to sex worker human rights.<sup>12</sup>

Although detailed submissions were provided by sex worker organisations, the only references to sex work in the Human

Rights Action Plan were those relating to ‘child pornography’, ‘forced prostitution’ and ‘trafficking’; none related to protecting sex workers from unacceptably high levels of discrimination.<sup>13</sup> The only new discrimination grounds included were ‘sexual orientation and gender identity’, which do not protect people from discrimination on the basis of their sexuality or their sexual activity, behaviour or labour.<sup>14</sup>

### Human rights not rescue organisations

International human rights law has focused more readily on freedoms from abuse, exploitation and trafficking rather than affirmative rights to sexuality and bodily sovereignty. Some international conventions inherently position sex work as exploitation, for example, the Convention on the Elimination of Discrimination Against Women 1979, which provides freedom from ‘the exploitation of prostitution’.<sup>15</sup> This approach places less onus on governments to create enabling conditions to ensure people’s access to health, justice and human rights, and gives more power to the state to increase surveillance, criminal laws, police and government control over people’s bodies. Laura Agustin refers to a ‘rescue industry’ in which the middle classes see ‘themselves as particularly suited to help, control, advise and discipline the unruly poor, including their sexual conduct’, whilst imposing a victim identity that affords privilege and status to helpers and is ‘closely linked to their carving out a new employment sphere for themselves through the naming of a project to rescue and control working-class women’.<sup>16</sup> Elizabeth Bernstein writes that under the guise of ‘rescue’ and ‘moral condemnation’, helping professions have offered middle-class, white, ‘young, evangelical women a means to engage directly in a sex-saturated culture without becoming “contaminated” by it’, without tainting their reputation.<sup>17</sup> By contrast, Elena Jeffreys notes that sex workers are not paid to mobilise, engage and advocate; our organisations face systemic underfunding and high levels of volunteer contribution; sex workers do not capitalise on stigma to ‘professionalise our CV’; and our labour organising is necessary to fight for our rights.<sup>18</sup> Human rights rhetoric has become about victimisation rather than rights against the state.

### Criminal and licensing laws

Australia is currently experiencing what has become a global push toward laws aimed at abolishing sex work and the sex industry. The ‘Swedish laws’ are incorrectly described as decriminalising sex workers and criminalising the clients of sex workers. However, the impact of criminalising one of the parties involved is that police detection and surveillance is on both the client and the sex worker.<sup>19</sup> When police are the regulators of the sex industry it is sex workers that experience the brunt of corruption. Even though some reporting states that sex workers may not be the intended target group, the experience from Sweden illustrates serious adverse effects of criminal laws upon sex workers and sex workers report a longer-term impact of increased stigma and discrimination towards sex workers.<sup>20</sup>

Sex-worker human rights in Australia are impacted by criminal laws and licensing frameworks that: criminalise sex work, workplaces and clients; criminalise sex workers living with HIV; impose mandatory HIV and sexually transmitted infections and diseases testing of sex workers; require sex workers to register on police/government databases; remove the presumption of innocence; and remove the right to silence. The 1995 New South Wales (NSW) Wood Royal Commission (the catalyst for the decriminalisation of sex work in NSW) demonstrated there was systemic police corruption when police were regulators of the sex industry.<sup>21</sup>

### Applicable human rights

Sex worker human rights are intrinsically linked to sex workers’ ability to negotiate with clients, and to access essential services and satisfactory workplace conditions. And yet sex industry legislation routinely violates sex workers’ basic human, civil and industrial rights.

In the national Principles for Model Sex Work Legislation, based upon extensive consultation with our membership of sex workers, Scarlet Alliance identified a number of ways in which sex workers are denied human rights, as follows.<sup>22</sup>

Article 23 of the (UDHR) 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.

Article 13 of the UDHR 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 seeking 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 a visa or passport, while those who work in unlicensed/illegal sectors risk sex-industry related offences, which create a criminal record and may significantly restrict a worker’s movement between countries.

Freedom of association is recognised by Article 20 of the UDHR 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.

Article 21 of the UDHR 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.

## Sex worker human rights have been left behind

While there has been a concerted movement towards extending human rights to lesbian, gay, bisexual, transsexual intersex, and questioning (LGBTIQ) communities (2006 Yogyakarta Principles), a focus on sexual orientation does not protect a person's sexual behaviour, sexual practice or sexual labour. It further continues to support a hetero-homosexual binary with a focus on fixed gender and static orientation.<sup>23</sup> The focus on marriage equality as a human right represents a tendency to reward sexualities that resemble heterosexuality (monogamy, shared assets, cohabitation) whilst criminalising other sexual intimacies (such as public sex, pornography and sex work). Sex worker human rights have been forgotten.

In 2013 the Global Network of Sex Work Projects released a report on sex work human rights and the law, which included eight rights: the right to associate and organise; the right to be protected by the law; the right to be free from violence; the right to be free from discrimination; the right to privacy, and freedom from arbitrary interference; the right to health; the right to move and migrate; and the right to work and free choice of employment.<sup>24</sup>

The World Health Organization provides a working definition of 'sexuality' that includes eroticism, pleasure and intimacy, and sexual rights to sexuality education, consensual sexual relations, and a satisfying, safe and pleasurable sexual life.<sup>25</sup> Discussions continue in the international human rights field about establishing a human right to sexuality or pleasure. There needs to be consultation on whether this could provide protections for sex workers, as a form of intimate labour, sex education and consensual sexual experience without interference from the state, and whether it could protect sex workers as sexual citizens – providing belonging, inclusion, accessibility to representation and participation in the public sphere.<sup>26</sup>

## Conclusion: what next?

New South Wales is one of only two jurisdictions in the world to have decriminalised sex work and we approach our twenty-year anniversary of decriminalisation in 2015. Decriminalisation has brought improved work safety, extremely low rates of HIV/STIs, increased transparency and better access to justice, health and services for sex

workers.<sup>27</sup> Decriminalisation is the only model to support the human rights of sex workers.

In July 2014, Melbourne hosted the 20th International AIDS Conference, 'Stepping up the Pace', which brought an opportunity to reflect on the successes sex workers have achieved in recent times and focus on the struggles ahead. Law reform is occurring in every state and territory in Australia. The gathering of the international community presents an opportunity for Australia to step up, meet its international obligations, and continue its role as a world leader through bold legal and policy changes.

Sex workers in Australia require enhanced investment and increased resourcing for community-driven health promotion and peer education in order to maintain our successes and prepare us for times ahead. We need full decriminalisation of sex workers, our workplaces and our clients in every state and territory, comprehensive anti-discrimination protections, and a human rights framework that actively supports our rights. We continue to fight against laws that criminalise our communities and work, against policing practices that pose barriers to safer sex practice, and we insist upon decriminalisation, human rights and self-determination.

## Notes

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