

Scarlet Alliance Submission Drugs and Crime Prevention Committee *Inquiry into Trafficking for Sex Work*

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*Sex workers from Thailand, Burma, Cambodia and India protest for sex worker rights
 Bangkok International AIDS Conference 2004*

Introduction: Scarlet Alliance, Australian Sex Workers Association

Scarlet Alliance formed as an Australian peak body of state and territory sex worker organisations in 1989. It is made up of sex workers; all leadership, staff, membership and volunteers are sex workers. Scarlet Alliance and the Scarlet Alliance membership are active in migrant sex worker rights, trafficking prevention and cross-cultural peer education, dating back to the early 1980's.

Scarlet Alliance State By State Organisational Membership 2009/2010:

Victoria:

RhED
VIXEN

ACT:

SWOP

NSW:

Touching Base
Sex Workers Union

NT:

SWOP

South Australia:

SIN

Queensland:

United Sex Workers
Crimson Coalition

WA:

Magenta & SWOPWA

NATIONAL:

Debby Doesn't Do It For Free
SWU

Tasmania does not have an independent sex worker project, however currently has a Scarlet Alliance funded project

Example of Scarlet Alliance Funded Projects 2009/2010:

- Pilot Migrant Sex Worker Trafficking-Prevention Project in partnership with Empower (Thailand)
- Pilot Migrant Sex Worker Research Project in partnership with Zi Teng (Hong Kong)
- AYAD Placement in partnership with Empower (Thailand)
- Communications Project
- STI Handbook - National resource for sex workers (Re-Release)
- Papua New Guinea Project in partnership with Friends Frangipani Inc.
- Asia Pacific Project Projects (Timor Leste, Fiji and Regional Networking)
- Tasmanian Sex Worker Outreach Project based in Hobart



Sex workers in India protest against trafficking 2005

Executive Summary

At least 0.5% of the migrant workforce globally experiences trafficking or slavery-like conditions.¹ This is indisputable and stems directly from exclusionary immigration policies regarding migrant labour and the third party traffickers who create profit from individuals' desires to travel and work. Lack of access to migration pathways leads sex workers to consider third party contracts. This has been brought to the attention of authorities by sex worker organisations, including the Prostitutes Collective of Victoria, since the late 1980s.²

Migrant sex workers from South East Asian countries face real and perceived barriers accessing migration pathways without the aid of third parties, migration agents and/or traffickers. Migrant sex workers choose contract labour as a means of gaining legitimate access to the legal and decriminalised sex industries of Australia. This makes them vulnerable to trafficking or slavery-like conditions.

State and Federal anti-trafficking laws have created a legal flurry of prosecutions against what sex workers perceive as the only method of gaining access to Australia – contract labour, trafficking-like situations and slavery. Existing criminal penalties prosecute brothel owners and traffickers after events have taken place, but do not protect the rights of migrant sex workers to come here without the costly assistance of a third party. Criminalisation and prosecution do not prevent trafficking; rather they increase sex workers' vulnerability and drive the practice of contract labour underground and away from support mechanisms including sex worker organisations.

In Australia there is a recent trend towards making a distinction between trafficking and migrant sex work *per se*.³ In contrast, anti-sex work approaches to trafficking conflate definitions and therefore numbers of sex workers, sex slaves, trafficking victims and people who may be working in trafficking-like conditions.⁴ This results in unsubstantiated claims that trafficking is a huge problem and is always rising.⁵

Anti-sex work campaigners have hijacked reasonable discussion about the issue of trafficking, preferring to use it as a platform for increased criminalisation and police involvement in sex work.⁶ This has contributed to the challenges for policy makers when considering a human rights approach to trafficking. Reactionary responses include harsh policing and criminalisation. These responses have resulted in reducing the rights of migrant sex workers and increasing vulnerability to trafficking.

Adding to this complexity, unnecessarily harsh regulation of brothel licensing in Victoria has created problematic occupational health and safety conditions for sex workers in legal brothels.⁷

Recognition of sex work as legitimate work, civil protections for migrant sex workers, access to justice within the industrial system for all migrant workers, anti-discrimination protections and scrapping Victoria's out-dated mandatory testing and registration regimes all are necessary in supporting migrant sex workers in Victoria, and preventing trafficking and slavery. Access to a visa system that is fair and non-discriminatory and provision of migration education in source countries is also essential. These civil policy solutions will ultimately pave the way to effective trafficking prevention and access to justice for all sex workers, regardless of their language background.

¹ Elena Jeffreys, "Anti-trafficking Measures and Migrant Sex Workers in Australia" in *Intersections: Gender and Sexuality in Asia and the Pacific*, Issue 19, (2009), para 1. <http://intersections.anu.edu.au/issue19/jeffreys.htm>

² Prostitutes Collective of Victoria, Sexual Health Information Resources and Education for Non English Speaking Background Sex Workers (SIREN) Project, funded by the Commonwealth AIDS Prevention and Education Program of the Department of Human Services and Health and released in 1994

³ Elaine Pearson, "Australia" in *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights Around the World*, GAATW, Thailand (2007):28-60, p 28.

⁴ Ronald Weitzer, 'The social construction of sex trafficking: ideology and institutionalization of a moral crusade,' in *Politics & Society*, vol. 35 (2007):447-475, p 454.

⁵ *Ibid* p 455.

⁶ *Ibid* p. 452.

⁷ Donovan, Harcourt and Eggar, *Laws and Sexual Health*, UNSW, first released in 2008

A. The Extent and Nature of Trafficking People for the Purposes of Sex Work into Victoria from Overseas

US sponsored research by the State Department Office to Monitor and Combat Trafficking in Persons concluded in 2008 that up to 800,000 people a year are affected by trafficking.⁸

Earlier this century the United Nations Department of Economics and Social Affairs, *International Migration Report* estimated that there are 175 million migrants across the world each year.⁹

Using these figures it can be concluded that trafficking affects 0.5 per cent of all migrants.¹⁰

Scarlet Alliance estimates that the number of sex workers on debt-contract in Australia at any one time is less than 400.¹¹ This number is important because in the experience of sex worker organisations in Australia, trafficking is characterised by debt-contract arrangements that have 'gone wrong'. For example, where the contract has been sold from one party to another and/or working conditions have been reduced drastically from the original agreement by the sex worker involved. Debt contracts *per se* and the crimes of trafficking and/or slavery are distinctly separate, as research in the field has shown.¹²

In 2004 Australian sex worker organisations estimated that up to 10 individual sex workers are subject to trafficking-like or slavery-like conditions nationally in any 18 month to 2 year period, including having been deceptively recruited, coerced or forced.¹³

The recent Laws and Sexual Health (LASH) comparative survey of sex workers found that conditions in the Victorian licensed brothel industry are worse than that of NSW (decriminalised) and Western Australia (criminalised).¹⁴

⁸ Office to Monitor and Combat Trafficking in Persons, 'Introduction,' *Trafficking in Persons Report*, US State Department, 2008 URL: <http://www.state.gov/g/tip/rls/tiprpt/2008/105376.htm>

⁹ Department of Economics and Social Affairs, *International Migration Report*, New York: United Nations, 2002, p. 1, URL: <http://www.un.org/esa/population/publications/ittmig2002/2002ITTMIGTEXT22-11.pdf>

¹⁰ Elena Jeffreys, *Anti-trafficking Measures and Migrant Sex Workers in Australia*, para 1.

¹¹ Scarlet Alliance, 'Submission to Parliamentary Joint Committee on the Australian Crime Commission,' September 2003, p. 7, URL: http://www.scarletalliance.org.au/library/traff_sub03, p. 7

¹² *This [contract] labouring relation is often incorrectly labelled 'enslavement' with debt-bonded women often identified as 'victims of trafficking'...Debt-bondage or indenture contracts buy a person's labour or their time for a certain period. As a contract, bonded labour is not slavery and indeed the period of the contract can be very brief. Thus, debt bondage is distinct from slavery because 'servitude' ends with repayment of the debt.* Larissa Jane Sandy, 'My Blood, Sweat and Tears: Female Sex Workers in Cambodia – Victims, Vectors or Agents?', Ph.D. Thesis, Australian National University, September 2006, p. 144.

¹³ Maria McMahon, 'Official Committee Hansard,' in Joint Committee on the Australian Crime Commission, *Trafficking in women for sexual servitude*, 25 February 2004, p. 25, URL: <http://parlinfoweb.aph.gov.au/piweb/Repository/Committee/Commjnt/Linked/3184-2.PDF>

¹⁴ 'Study backs decriminalisation of prostitution' *The world today*, ABC News <http://www.abc.net.au/worldtoday/content/2008/s2365943.htm> and 'Sydney is the green city for sex workers' *Thaindian News*, 16 September 2008, http://www.thaindian.com/newsportal/india-news/sydney-is-the-green-city-for-sex-workers_10096284.html

B. The inter-relationship (if any) between the unlicensed and licensed prostitution sectors in Victoria and trafficking for the purposes of sex work

In the past 13 years there has been a significant increase in Victorian state involvement in and surveillance of the sex industry; through licensing and with the recent introduction of compliance officers inspecting licensed premises. This has also resulted in an increase in “joint agency” inspections or “raids” by local and federal police as well as the immigration department and others. Even given this increased surveillance limited evidence of sex trafficking has been identified.

Anecdotally it is understood that the licensed and unlicensed sectors of the sex industry in Victoria exist almost entirely commercially discretely of one another (when it comes to ownership and management) however research shows that most sex workers will have worked in both sectors.¹⁵ Clients similarly will visit both licensed and unlicensed premises arbitrarily.

The vast majority of licensed businesses provide a full sexual service. Currently only 1 licensed premises offers only massage and hand relief. Most unlicensed premises generally limit their services to massage and hand relief. While there appears to be an over representation of “Asian” (Chinese and Thai) unlicensed premises in Victoria there has been no evidence that these businesses are destinations for trafficked women. It may be that this perception is inaccurate as there is little empirical evidence on the unlicensed sector of the sex industry in Victoria, and the Asian sector is more visible than the non-Asian sector, particularly to anti-sex work crusaders from a local council perspective.

The recent Australian book ‘Sex Trafficking’¹⁶ provides a critical criminological perspective of trafficking and summarises that anti-trafficking campaigners see that legalised or decriminalised prostitution is one of the root causes of sex trafficking. One such proponent, Leidholdt,¹⁷ claims that the legalisation of sex work resulted in a “massive expansion of Victoria’s sex industry and an increase in sex trafficking”. There is no empirical evidence to support such a claim and Scarlet Alliance agrees with the academic consensus that these unfounded statements are based on a crusadist approach that has an ultimate agenda to abolish sex work.¹⁸

CONCLUSIONS

The licensed and unlicensed brothel sectors of Victoria are economically discrete however share the same workforce and clientele.

Increased regulation of the licensed brothel sector is unnecessary and may have negative consequences for sex workers’ occupational health and safety and vulnerability to trafficking-like conditions.

Claims by religious and some feminist groups that the legalisation of sex work in Victoria has led to sex trafficking and exploitation of women is untrue and not supported by evidence¹⁹.

Criminalisation increases sex workers’ vulnerability to trafficking, by reducing sex workers’ rights and access to justice. Sex worker groups across the world are campaigning for decriminalisation of sex work as a trafficking prevention measure.

¹⁵ Roberta Perkins and Frances Lovejoy, *Call Girls*, UWA Press, 2007

¹⁶ Pickering, S; Segrave, M and Milivojevic, S. (2009) *Sex Trafficking* Willan Publishing.

¹⁷ Leidholdt, D (2003) Prostitution and trafficking: An intimate relationship. In Farley, M. (ed.) *Prostitution, trafficking and traumatic stress* (pp. 167-186) Binghamton: Haworth Press.

¹⁸ Ronald Weitzer, ‘The social construction of sex trafficking: ideology and institutionalization of a moral crusade,’ p 455.

¹⁹ Janelle Fawkes for Scarlet Alliance, ‘The Australian response to ‘10 Reasons for Not Legalizing Prostitution’ URL: http://www.scarletalliance.org.au/library/10reasons_07pdf/

C. The Current and Proposed Intergovernmental and International Strategies and Initiatives in relation to dealing with Trafficking for the purposes of Sex Work

International and Australian trafficking policy is moving towards community partnership and civil responses, away from relying solely on criminalisation and justice measures as it has in the past.

Partnership with sex worker organisations in the region to improve access to reliable and accurate migration information for sex workers, as a trafficking prevention measure, is an important component of this new policy direction. Scarlet Alliance is a key player in this and has been funded by the Commonwealth Government to implement a pilot of this new approach.

A focus purely on criminalisation and prosecution has negative outcomes for sex workers and increases sex workers' vulnerability to trafficking into Australia²⁰. Anti-trafficking approaches that are repressive towards sex workers' rights to migrate ultimately benefit traffickers by making their services more prevalent in sex workers' lives²¹. Reduced rights for migrant sex workers and resultant increased vulnerability to trafficking are unintended consequences of anti-trafficking efforts.

Sex workers and sex worker advocates in no way support trafficking. We have consistently asserted our human rights to be able to travel without facing penalties or being assumed to be victims since the second World Whores Congress in 1986.²² Sex worker criticism of anti-trafficking efforts has unfairly been type-cast by anti-sex work crusaders as a pro-trafficking stance or actually practicing trafficking.

Academic Penelope Saunders summarises:

“Sex worker rights activists have, with due cause, opposed initiatives to stamp out 'trafficking in women and children.' Activists are, of course, opposed to abuse of women migrants but substantial evidence exists to indicate that anti-trafficking initiatives are more concerned with eliminating prostitution and stemming migration than in protecting human rights.”²³



On the 8th March 2005 International Women's Day, the National Human Rights Commission of Thailand awarded Ms Pornpit Puckmai, Empowe, (centre) with the first annual human rights award for defending the rights of women.

²⁰ Elaine Pearson, 'Australia,' Collateral Damage, GAATW, 2007, p. 51 URL: [http://www.gaatw.net/Collateral per cent20Damage_Final/CollateralDamage_AUSTRALIAfinal.pdf](http://www.gaatw.net/Collateral%20Damage_Final/CollateralDamage_AUSTRALIAfinal.pdf), accessed 10 July 2008.

²¹ Marjan Wijers, 'Women, labor and migration,' in Global Sex Workers, ed. Kemala Kempadoo and Jo Doezma, New York: Routledge 1998, pp. 69–78, p. 72; Carol Leigh, 'Behind the moral panic, an opportunity to work,' in SFGate, 22 July 2005, URL: <http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2005/07/22/EDGHGDRSV41.DTL>, accessed 2 July 2008.

²² Second World Whores Congress, *World Charter for Prostitutes Rights*, International Committee for Prostitutes Rights (ICPR), Brussels, 1986.

²³ Penelope Saunders, 'Migration, sex work, and trafficking in persons,' in *Walnut*, 14 October 2002, URL: <http://www.walnet.org/csis/papers/saunders-migration.html>, accessed 2 July 2008. para. 2

D. The need for Policy and Legislative Reform to combat Trafficking for the purposes of Sex Work

The Australian Government must consider the rights of migrant sex workers as central to any public policy response²⁴. Furthermore, migrant sex workers in Australia who are not trafficked are a source of vital information for preventing trafficking to others. Scarlet Alliance is currently embarking on a 12 month research project funded by the Australian Institute of Criminology for the purpose of exploring these issues further.

Under the previous Federal Government there was a common perception among policy makers, researchers and legislators that preventing sex worker migration prevents trafficking. However this policy is misplaced and creates the opposite of its intention. Creating barriers to visas directly contributes to women choosing to enter Australia on a contract—which makes them vulnerable to trafficking²⁵.

Pornpit Puckmai explains:

No wonder we think it's easier, and surer, if we pay a broker to organise our trip. This is a common practice for Thai migrant workers and students. A broker will arrange visas, flights, work or enrolment [for an educational institution], and the money will be paid back. If we had easy access to passports and visas, like you, we could travel independent of others²⁶.

Contract labour is criminalised in Australia, within a section of the Criminal Code that specifically criminalises activities associated with human trafficking and sexual exploitation. The specific crime is *Debt Bondage*²⁷. Other related crimes include *Deceptive Recruiting*²⁸, encompassing contract negotiation that conceals or misrepresents the nature of work that the contract includes.

Debt Bondage and Deceptive Recruiting are minor offences compared to the more serious offences of slavery and trafficking. In the last five years there have been 150 investigations of alleged trafficking in Australia, involving about a hundred alleged victims of trafficking²⁹. These existing Commonwealth Criminal Code provisions for trafficking, slavery and related offences are more than adequate to deal with crimes against migrant sex workers in Australia.

In the experience of Scarlet Alliance through its membership of state and territory sex worker organisations and projects, almost all migrant sex workers have entered Australia through legitimate means and on legal visas. This is backed up by research by Sydney Sexual Health with migrant sex workers, who found that all migrant sex workers attending the clinic were working in Australia legally³⁰ and 73.9% paid for their own ticket to Australia.³¹ For the minority who entered into

²⁴ Scarlet Alliance response to Discussion Paper #9, 'Slavery' Attorney General's Committee)

²⁵ Elena Jeffreys, 'Truth and visas will set migrant sex worker free,' in the Sydney Morning Herald, 4 April 2008, URL: <http://www.smh.com.au/news/opinion/truth-and-visas-will-set-asian-sex-workers-free/2008/04/03/1206851098330.html>

²⁶ Puckmai, 'Presentation at the Scarlet Alliance Annual Symposium on Contemporary Sex Work Issues.' Kalgoorlie, 2007

²⁷ 'Division 271 – Trafficking in Persons and Debt Bondage,' in Commonwealth Criminal Code, Commonwealth of Australia.

²⁸ 'Division 270.7 – Deceptive Recruiting,' in Commonwealth Criminal Code, Commonwealth of Australia.

²⁹ Attorney Generals Department, 'Background paper on people trafficking,' in *National People Trafficking Roundtable*, Canberra: Commonwealth Government, 2008, p. 3.

³⁰ Jeffrey Dabhadatta Catherine C. O'Connor, Kate Tribe, Cathy Pell, 'Changes in migration status and work patterns in Asian sex workers attending a sexual health centre,' in *Scarlet Alliance Submission to Commonwealth Attorney General's Department*, Scarlet Alliance, 2004, p. 42, URL: <http://www.scarletalliance.org.au/library/traff-sub04>, p. 42.

'contracts' with agents to facilitate their passage and working arrangements, they have willingly chosen to work in the Australian sex industry. Their documentation is authentic – the only crime is that the documentation has been gained via a financial agreement.

Sex workers desire to come to Australia to work. Opportunities for trafficking arise when there are perceived or real barriers to accessing visas and travel independently of third parties.

CONCLUSION AND RECOMMENDATIONS

Sex workers are the population most affected by laws and policies targeting trafficking for the purposes of sex work.

Increased criminal and prosecution approaches will increase sex workers' vulnerability to trafficking.

Improved access to migration pathways for all migrant labour coming into Australia is a central factor in ending trafficking and slavery in sex work.

Sex workers in Victoria, Australia, Asia Pacific and across the world recommend against harsh criminal justice approaches to trafficking. Sex workers prefer civil community based peer education approaches and advise towards immigration reform, industrial relations reform, decriminalisation of the sex industry and improved rights for all migrant labour.

Scarlet Alliance recommends that sex work in Victoria must be fully decriminalised in order to maximise occupational health and safety, industrial and other regulatory mechanisms, and to prevent trafficking and slavery-like situations.

Scarlet Alliance further recommends that the way to end trafficking and slavery is to better recognise and promote migrant sex workers' rights and legal status, and empower migrant sex workers to reject exploitative contracts and conditions. Eradication of criminal-based third parties who facilitate travel to and work for sex workers in Australia is achieved by an open, legal system of entry to Australia for overseas sex workers³².

³¹ Cathy Pell, Jeffrey Dabhadatta, Christine Harcourt, Kate Tribe, Catherine O'Connor, 'Demographic, migration status, and work-related changes in Asian female sex workers surveyed in Sydney, 1993 and 2003,' in *Australian and New Zealand Journal of Public Health*, vol. 30, no. 2 (2006):157–62, p. 159.

³² Sex Workers Outreach Project response to the Criminal Code Amendment (Slavery and Sexual Servitude) Bill 1999