



**Australian  
Sex Workers  
Association**

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sent via [tipreport@state.gov](mailto:tipreport@state.gov)

To the Trafficking In Persons team at the US State Department,

Thank you for the opportunity to submit to the 2024 US State Department TIP Report. This submission relates to Australia and the concrete action taken in relation to human trafficking that occurred in Australia between 1 April 2023 and 1 February 2024.

Scarlet Alliance is the Australian Sex Workers Association. Through its objectives, policies and programs, Scarlet Alliance aims to achieve equality and social, legal, political, cultural and economic justice for past and present workers in the sex industry.

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 the country. Scarlet Alliance is a leader when it comes to advocating for the health, safety and welfare of sex workers in Australia. Our member organisations and projects have the highest level of contact with sex workers in Australia of any government or non-government agency. Through our projects and the work of our membership we have a high level of access to sex industry workplaces in major cities. Scarlet Alliance also represents sex workers on a number of Commonwealth committees and ministerial advisory mechanisms.

Decriminalisation of many forms of sex work has been implemented in three Australian jurisdictions; New South Wales (1996), [Northern Territory \(2020\)](#) and Victoria (2022/23). The recognition of sex work *as work* is a key characteristic of Australia's anti-trafficking response and forms the basis of partnership work across government.

We commend this submission to your TIP 2024 process and look forward to seeing the outcomes,

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## Overview of 2023

*Q.1 What were the Australian government’s major achievements and how have new laws or policies affected the Australian government’s anti-trafficking response?*

### Most aspects of sex work in Victoria were decriminalised.

The passage of the Sex Work Decriminalisation Act 2022 repealed the brothel licensing system, removed criminal penalties for indoor sex work and granted indoor sex workers access to that jurisdiction’s WHS protections ([Vixen, 2022](#)). Some of these changes came into effect during the reporting period. The main impact on sex workers is that workplaces which were previously illegal workplaces are instead subject to WHS regulations and scrutiny through labour laws. As a result, sex workers are now more empowered to be able to implement labour-organising power. Addressing situations of labour exploitation in sex work *at the time violations first occur* prevents more extreme cases of trafficking from happening at all. Moving into 2023, we expect that the more unscrupulous bosses will have a harder time retaining staff unless they improve workplace conditions and adhere to WHS protections for workers.

### Sex workers continue to be a priority population in the HIV and STI partnership response.

In 2023, the Australian Commonwealth maintained a national HIV and STI response, with state and territory governments responsible for implementing relevant community-facing activities and programs. Under the banner of this response, state and territory governments distribute funds via their health departments to sex worker organisations, ensuring that front-line peer education and crisis support is available year round in as many locations as possible . This extends to communication and support in a range of languages to all sex workers. including migrant workers. The day-to-day frontline work conducted by sex worker organisations provides a solid platform of evidence, data and advocacy messaging that is able to be communicated to all levels of government. The ongoing reliability, regularity and uninterrupted activity of sex worker organisations in Australia is credited for low rates of HIV and STIs among sex workers, and since the 1980s has propelled peer education into the international spotlight as a singularly successful approach to health promotion for sex workers ([Respect Inc and DecrimQLD, 2022](#)). Sustained community development work, funded by the government and undertaken by sex worker peer organisations in part explains why instances of trafficking in sex work in Australia are such an anomaly and why incidents of exploitation in sex worker workplaces are able to be addressed and prevented from becoming extreme forms of trafficking.

### Sex workers continue to attend the Roundtable.

The Australian Federal government engaged specifically with anti-trafficking work through the Australian Senior Officials and Ministerial Roundtable meetings (22 August 2023 and 5 December 2023.) Using the partnership approach to HIV and STIs as a model, Scarlet Alliance lobbied for the creation of the Roundtable in 2007 and has participated since inception. The meetings are an opportunity to present sex worker peer education data, evidence and messaging to the Commonwealth Government. This partnership work is credited for adding depth, nuance, accountability and transparency to the Australian anti-trafficking response, facilitating the sharing of information between government agencies and the sex worker community, and encouraging sex worker voices to bring relevant advocacy points to government.

#### Anti-Discrimination protections were implemented for sex workers in the Northern Territory.

In 2023, the [NT Anti-Discrimination Act 2022](#), was enacted, which protects sex workers from discrimination in the Northern Territory. When developing the Act, the NT Government consulted with the most marginalised groups through their representative organisations to ensure coverage was provided through inclusive and appropriate attributes. Like other marginalised communities, sex workers require accessible anti-discrimination protections that recognise the pervasive and unique effect that the stigma of sex work has on our lives, health, safety, and standing in the community.

Sex Worker Reference Group Member Willow Beth stated:

“Sex workers experience widespread and pervasive stigma and discrimination in every facet of our lives, with devastating impacts on our safety, access to housing, financial stability, mental health and wellbeing; with limited avenues for redress. Crucially, today’s reforms provide an opportunity for sex workers to seek redress when experiencing discrimination and sends a message to the community that discrimination against sex workers and our work is unacceptable.” ([Scarlet Alliance and SWOP NT, Nov 2022](#))

The second phase will introduce a new legal duty called Positive Duty, and a new complaints mechanism called the Representative Complaints process. The reforms confer new functions and powers to the Anti-Discrimination Commission ([Northern Territory Anti-Discrimination Commission, Dec 2023](#)).

#### *Q.2 What were the greatest deficiencies or limitations?*

#### The Department of Home Affairs did not engage productively with the anti-trafficking sector.

In 2023, Scarlet Alliance and the Asian Migrant Sex Worker Advisory Group (AMSWAG) observed a lack of presence, engagement and meeting attendance by the Department of Home Affairs, Border Force staff and officials in the anti-trafficking response and sector.

On 5 December 2023, at the national Roundtable meeting, Scarlet Alliance and AMSWAG tabled a request for the Department of Home Affairs be called upon to attend an extraordinary meeting of the Roundtable. The request included asking the Department to present their data on Operation Inglenook, justify their public statements about detecting, disrupting and deterring migrant worker exploitation, share the curriculum they are using to educate migrants about workplace rights in Australia and answer questions from the sex worker community and other civil society groups representing the populations with lived experience including victims and survivors.

Community organisations and Australian civil society expected a more active involvement from the Department of Home Affairs in the Roundtable during 2023, especially given the resources invested

in Operation Inglebrook. Without community input and front-line knowledge, the work of the Department of Home Affairs could be acting in opposition to the work of the anti-trafficking sector in Australia.

#### *Q.4 What are strategies other governments could consider adopting?*

##### Decriminalisation of sex work is recommended by the evidence.

The decriminalisation of sex work is inextricably linked to the reduction of socio-economic harm ([Armstrong 2021](#)), improved human rights ([Decker et al 2015](#)), better health ([McCann 2021](#), [Platt et al 2018](#), [Harcourt et al 2010](#)) and access to justice otherwise denied in criminalised settings ([Abel et al 2007](#)) including for migrant sex workers, as demonstrated by this longitudinal study in NSW from both before and after decriminalisation:

“Positive changes have occurred in the conditions of Asian female sex workers surveyed over 10 years in Sydney. Maintaining current levels of health service delivery will ensure continued improvements in health and workplace conditions and address inequalities between language groups.” ([Pell et al, 2006](#))

##### Funding sex worker organisations is recommended by the evidence.

A 15-year examination of community development and health promotion work by sex worker organisations in India and South Africa found sex worker leadership and peer education to be the main factors in the production of strong, measurable health outcomes for sex workers. A community-controlled peer education program called Sonagachi, run by sex worker organisation Durbar in Kolkata, India, produced ‘sustainable’ results for sex worker health. A comparable project in Summertown, South Africa that was *not* run by sex workers, and lacked a community development approach, had ‘disappointing’ outcomes ([Cornish et al, 2009](#)).

To benchmark these conclusions, the same research team used the Sonagachi data as a comparison to a second South African project for volunteer HIV carers in Entabeni. Once again, it was found that the Entabeni project work (which was not controlled by the affected community and lacked a community development approach) was less successful in creating improved health outcomes compared with Sonagachi outcomes. The ‘enabling environments for transformative communication’ were a key factor in the viability of health outcomes, and sex worker leadership within the Sonagachi project deployed sex worker knowledge and first hand lived experience in ways that other projects, without proper consultation or leadership from the community, were unable to achieve ([Campbell, 2012](#)).

To account for the possibility of cultural differences between Indian and South African HIV and STI health promotion campaigns affecting results, the research team then gathered data during six months of fieldwork on outreach involving two sex worker health projects in India (one in west India, the other in east India). It was once again confirmed that sex worker organisations run ‘intelligent responses that resonated with participants’ identities and goals’ ([Cornish et al, 2012](#)).

##### Migrant sex worker advocates participated as experts within the anti-trafficking sector.

In 2023, Asian migrant sex workers had an important voice in the Asian Migrant Sex Worker Advisory Group, a long-established committee that meets regularly (23 meetings in 2023) to utilise the lived experience in communications with the government and law enforcement. This collaborative approach encouraged policy-makers and law enforcement officials to learn directly from Asian

migrant sex worker advocates about the successes and failures of the trafficking response in Australia.

Outcomes included a Key Issues Paper ([27 June 2023](#)) and a Stakeholder comment on the government response to the Nixon Review ([11 Oct 2023](#)). Asian migrant sex workers were active participants in every possible step of the policy and law reform processes in Australian jurisdictions in 2023.

#### Anti-Discrimination protections were extended to sex workers.

Protection from discrimination is a human right that should be afforded to sex workers, and all jurisdictions that have such protections should extend them to include sex workers. In the Northern Territory in 2023, the Anti-Discrimination Commission investigated a sex worker's discrimination complaint on the basis of 'employment in sex work or engaging in sex work'; and was to supply information on which unlawful discrimination might be based. The complaint is against NT Police and will likely have 'wide-reaching' effects ([ABC News, Oct 2023](#)).

## Prosecutions in 2023

### *Q.5 What are the observations regarding the implementation of existing laws?*

#### Sex worker advocates met regularly with relevant law enforcement agencies.

In 2023, Scarlet Alliance team members met regularly with the Australian Federal Police anti-trafficking staff and relevant Attorney General Department staff, and participated as active members of the Roundtable and made connections within Border Force.

#### The Northern Territory Anti-Trafficking Working Group (ATWG) met regularly.

In 2023, SWOP NT representatives attended bi-monthly meetings of the Northern Territory Anti-Trafficking Working Group (ATWG). The ATWG committee is comprised of the Red Cross Support for Trafficked Peoples Program, the Fair Work Commission, Border Force (Home Affairs), Unions NT, Services Australia, the Australian Federal Police, NT Police Serious Crimes and Sex Crimes Units, the Red Cross & Anglicare Migration Programs, NT Working Women's Centre, NT Victims of Crime, Status of Women (Territory Families), Centrelink, Women's Legal Services, Legal Aid, the Multicultural Council of the Northern Territory (MCNT), Melaleuca Refugee Centre, and other NGOs who may come in contact with people vulnerable to exploitation and modern slavery-like conditions. Meetings are joined by other relevant anti-trafficking agencies from time to time. SWOP NT joined as one of the group's inaugural members.

Sex workers actively raised issues for the agenda, tabled documentation for dissemination to group member agencies and highlighted impacts of Border Force raids on migrant sex workers in 2023. The Northern Territory is now a decriminalised jurisdiction, but the historical scars of previous harsh licensing legislation in that jurisdiction remain, including harmful raids on sex worker workplaces and unfair treatment of sex workers by local and federal police and Immigration personnel, additionally sex workers were required to register to work with the NT Commission of Police. The ATWG is an important tool to ensure decriminalisation is of benefit to all sex workers, including Asian migrants in the NT.

*Q.6 Do government officials understand the nature of all forms of trafficking? Is there specialised training provided to law enforcement?*

Sex workers attended and spoke at the Modern Slavery Conference in Naarm.

In 2023, a sex worker representative of Scarlet Alliance's Asian Migrant Sex Worker Advisory Group of (AMSWAG) spoke on the main stage of the Modern Slavery Conference (27-29 June, Naarm). The presentation addressed myths, stereotypes and racist media portrayals of Asian migrant sex workers in Australia (see [Scarlet Alliance, 2023](#)). The generous sharing by AMSWAG members contributed to an improved understanding of trafficking among government officials in attendance. Other sex worker groups in attendance were SWOP NT, Vixen and Scarlet Alliance. Notably, the SWOP NT Coordinator was the only member of the ATWG to attend the 2023 Modern Slavery Conference in Melbourne. Within a month, feedback was provided to the Attorney General Department's organising committee about ways to improve the conference in the future.

Sex worker organisations delivered training to relevant law enforcement agencies.

On 25 May 2023, Scarlet Alliance conducted training for the Australian Federal Police Human Trafficking Investigators Course, coordinated by Mel Bedford and Luke Perritt of the AFP.

In 2023, SWOP NT conducted regular training for NT police cadets. The collaborative training module for Sex Industry Awareness in the NT includes the SWOP NT Coordinator, a representative of NT Sex Crimes Unit and a SWOP NT CALD (culturally and linguistically diverse) peer worker. The CALD peer worker provided case studies as evidence of the historical effects of criminalisation and licensing in the Northern Territory. Those case studies demonstrated the detrimental impact of targeted police raids on migrant workers, including lack of support when travelling to New Zealand due to anti-migrant laws embedded in the NZ legislation, and improved working conditions in decriminalised jurisdictions without the fear and trauma caused by criminalisation of sex work and the threat of raids on workplaces.

*Q.7 Regarding observations on overall anti-trafficking law enforcement efforts; Were efforts equitably enforced or were certain communities disproportionately affected?*

Operation Inglenook raids disproportionately targeted sex industry workplaces.

Operation Inglenook prompted raids on sex industry workplaces in 2023, which were a failed, scattergun approach to identifying exploitation. The raids were highly disruptive and traumatic for sex workers and others on the premises. The raids worsened workplace conditions and actively harmed workers. No incidents of workplace non-compliance were addressed, migrant sex workers' trust of authority was impaired and WHS support was interrupted in the workplaces that needed it the most. Any perceived positive outcomes were distinctly outweighed by the harm caused. Raids disproportionately hurt the workers at these sites, without resulting in substantial detection of unscrupulous actors.

In addition to creating negative health outcomes, raids also directly lead to the creation of barriers to support services, advice, colleagues at other workplaces, networking and community support. Scarlet Alliance and the Scarlet Alliance membership remain concerned that the expansion and extension of Operation Inglenook - particularly the intimidating and terrifying raids - will continue to drive vulnerable migrant workers underground. The raids on workplaces to date have targeted and isolated individual sex workers who are of Asian migrant background, mainly women, for questioning, and collection of personal information. Repeated visits to the same workplaces led the



Scarlet Alliance Asian Migrant Sex Worker Advisory Group (AMSWAG) to describe Inglenook as ‘government-funded harassment and discrimination’.

During raids, Border Force agents demanded sex workers divulge personal information without explaining how or if the information would be protected. Migrant workers were left fearing visits and further questioning from other law-enforcement authorities. Government statements and the Australian Border Force media releases in 2023 claimed that Operation Inglenook was effective at addressing migrant worker exploitation, trafficking and modern slavery. However, support agencies (including those that provide services under the Support for Trafficked People Program) have received *no* referrals as a result of the raids in 2023.

## Protection in 2023

*Q.14 If commercial sex is legalised or decriminalised in the country, how did health officials, labour inspectors, or police identify trafficking victims among persons involved in commercial sex?*

Sex work decriminalisation reduced opportunity for labour exploitation.

In 2023, sex work is recognised under industrial relations and labour protections in NSW ([SafeWork NSW](#)), Victoria ([WorkSafe Victoria](#)), ACT ([ACT Government](#)), Northern Territory ([NT Government](#)), and federally ([Safe Work Australia](#)). The federal protections relating to ‘a person conducting a business or undertaking’ (PCBU) state that ‘PCBU is a broad concept that extends beyond the traditional employer/employee relationship to include all types of modern working arrangements’ and applies legal responsibilities to all PCBUs, including the applicable sex work settings.

Anti-Discrimination protection created civil avenues to report injustice.

In 2023, the Anti-Discrimination protections for sex workers in the Northern Territory were enacted. The protected attribute is:

‘Employment in sex work or engaging in sex work including past employment in sex work or engagement in sex work’ ([NT Anti-Discrimination Act, 2022](#))

*Q. 19 What is the level of cooperation, communication and trust between service providers and law enforcement?*

Sex worker organisations engaged directly with law enforcement.

In 2023, Scarlet Alliance maintained regular engagement with law enforcement officers from trafficking-related teams in the Australian Federal Police. There were five informal, face-to-face meetings that included policy discussions, phone consultations to discuss training logistics, briefing each other during Attorney General consultation processes and debriefing on submissions and policy following government announcements. Such engagement is part of the everyday work of the Australian Federal Police and Scarlet Alliance, and acts as an effective tool for increasing accountability across both organisations

Northern Territory sex workers attended the Anti Trafficking Working Group meeting.

In the Northern Territory, sex work was decriminalised in 2019 and fully implemented in 2020. Throughout 2023, the NT Anti Trafficking Working Group (ATWG) - a committee of the anti-trafficking sector in Northern Territory - met regularly to discuss local issues and national policy. The Red Cross



Complex Caseworkers from the NT Support for Trafficked People Program are the network secretariat of ATWG. Sex Worker Outreach Project (SWOP) NT, a sex worker member organisation of Scarlet Alliance, was one of eight inaugural members and is an active participant in that committee. The group receives all relevant sex worker submissions, related decriminalisation and WHS issues, and the members of the committee then share and distribute among their agencies.

#### Queensland police received training from sex workers.

In 2023, Queensland sex worker organisation Respect Inc. provided training to upskill plainclothes police working with survivors of sexual assault. Respect Inc. also engaged pro-actively and directly with local police stations. When sex workers contact Respect Inc. seeking advice about reporting a perpetrator to the police, the peer educator offers to liaise with Queensland Police Service, brief the officers who will attend to the case, be present as a support person during meetings including when a statement is collected. Respect Inc. workers are also able to report the information anonymously to the police and follow up the progress of the case, or provide a combination of these services depending on the wishes of the sex worker/s involved.

#### Australian Capital Territory sex worker engagement with territory policy

In 2023, SWOP ACT, the organisation representing sex workers in the Australian Capital Territory, supported a sex worker survivor of stealthing - which is defined as non-consensual condom removal during sex. Although this action was declared a crime in 2021, this jurisdiction was the first in Australia to enact this legislation, and this was the first case of its kind brought before the court. In this case, SWOP ACT acted as a go-between for sex worker survivors of assault and the legal system. Engaging directly with local law enforcement allows sex workers to make informed decisions about if, when and how they want to report to and interact with police.

*Q. 21 Are you able to provide observations on trafficking victims and survivors' ability to access justice, as they define it, and the treatment of survivors throughout the criminal legal process?*

#### Anti-trafficking repression continued to reduce access to justice.

Migrant sex workers' access to justice is best protected by policies focusing on the prevention of exploitative conditions, rather than increased criminal justice approaches and surveillance. In her analysis of the Australian Government's response to trafficking, Sarah Steele (2007) notes that targets of anti-trafficking policy are construed as victims needing protection from harm, rather than as individuals deserving of positive rights. Rather than continuing this 'repressive' model, governments should adopt an 'empowering model' aimed at enhancing and restoring the rights of migrant sex workers through the provision of support and assistance to increase autonomy and self-determination. Such an approach would be underpinned by the understanding that sex work is a legitimate occupation. This would include reducing the police presence in sex industry workplaces and strengthening the political and civil rights of sex workers across the board through increased access to resources, training and skill-sharing. For this to occur, it is also imperative that funding is increased for sex worker organisations advocating to all levels of government.

#### Migrant sex worker input into government policy remains unfunded.

In the first week of June 2023, Scarlet Alliance was informed that a funding grant for a Migration Program and the Asian Migrant Sex Advisory Group (AMSWAG) was unsuccessful.

Migrant sex workers are a key demographic impacted by modern slavery, migration and border protection policy, and organisations such as the AMSWAG need to be resourced in order to address relevant issues and offer community support. A meaningful understanding of sexual servitude and slavery must incorporate the nuanced knowledge and voices of migrant sex workers with real-world experience. Without such expertise, the sector risks being unintentionally uninformed, and at worst actively harmful to the stated aim of preventing exploitation. Resourcing is essential to ensure the positive engagement of migrant sex workers with the modern slavery sector in Australia.

Personal peer education support by and for migrant sex workers has been an essential facet of the response to trafficking and modern slavery in Australia for decades. This cannot be provided without funding, and a lack of resources will have long term repercussions for the government and for migrant sex workers. Without essential funding, people with lived experience of these issues - such as AMSWAG members - will be severely limited in their ability to continue their essential work. Scarlet Alliance, when properly resourced, has ensured the on-the-ground experiences of sex workers at risk of modern slavery are consolidated into evidence-based policy, and ensured that sex workers are receiving support that matches their needs.

Scarlet Alliance's own experience and first-hand knowledge demonstrates that ending reliance on debt contracts requires the provision of safe and accessible migration channels for all workers. It also enhances the ability of migrant workers, including migrant sex workers, to access industrial and workplace rights and protections through mechanisms such as Fair Work and jurisdictional tribunals. AMSWAG argues that peer education and specialised support makes a material contribution to the prevention of modern slavery by providing consistent, nationally coherent advice delivered by community members with relevant lived experience. It is not tenable for the Australian government to leave migrant sex worker advocacy, education, information and support unresourced.

*Q. 24 Does the government arrest, detain, imprison, or otherwise punish trafficking victims (whether or not identified as such by authorities) for unlawful acts committed as a direct result of being trafficked (forgery of documents, illegal immigration, unauthorised employment, prostitution, theft, or drug production or transport, etc.)? If so, do these victims disproportionately represent a certain gender, race, ethnicity, or other group or particular type of trafficking?*

Operation Inglenook demonstrated bias towards younger Asian women.

Questions On Notice indicate that in 2023, Operation Inglenook's profiles and targets resulted in the visa cancellation, detention and deportation of predominantly women under the age of 30 with an Asian background. Of the people detained under Operation Inglenook, 82% were from South East Asian countries, 59.1% were aged between 20 and 29 years old and 93.5% were women.

Operation Inglenook targeted sex industry workplaces in the Northern Territory.

In 2023, Operation Inglenook and other federally-sanctioned raids were carried out in the Northern Territory. In early 2023 and again towards the end of the year, NT sex workers made contact with SWOP NT and voiced concerns that the behaviour by Border Force officials was immediately reminiscent of the negative impacts that criminalisation and licensing regimes had on that jurisdiction prior to decriminalisation. Migrant sex workers reported negative mental health concerns, interruption to income, aggressive treatment by officers including badge concealment, being questioned inappropriately (for example, alone or in a state of undress).

## Prevention in 2023

*Q.25 What efforts has the government made to prevent human trafficking? Did the government enforce any policies that further affected marginalised communities already overrepresented among trafficking victims, and increasing their risk to human trafficking? If so, did it make efforts to address those policies?*

Funding for a sex worker migration project was not forthcoming.

Between 2008 and 2018, the Australian government funded a national migration project ostensibly to deliver information about safe migration and the rights and responsibilities of people travelling to Australia.

In 2023, there was less availability of information about safer migration for migrant sex workers travelling in Australia and around the region than there was in 2018.

Sex worker peer organisations must be sufficiently financially supported to run projects and provide services by and for migrant sex workers. The most effective way to address trafficking, slavery and slavery-like offences in the sex industry is to strengthen the human, civil and political rights of migrant sex workers, creating increased autonomy, agency and self-determination.

*Q.27 Does the government provide financial support to NGOs working to promote public awareness?*

AMSWAG was not provided government support.

Between 2009-2018, the Scarlet Alliance Migration Project - staffed entirely by and for migrant sex workers - was granted funding as part of the Australian Government's response to trafficking. The goal was to enhance the capacity of sex worker peer educators in Australia to provide key peer support, education, referrals, and information on rights and responsibilities in relation to Australian laws in each jurisdiction in a variety of languages. This empowered sex workers to more safely navigate pathways for migration and sex work in Australia, as well as form partnerships with international sex worker advocacy and support organisations. The project centred migrant sex worker voices in trafficking legislation and policies to challenge the harmful myths and stereotypes about migrant sex workers in policies and public discourse, and partnered with the Australian Institute of Criminology to conduct research by and for migrant sex workers in Australia.

In early 2023, Scarlet Alliance applied for government funding from the Modern Slavery grants program to continue this work, but were unsuccessful. On 23 June 2023, Scarlet Alliance communicated concerns about this lack of funding to the Attorney General and will continue to follow this up in 2024.

*Q.28 Did the government seek and include the input of survivors in crafting its anti-trafficking laws, regulations, policies, programs, or in their implementation? If so, did the government take steps to ensure input was received and incorporated from a diverse group of survivors?*

Sex workers were consulted during the review of trafficking laws (Crim Code Div 270 + 271).

In 2023, sex workers attended consultation meetings for the 2023 review of the Criminal Code (Div 270 + 271). Sex worker representatives heard AFP officers describe police 'disruption' of migrant sex worker workplaces as a 'successful' method of preventing trafficking or slavery-like crimes.

Scarlet Alliance and our members can confirm that migrant sex workers who directly experienced such 'methods' reported these actions negatively using language such as police raids' or 'undercover stings'. Meanwhile, these same actions are referred to by police as 'visits' or 'disruptions', and were reported in the media as benevolent efforts to 'identify and support trafficking victims'. In practice, the workplaces of Asian migrant sex workers who are not experiencing trafficking or slavery-like conditions are also being targeted for raids by police, and those migrant sex workers are also being harassed and deported. It is also crucial to note that these police raids led to a low number of prosecutions, incongruent with the high number of reported police 'visits' to migrant sex worker workplaces.

Scarlet Alliance has sat on the National Roundtable on Human Trafficking and Slavery since its formation, and many of our member organisations and projects provide regular representation in state and territory anti-trafficking working groups. We were deeply engaged in the 2012 Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill, which recently marked its 10th Anniversary of royal assent.

In 2023, Scarlet Alliance provided a submission to the government review of Criminal Code Divisions 270 and 271. Scarlet Alliance obtained follow up meetings with the Attorney General's Department and corresponded with the Attorney General about the matter on 12 July 2023.

#### Sex workers consulted on the Victim and Survivor Engagement and Empowerment Strategy.

In 2023, the Attorney General's Department conducted a consultation with survivor groups, including migrant sex workers with lived experience), to develop a Victim and Survivor Strategy. Input for the Strategy was gathered by the Department through online consultation with Scarlet Alliance (16 November), in writing via a Scarlet Alliance submission and dossier (24 November), then a smaller, longer focus group with people with lived experience from AMSWAG (22 December). Scarlet Alliance and AMSWAG liaised with the Attorney General's Department in November and December 2023 to arrange, facilitate and host a safer space for migrant sex workers with lived experience to participate in the development of the strategy, and ensure that participants were ethically remunerated.

#### Sex workers continue to lead the development and maintenance of 'Guidelines For Working with Trafficked People' (name change pending).

In 2023, sex worker advocates actively supported the Attorney General's Department and Roundtable efforts to update the 'Guidelines For Working with Trafficked People' to meet National Strategic Priority 3 of the [Action Plan to Combat Modern Slavery 2020-2025](#). Sex worker advocates were previously involved in drafting the [2008 Guidelines](#) with the Australian government, the Human Rights Commission, Anti-Slavery Australia and other relevant groups. Sex workers remain committed to ensuring the next iteration will remain practical and set the global standard. In 2023 a working group of the Roundtable was formed to create terms of reference and appoint a chair. The first meeting of the working group was 15 November 2023.

*Q.29 Did the government allow migrant workers to change employers in a timely manner without obtaining special permissions?*

#### Migrant worker rights in Australia remained an ongoing challenge.

In December 2023, a tripartite co-design approach to comprehensive new protections for migrant workers in exploitative workplaces was discussed at the Roundtable, and it is expected this will

further develop in 2024. Migrant workers in Australia who experience wage theft, exploitation or slavery-like conditions are hampered from reporting their employer for fear of being terminated and deported. A coalition of more than 30 unions, community organisations, churches and NGOs including Scarlet Alliance are actively advocating for law reform that would allow migrant workers to change employers without the risk of losing their visa ([Human Rights Law Centre, 2022](#)).

*Q.31 Did government policies, regulations, or agreements relating to migration, labour, trade, and investment facilitate vulnerabilities to, or incidences of, forced labour or sex trafficking? If so, what actions did the government take to ensure that its policies, regulations, and agreements relating to migration, labour, trade, border security measures and investment did not facilitate trafficking?*

#### Sex workers' input into the Migration Amendment (Strengthening Employer Compliance) Bill.

On 21 July 2023, Scarlet Alliance submitted to the Senate Legal and Constitutional Affairs Committee on the Migration Amendment (Strengthening Employer Compliance) Bill 2023. The submission explained to the committee that the most effective approach to address workplace breaches is to promote education to members of the impacted community using a variety of languages to enhance the ability of sex worker organising and enact workplace protections by working towards widespread decriminalisation. Sex worker organising includes education that addresses sex workers' needs, recognises sex workers' autonomy and agency, and promotes self-determination and solidarity in workplace settings. Government policies should promote industrial rights and create civil remedies to statutory compensation that are accessible to sex workers *without* the threat of deportation.

Criminal penalties that aren't accompanied by civil prevention efforts and human rights measures such as training for front-line staff is counterproductive, erodes trust between migrant workers and enforcement agencies and does not resolve the risks of exploitation of migrant workers. Effective approaches to address labour breaches must be undertaken with a focus on prevention, industrial rights, occupational health and safety, and should include civil remedies such as statutory compensation, non-criminal justice pathways, and equitable access to visas, migration channels and support.

Access to civil avenues of redress must be developed to protect the labour rights of migrant workers. Migrant workers need unimpeded access to industrial mechanisms in order to claim compensation, redress exploitative working conditions and access legal aid and support without fear of deportation or the very real threat of negative impacts on future permanent residency applications.

Scarlet Alliance supports calls to introduce a reliable guarantee against visa cancellation for migrant workers taking action against exploitation through government agencies, trade unions, nonprofits and/or specialist lawyers. We support the model set out in the [Breaking the Silence report](#), which was also endorsed by more than 40 other organisations across Australia. It proposes that the most appropriate way to provide this guarantee is by way of regulations issued pursuant to s 116(2). Unlike s116(1A), which is the subject of this Bill, s116(2) prohibits the Department of Home Affairs from cancelling a visa under circumstances set out in regulations.

## Commentary on the minimum standards (§7106) in 2023

***Criteria.1 - Whether the government of the country vigorously investigates and prosecutes acts of severe forms of trafficking in persons, and convicts and sentences persons responsible for such acts, that take place wholly or partly within the territory of the country, including, as appropriate, requiring incarceration of individuals convicted of such acts.***

Sex workers offered input into the review of trafficking laws (Crim Code Div 270 + 271).

Police presence in sex worker workplaces pushes migrant sex work underground, *increasing* the possibility of trafficking and slavery-like situations. Our state and territory-based member sex worker organisations conduct regular and extensive outreach projects to assist sex workers in a variety of locations. Such initiatives are the key mechanisms that address the primary drivers of trafficking and modern slavery, identify instances of trafficking, slavery and slavery-like offences when they occur in the sex industry. Organisations are then able to provide practical and informed support, or referrals to other support systems, for migrant sex workers who are experiencing, or are at risk of experiencing, trafficking, slavery and slavery-like practices.

We believe that expanding the current criminal justice approach will not advance the rights of victims and survivors of trafficking, slavery and slavery-like practices. Practical experience tells us that broadening the scope of these laws will not only not result in better outcomes, but will result in overcapture, increased police and immigration surveillance, harassment, arrest and deportation of migrant sex workers.

***Criteria.6 - Whether the government of the country monitors immigration and emigration patterns for evidence of severe forms of trafficking in persons.***

Asian migrant sex workers have expressed anger over Operation Ingleenook.

In 2023, Operation Ingleenook raids on sex industry workplaces had multiple negative impacts; The raids pushed Asian migrant workers underground and made the community fearful of authorities. This specifically harms people who work in the sex industry as it makes sex workers unlikely to share any information with law enforcement

Asian migrant sex workers told Scarlet Alliance and AMSWAG:

“Border Force please do not raid us. Instead, provide access to a fair visa program for workers from any industry to work in Australia, including sex workers.

To avoid this happening again, it’s necessary to let the workers who are exploited know how to navigate help. Multilingual peer education outreach teams at local sex worker organisations communicate to Asian migrant sex workers in their preferred languages to let them know they can ask for help even if they don’t speak English. Many workers don’t ask for help because they worry about discrimination. We wish the social environment would be more friendly to Asian migrant sex workers.

Detention and deportation is dehumanising and dangerous to our freedom of movement, and demonstrates gross disregard for our work and human rights. Deportation makes migrant workers more vulnerable to exploitation, not less.” ([Scarlet Alliance, 9 Aug 2023](#)).

By August 2023, there had been Border Force raids on sex worker workplaces in Melbourne, Sydney, Adelaide, Brisbane, Darwin and regional Northern Territory. At least 13 workplaces were targeted in July alone and it was reported that one Sydney raid involved 25 officers including four armed police officers entering the sex worker workplace.

[The 2023 review of Australia’s Migration System](#) recommended allowing greater migrant worker mobility as a way to decrease the inherent risk of exploitation. It further recommended migrant worker exploitation be further reduced through the more effective provision of information

regarding workplace rights and conditions, introducing new migrants to relevant community support and networking opportunities, and pathways to legal remedies if necessary. Migrant sex workers working in sex worker peer organisations have a key role in providing such support, but are not currently funded to do this work, despite a proven track record of successful peer education and community development.

The law enforcement approach is still inherently not ‘person centred’.

A law enforcement-based approach to trafficking in persons prioritises criminal justice proceedings over the needs and rights of people who have been trafficked. It has also led to practices that violate the rights of people who have been trafficked, including the use of excessive force, harassment and abuse, interrogation without an attorney present, and detention of trafficked persons.

Women interviewed for the [Sex Workers Project 2009 report](#) described receiving assistance from people they knew, including clients and coworkers, who recognised that they were in coercive situations and stepped in to offer help. The ability to leave trafficking situations in a non-coercive fashion and thereby avoiding the trauma associated with a law enforcement raid, sex workers were more prepared to cooperate with law enforcement to assist with the prosecution of their traffickers. Ultimately, an approach that recognises, supports and prioritises the rights, agency and self-determination of trafficked persons is more likely to produce better outcomes for trafficking survivors and legal ramifications for those responsible.

It is also clear that local police raids focusing on sex industry venues are not at all effective in identifying trafficked persons, and can result in further violations of the human rights of trafficked persons and sex workers alike. Additionally, conflation of trafficking and sex work diverts anti-trafficking resources away from trafficking in other labor sectors, including domestic work, agricultural labor, and service sectors, with no accompanying increase in the identification of trafficked persons. A significant number of trafficked persons are able to leave coercive situations without being subjected to the trauma of a law enforcement raid, with the help of a variety of actors, including friends and contacts in their communities, co-workers, clients, and other sex workers. ([Sex Workers Project, 2009](#))

***Criteria.12 - Whether the government of the country has made serious and sustained efforts to reduce the demand for (a) commercial sex acts.***

Most sex work is recognised as legitimate work in multiple jurisdictions in Australia.

## Commentary on 2023 Prioritised Recommendations for Australia (Tier 1)

*Investigate and prosecute labour trafficking under anti-trafficking laws instead of as labour or employment violations.*

The Department of Home Affairs and Fair Work Ombudsman lack a firewall.

The current inadequate ‘assurance protocol’ must be replaced with a guaranteed ‘firewall’ between the Fair Work Ombudsman, Safe Work Australia jurisdictional bodies and the Department of Home Affairs to protect migrant workers from visa-related repercussions when they speak out against trafficking, slavery and slavery-like practices, exploitation or industrial issues.



Advocates argued for a new visa category.

A new substantive visa category must be created to allow migrant workers with outstanding claims for workplace entitlements to remain in the country with working rights until their claim has been settled.

*Further decouple the provision of services to victims from participation in the criminal justice process, and increase services available to victims who are unable or unwilling to participate in the criminal justice process.*

Government support services are still conditional on cooperation with law enforcement.

In 2023, Scarlet Alliance held six formal advocacy briefings to update Senators on the progress of the decoupling; 18 March, 3 April, 11 April, 4 May, 11 July and 21 November. A support service for victims and survivors of trafficking, slavery and slavery-like practices that does not necessitate engagement with police in order to access support is yet to be implemented. This includes enabling additional referral pathways from a diverse range of culturally-appropriate organisations. On 18 August 2023, Scarlet Alliance attended a meeting with the Department of Social Services and relevant public servants for a consultation and to gather information about the progress of the decoupling.

*Amend the statutory definition of trafficking under the criminal code to not require movement of the victim as an element of the crime.*

Anti-trafficking legislation did not improve the human rights of sex workers.

The Palermo Protocol is not a human rights instrument. It is designed to facilitate cooperation between states to combat organised crime, rather than to protect or give restitution to the victims of crime. It mandates that they are responsible for strengthening border controls to prevent trafficking and smuggling. Border controls and police cooperation - not human rights protection - lies at the heart of both the smuggling and trafficking protocols ([Anderson et al, ND](#)).

Contrary to protecting the human rights of migrant sex workers, anti-trafficking approaches that fail to centre the agency and rights of migrant sex workers have resulted in counterproductive responses that have increased stigma and discrimination against sex workers as well as increasing sex workers' vulnerabilities to trafficking.

Overly broad offences intended to criminalise those who recruit, transport, transfer, harbour or receive an exploited or trafficked sex worker has also criminalised many support and safety structures such as receptionists, security guards, and drivers. As a result, support and safety structures that sex workers rely on are forced to operate covertly. Sex workers are often forced to work alone, directly undermining our right to freedom of association, decreasing access to support and increasing the isolation already experienced by many sex workers.

Scarlet Alliance did not support the removal of the element of 'movement' from Criminal Code Division 271; provisions for trafficking people into, out of, and within Australia.

On 24 March 2023, Scarlet Alliance submitted to the Attorney General's Department that there should be no amendment to Division 271 to remove the element of physical movement of a person. Movement across a border is the only factor that distinguishes trafficking crimes from offences listed

in Division 270 offences of modern slavery, servitude, forced labour and deceptive recruiting. Movement is also an essential element for the identification of Division 271 offences. The crimes that include movement cover a broad range of conduct, including online and technology-facilitated movement and proposed movement.

There is no evidence that offending is not adequately addressed by the existing legislation.

Lowering the bar to prosecute activity that would otherwise not be a crime is not an effective use of government resources. Trafficking cannot be prosecuted if trafficking is not occurring.

*Train police, immigration officials, and other front-line officers, both offshore and onshore, to recognise indicators of trafficking and proactively respond to suspected cases of both sex and labour trafficking.*

Online self-directed training modules were not as effective as in-person training.

Training for indicators of trafficking among public officials has moved online in recent years. Scarlet Alliance's assessment is that while this move is well-intentioned, self-directed remote learning has reduced the usefulness of the learning. It has resulted in lost opportunities to network and limits opportunities to build trust and gain new contacts from interactions at in-person training sessions.

10,000 newly trained government officers did not identify trafficking.

At a Roundtable meeting on 5 December 2023, it was stated that "ten thousand officials have now completed the online training to identify trafficking victims". This is a new record for the government training program. However, we note it *did not result* in increased identification of trafficking. This could be due to a range of reasons - government officials clicking through the training without retaining information, or the trained government officials not conducting any regulatory activity in relevant workplaces. Incidences of trafficking-like work conditions in Australia are also very low, and are more likely to be reported within the community and not via a government department. Regardless of the reason, Scarlet Alliance concludes that online self-directed training modules are ineffective and are not a sufficient substitute for investment in community capacity that brings government officials into face-to-face training with affected communities and people with lived experience.

Officers involved in Operation Ingleenook did not do the online training.

Although it was stated that "ten thousand officials have now completed the online training to identify trafficking victims", it was also stated at the same meeting that immigration officials carrying out Operation Ingleenook had not done the online training and were not mandated to do so.

On 20 December 2023, in a meeting with Vaughan Baxter (Operation Ingleenook, Border Force, Department of Home Affairs), it was stated that he had not done the online training, and had not been mandated to do so.

On 21 December 2023, in a meeting with Melati Smith and Troy Sokaloff (Regional Command Queensland, Border Force, Department of Home Affairs), it was stated that their team - which was responsible for actioning Operation Ingleenook - had not done the online training, had not been mandated to do the online training, and had never heard about the online training.