



**Scarlet Alliance, Australian Sex Workers Association, Written Submission for CEDAW Discussion on the General Recommendation on Trafficking in Women and Girls in the Context of Global Migration**

Scarlet Alliance is the Australian Sex Workers Association. Through our objectives, policies and programs, Scarlet Alliance aims to achieve equality, social, legal, political, cultural and economic justice for past and present workers in the sex industry. Formed in 1989, Scarlet Alliance is the national peak body representing a membership of individual sex workers, and sex worker networks, groups, projects and organisations from around Australia. Scarlet Alliance is a leader when it comes to advocating for the health, safety and welfare of workers in Australia's sex industry. Through our projects and work and that of our member organisations, we have the highest level of contact with sex workers in Australia of any agency, government or non-government.

As highlighted by the *Concept Note prepared for the Committee on the Elimination of Discrimination Against Women on its elaboration of a General Recommendation on Trafficking in Women and Girls in the Context of Global Migration* (the Concept Note), the aim of the General Recommendations is to provide State parties guidance in fulfilling Article 6 of the *Convention on the Elimination of All Forms of Discrimination against Women*. Article 6 obliges states to 'suppress all forms of trafficking in women and girls, ensuring that the human rights of women and girls are respected, protected and fulfilled in accordance with international law'.<sup>1</sup> Sex workers ongoing experience of criminalisation, deportation, discrimination and stigma as well as human rights violations in the guise of anti-trafficking interventions signal the crucial need for legislative and policy reform. Sex workers need an inclusive approach to 'gender sensitive' anti-trafficking responses that are sex worker driven; center the agency and human rights of sex workers; advocate for rights-based approaches to sex work regulation; provide access to safe migration pathways; ensures full labor rights; and provides access to peer and culturally sensitive sex worker services. Given that anti-trafficking measures around the world have disproportionately focused on the sex industry and have perpetuated exploitation and human rights violations rather than correct it, protecting sex workers' rights is imperative to achieving gender equality and fulfilling the human rights of women and girls as defined under CEDAW.

***Failure of 'End Demand' approaches***

*The Concept Note* refers to 'demand for the labour or services provided by trafficked victims' as a key root cause of trafficking.<sup>2</sup> In the context of the sex industry, the concept of 'demand' is often used to refer to employers' and clients' seeking services provided by sex workers. The targeting of

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<sup>1</sup> United Nations Human Rights Office of the High Commission (OHCHR). (2018). *Concept Note prepared for the Committee on the Elimination of Discrimination Against Women on its elaboration of a General Recommendation on Trafficking in Women and Girls in the Context of Global Migration*. Retrieved from <https://www.ohchr.org/EN/HRBodies/CEDAW/Pages/DiscussionOnTrafficking.aspx> on 26/01/19. Pg 1.

<sup>2</sup> Ibid. Pg 5.

clients of sex workers for criminal penalties has been promoted as an 'end demand' based prevention approach to trafficking in the sex industry. The ultimate goal of the criminalisation of clients is to tackle exploitation and trafficking in the sex industry by eliminating the entire sex work sector.

'End demand' measures that propose to reduce demand for services provided by female sex workers by criminalising the clients reflect the inaccurate assumption that all clients are abusive and all female sex workers are victims of exploitation. It conflates all sex work and labour exploitation in the sex industry with trafficking. Such measures ultimately blame clients, employers and sex workers for the wider systemic injustices in law, policy and immigration that create the circumstances that may expose some migrant sex workers to exploitation in the sex industry.

The focus on demand fails to centre the agency and human rights of migrant sex workers, including those experiencing exploitation and trafficking. Although 'end demand' based prevention approaches to trafficking has been promoted as a gender equality measure that protects the human rights of sex workers, the impact of these laws have been detrimental to the rights and safety of sex workers. Despite claims that the criminalisation of clients will protect sex workers while driving down demand for commercial sexual services and human trafficking, research conducted in countries where similar legislation has been introduced reveals that the laws have hindered sex workers' ability to report crime to the police and made sex workers more vulnerable to violence.<sup>3,4</sup>

Research from France, Canada and Sweden has shown that since the implementation of laws that target of clients and third parties for criminal penalties they have:

- hindered sex workers ability to report crime to the police<sup>5</sup>;
- made sex workers more vulnerable to violence<sup>6</sup>;
- not reduced the number of sex workers<sup>7</sup>;
- forced sex workers to operate in more isolated settings<sup>8</sup>; and
- deteriorated the rights, health and safety of sex workers<sup>9</sup>.

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<sup>3</sup> Amnesty International. (2016a). *Amnesty International policy on State obligations to respect, protect and fulfil the human rights of sex workers*. Retrieved from <https://www.amnesty.org/en/documents/pol30/4062/2016/en/> on 25/01/19.

<sup>4</sup> Bail, H. L., & Giametta, C. (2018). *What do sex workers think about the French prostitution act: a study on the impact of the law from 13th April 2016 against the 'Prostitution System' in France*. Retrieved from <http://www.medecinsdumonde.org/sites/default/files/ENGLISH-Synth%C3%A8se-Rapport-prostitution-BD.PDF> on 25/01/19.

<sup>5</sup> Bail, H. L., & Giametta, C. (2018). *What do sex workers think about the French prostitution act: a study on the impact of the law from 13th April 2016 against the 'Prostitution System' in France*. Retrieved from <http://www.medecinsdumonde.org/sites/default/files/ENGLISH-Synth%C3%A8se-Rapport-prostitution-BD.PDF> on 25/01/19. Pg7.

<sup>6</sup> Landsberg, A., Shannon, K., Krüsi, A., DeBeck, K., Milloy, M., Nosova, E., . . . Hayashi, K. (2017). Criminalizing sex work clients and rushed negotiations among sex workers who use drugs in a Canadian setting. *Journal of Urban Health*, 94(4). Pg567.

<sup>7</sup> Bail, H. L., & Giametta, C. (2018). *What do sex workers think about the French prostitution act: a study on the impact of the law from 13th April 2016 against the 'Prostitution System' in France*. Retrieved from <http://www.medecinsdumonde.org/sites/default/files/ENGLISH-Synth%C3%A8se-Rapport-prostitution-BD.PDF> on 25/01/19Pg4.

<sup>8</sup> Amnesty International. (2016b). *The human cost of 'crushing' the market: Criminalisation of sex work in Norway*. Retrieved from [https://www.amnestyusa.org/wp-content/uploads/2017/04/norway\\_report\\_-\\_sex\\_workers\\_rights\\_-\\_embargoed\\_-\\_final.pdf](https://www.amnestyusa.org/wp-content/uploads/2017/04/norway_report_-_sex_workers_rights_-_embargoed_-_final.pdf) on 25/01/19. Pg23.

<sup>9</sup> Ibid.

### ***The negative impact of criminalising sex work***

While the implementation of offences that accurately capture perpetrators of trafficking is an important component in the anti-trafficking response, the laws that apply to sex work itself plays a critical role in sex workers ability to access justice. Many studies have documented sex workers heightened risk of human rights violations, including HIV exposure and serious violence, particularly by State officials, as well as the significant barriers to accessing justice caused by criminalisation.

Criminalisation:

- reduces sex workers access to justice mechanisms as sex workers fear that reporting crime will result in surveillance, being exposed as a sex worker, charged, harassed, incarcerated, or deported. For example, in the *Western Australian (WA) Law and Sex Worker Health (LASH) Study*, a large study investigating the impact of criminalisation on sex workers health and welfare, found that 25.5% and 23.4% of sex workers surveyed respectively responded that they felt 'not comfortable' or 'very uncomfortable' when asked about their level of comfort of contacting the police in relation to complaints such as sexual assault, threats, theft, and unpaid services<sup>10</sup>;
- forces sex workers to operate covertly, creating significant barriers to accessing essential services, such as health, support and legal services, in fear that it will result in stigma and discrimination or being reported to the authorities<sup>11</sup>;
- reduces sex workers access to work health and safety protections<sup>12</sup>;
- brothel licensing and criminalisation in Australia has resulted in poorer access to health promotion and support<sup>13</sup>;
- impedes best practice, human rights-based HIV responses. For example, where condoms are used as evidence, sex workers are discouraged from carrying condoms. In addition, as highlighted above, criminalisation creates significant barriers to accessing essential support and health services; and
- violates sex workers basic human rights. For example, criminalisation denies sex workers right to free choice of employment, favourable conditions at work, equal protection of the law, and freedom of association.

### ***Rights Based Approaches to Trafficking Prevention***

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 and have increased sex workers vulnerabilities to trafficking. For example, overly broad offences intended to criminalise

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<sup>10</sup> Selvey, L., Hallett, J., Lobo, R., McCausland, K., Bates, J., & Donovan, B. . (2017). *Law and Sex worker Health (LASH) Study: A summary report to the Western Australian Department of Health*. Perth: School of Public Health, Curtin University.

<sup>11</sup> UNAIDS, & UNFPA. (2011). *Building Partnerships on HIV and Sex Work: Report and Recommendations from the first Asia and the Pacific Regional Consultation on HIV and Sex Work*.

<sup>12</sup> Donovan, B., Harcourt, C., Egger, S., Schneider, K., O'Connor, J., Marshall, L., . . . Fairley, C. K. (2010). *The sex industry in Western Australia: a report to the Western Australian Government*. Sydney: National Centre in HIV Epidemiology and Clinical Research, University of New South Wales.

<sup>13</sup> Harcourt, C., O'connor, J., Egger, S., Fairley, C. K., Wand, H., Chen, M. Y., . . . Donovan, B. (2010). *The decriminalisation of prostitution is associated with better coverage of health promotion programs for sex workers*. Australian and New Zealand Journal of public health, 34(5).

those who recruit, transport, transfer, harbour or receive a sex worker found to be experiencing exploitation and trafficking has also criminalised our support and safety structures such as receptionists, security guards, and drivers. As a result, sex workers and our support and safety structures are forced to operate covertly and sex workers are often forced to work alone<sup>14</sup>, decreasing our access to support structures, increasing isolation and undermining sex worker's right to freedom of association.

Moreover, anti-trafficking measures that are not rights driven have created barriers for victims of trafficking to access support. For example, ongoing access to the Australian Government's Support for Trafficked People Program beyond the initial period is still contingent on the victim's participation in a criminal proceeding. Trafficked women may be unable or unwilling to participate in a criminal proceeding for multiple reasons, including 'trauma, the fear of deportation, retribution from traffickers, the stigma associated with being identified as a trafficked person, poor trust in the criminal justice system and lack of meaningful support.'<sup>15</sup> The requirement of trafficked victims to participate in a criminal proceeding to access support is a serious barrier for victims to access justice.

Migrant sex workers' access to justice are best protected by policies focusing on 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 notes that targets of anti-trafficking policy are constructed as victims needing protection from harm rather than as individuals deserving of positive rights.<sup>16</sup> Lin Chew, a founding member of the Global Alliance Against Trafficking in Women (GAATW), argued that instead of a 'repressive' model, governments should adopt an 'empowering model', aimed at enhancing and restoring the rights of migrant sex workers, provide support and assistance in an enabling environment and increase autonomy and self-determination. As Chew argues, such an approach would include understanding sex work as a legitimate occupation, recognising the agency of women and girls, strengthening the political and civil rights of sex workers, increasing access to resources, training and jobs, and mobilising for self-representation and participation at all levels.<sup>17</sup>

Scarlet Alliance submits that sex worker driven, evidence-based approaches to sex work, migration and trafficking should be pursued over criminal justice or demand-based approaches to prevent trafficking in the sex industry. The most effective approaches aim to address the circumstances that expose sex workers to exploitation and prioritise the needs, agency and self-determination of victims over criminal prosecutions and increased surveillance. States must implement prevention measures that:

- ensure equal labour rights of migrant sex workers – Migrant sex workers need equal access to industrial mechanisms to claim compensation, redress exploitative working conditions and access legal aid and support without needing to contribute to a criminal proceeding or

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<sup>14</sup> Network for Sex Worker Projects (NSWP). (2017). *The Decriminalisation of Third Parties*. Retrieved from <http://www.nswp.org/resource/policy-brief-the-decriminalisation-third-parties> on 25/01/19. Pg6.

<sup>15</sup> YWCA Australia. (2014). *2014 CEDAW Shadow Report A non-government perspective on Australia's implementation of the United Nations Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)*. Retrieved from [https://www.equalityrightsalliance.org.au/wp-content/uploads/2017/01/YWCA\\_CEDAW\\_Main-Report\\_final.pdf](https://www.equalityrightsalliance.org.au/wp-content/uploads/2017/01/YWCA_CEDAW_Main-Report_final.pdf) on 25/01/19. Pg28.

<sup>16</sup> Steele, S. (2007). *Trafficking in People: The Australian Government's Response*. *Alternative Law Journal*, 32(1).

<sup>17</sup> Chew, L. (1998). *Prostitution and Migration: Issues and Approaches*. Presented to Asia Pacific Network of Sex Workers. Calcutta. Retrieved from <http://www.scarletalliance.org.au/library/chew98> on 25/01/19.

without the need for labour exploitation to fit within a trafficking framework in order to access support;

- include translated information on visa options and conditions, industrial rights, human rights, justice mechanisms and relevant laws in multiple languages to increase migrant workers awareness of their rights and responsibilities;
- provide safe and accessible migration pathways for sex workers –Trafficking and exploitation of migrant workers can be prevented at its source by providing migrants with access to translated information and legal, safe and accessible migration avenues that do not require migrant workers to use the assistance of an agent, reducing traffickers access to migrant workers; and
- support multilingual peer education and culturally appropriate service provision through multicultural projects within sex worker organisations, peer translated resources and community engagement.

***Responsibility of State parties to create conditions to address the root causes of trafficking for sex workers.***

The UN's 2030 Sustainable Development Agenda commits to universality, human rights and leaving nobody behind.<sup>18</sup> Efforts to address 'gender-stereotyped services' as a measure to prevent trafficking in the sex industry must also recognise and advance the agency and labour rights of sex workers. In Australia, the human trafficking convictions related to the sex industry involved serious labour exploitation including long working hours, inadequate breaks and time off, withheld wages, and incurring large and unfair debts – not forced sex work.<sup>19</sup> Scarlet Alliance submit that States must fulfil their obligation in reaching the SDG target 8.8:

'Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment.'<sup>20</sup>

Ensuring migrant sex workers have equal access to industrial mechanisms to claim compensation, redress exploitative working conditions and access legal aid and support without needing to contribute to a criminal proceeding or without the need for labour exploitation to fit within a trafficking framework to access support is an essential component in addressing the root causes of trafficking in the sex industry. It would correct the conditions that disadvantage sex workers, thus reducing the power imbalance between employer and migrant worker that exacerbates potential for trafficking and exploitation

A crucial target of SDG 5: Achieve gender equality and empower all women and girls is to 'adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels.'<sup>21</sup> The promotion of 'gender-sensitive' anti-

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<sup>18</sup> General Assembly Resolution 70/1. (2015). *Transforming our world: the 2030 Agenda for Sustainable Development*: . (A/RES/70/1 ). Retrieved from [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/70/1&Lang=E](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E) on 25/01/19.

<sup>19</sup> Australian Government. (2016). *Trafficking in persons: the Australian Government response* Canberra: the Parliament of the Commonwealth of Australia: Commonwealth of Australia.

<sup>20</sup> United Nations. (2015a). *Promote inclusive and sustainable economic growth, employment and decent work for all*. Retrieved from <https://www.un.org/sustainabledevelopment/economic-growth/> on 25/01/19.

<sup>21</sup> United Nations. (2015b). Goal 5: Achieve gender equality and empower all women and girls. Retrieved from Retrieved from <https://www.un.org/sustainabledevelopment/gender-equality/> on 25/01/19.

trafficking responses requires an inclusive approach in which sex workers full range of human and labour rights are also protected. While some promote the ending of demand for services provided by female sex workers an essential gender equality measure, there is a growing body of global evidence that indicates that regulatory models that criminalise the clients of sex workers reduce sex workers control over our work and compromises our ability to work safely, reproducing the very circumstances that make some sex workers vulnerable to exploitation and trafficking.<sup>22,23</sup> To ensure States are implementing policies and legislation that promote 'gender equality and the empowerment' of all women and girls, including those operating in the sex industry, it is essential that States implement policies that are sex worker rights driven and evidence-based.

### ***Tackling poor governance, including corruption of State officials.***

One of the major drivers for decriminalisation in NSW was the findings of the Wood Royal Commission showing 'a clear nexus between police corruption (in the NSW Police Force) and the operation of brothels.'<sup>24</sup> Another government study found that the criminalisation of large sectors of the sex industry increased opportunities for corruption, particularly police corruption.<sup>25</sup> Research demonstrates that in criminalised jurisdictions sex workers were more likely to report being harassed by police, and that this harassment included verbal abuse, racial insults, stalking, phone calls and requests for sexual favours.<sup>26</sup> The 2016 *NSW Government Response to the Legislative Assembly Inquiry into the Regulation of Brothels* warned against the reintroduction of police in the sex industry as it 'risks creating similar outcomes to re-criminalising sex work'.<sup>27</sup> Criminalisation and overly restrictive sex industry regulation results in poor governance of the sex industry, increases opportunities for corruption, pushes the sex industry underground, and harms migrant sex workers, not traffickers

In New Zealand (NZ), where the sex industry is decriminalised, the NZ Government's Prostitution Law Review Committee found that 'links between (organised) crime and prostitution are tenuous'<sup>28</sup> and that greater industry transparency under decriminalisation aids anti-trafficking efforts. In NSW's decriminalised sex industry, the regulation of the sex industry by a number of different sectors of government, including the federal and state industrial rights departments, health department and local councils, have been very effective in maintaining transparency of the sex industry, workplace

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<sup>22</sup> Amnesty International. (2016a). *Amnesty International policy on State obligations to respect, protect and fulfil the human rights of sex workers*. Retrieved from <https://www.amnesty.org/en/documents/pol30/4062/2016/en/> on 25/01/19.

<sup>23</sup> Bail, H. L., & Giametta, C. (2018). *What do sex workers think about the French prostitution act: a study on the impact of the law from 13th April 2016 against the 'Prostitution System' in France*. Retrieved from <http://www.medecinsdumonde.org/sites/default/files/ENGLISH-Synth%C3%A8se-Rapport-prostitution-BD.PDF> on 25/01/19.

<sup>24</sup> New South Walse Government. (1997). *Royal Commission into the NSW Police Service: Final Report- Corruption (Vol. 1)* Retrieved from <https://www.pic.nsw.gov.au/Report.aspx?ReportId=100> on 25/01/19. Pg13.

<sup>25</sup> Prostitution Law Reform Working Group. (2007). *Prostitution Law Reform for Western Australia: Report of the Prostitution Law Reform Working Group*. Office of the Attorney General. Pg14.

<sup>26</sup> Woodward, C., & Fischer, J. (2005). Regulating the world's oldest profession: Queensland's experience with a regulated sex industry. *Research for Sex Work*, 8. Pg17.

<sup>27</sup> Minister for Innovation and Better Regulation. (2016). *NSW Government Response to the Legislative Assembly Inquiry into the Regulation of Brothels*. Retrieved from <https://www.parliament.nsw.gov.au/committees/listofcommittees/Pages/committee-details.aspx?pk=185#tab-governmentresponses> ib 25/01/19. Pg 3.

<sup>28</sup> Ministry of Justice. (2008). *Report of the Prostitution Law Review Committee on the operation of the Prostitution Reform Act 2003*. New Zealand: New Zealand Government. Pg 163-164.

standards and reducing corruption of State officials. The NSW decriminalised sex industry and its higher rates of workplace and health standards compared with other states and territories<sup>29</sup> proves that when the sex industry is treated as a legitimate business, it brings transparency and accountability.

***Understanding of the mechanisms and cooperation needed to detect perpetrators of trafficking, both nationally and internationally.***

As highlighted above, decriminalisation enables a ‘whole of government’ approach to sex industry regulation in which a number of different government sectors are involved in the effective regulation of the sex industry, not just the police, bringing greater transparency and accountability. When the sex industry is not criminalised or regulated through overly restrictive laws, there are far fewer barriers for sex workers to report instances of exploitation to relevant organisations or authorities as sex workers do not fear that reporting will result in being prosecuted or deported. Decriminalisation of the sex industry is an essential mechanism in creating the most enabling environment to advance the labour and human rights of sex workers.

Numerous Australian federal inquiries have highlighted the urgent need for a greater coordinated response.<sup>30,31</sup> Scarlet Alliance submits that a greater coordinated response to trafficking requires ‘a model of collaborative practice’ in which affected communities are key drivers in forming and implementing anti-trafficking responses impacting them. For example, training provided to authorities involved in detecting trafficking in the sex industry must be driven by migrant sex workers to train authorities on actual indicators of trafficking and in working appropriately with sex workers. The inclusion of affected communities in anti-trafficking responses encourages communities to work together to tackle trafficking in their industries and within their communities and will ensure a greater coordinated response. Additionally, meaningfully including communities in the anti-trafficking response will ensure effective, tailored approaches that are cost effective, culturally appropriate and will result in a coordinated response that does not contravene the rights of the community.

***Clarity on the number of trafficking victims placed in detention and the number of perpetrators also detained.***

The Committee will be presented with global, regional and national trafficking and slavery estimates that are alarming. In 2006, the General Accountability Office (GAO), a US based government department, published a report which examined the stated estimates of global trafficking. This report found that global estimates of people trafficked was rife with ‘methodological weaknesses,

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<sup>29</sup> Donovan, B., Harcourt, C., Egger, S., Watchirs Smith, L., Schneider, K., Kaldor, J., . . . Tabrizi, S. (2012). *The sex industry in New South Wales: a report to the NSW Ministry of Health*. Sydney: Kirby Institute, University of New South Wales.

<sup>30</sup> Joint Standing Committee on Foreign Affairs Defence and Trade. (2017). *Hidden in Plain Sight: An inquiry into establishing a Modern Slavery Act in Australia*. Commonwealth of Australia. Retrieved from [https://www.apf.gov.au/Parliamentary\\_Business/Committees/Joint/Foreign\\_Affairs\\_Defence\\_and\\_Trade/ModernSlavery/Final\\_report](https://www.apf.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/ModernSlavery/Final_report) on 25/01/19. Pgxliii.

<sup>31</sup> The Parliamentary Joint Committee on Law Enforcement. (2017). *An inquiry into human trafficking, slavery and slavery-like practices*. Commonwealth of Australia. Retrieved from [https://www.apf.gov.au/Parliamentary\\_Business/Committees/Joint/Law\\_Enforcement/Humantrafficking45/Report](https://www.apf.gov.au/Parliamentary_Business/Committees/Joint/Law_Enforcement/Humantrafficking45/Report) on 25/01/19. Pgxix.

gaps in data and numerical discrepancies' and it concluded that 'country data are generally not available, reliable, or comparable.'<sup>32</sup> A growing body of researchers are criticising the promotion of misleading estimates proffered by some activists, organisations, and governments for their 'lack of methodological transparency' and source documentation<sup>33</sup>, and for the lack of a standard definition of 'victims of trafficking' as a basis for estimates of the magnitude of the problem.<sup>34</sup>

Previous trafficking interventions and inquiries have almost solely focused on the sex industry. Despite enormous surveillance, heavy police investigations, substantial investment into criminal justice approaches, and the introduction of legislation that widened the types of offences that are now covered under anti-trafficking, only 14 trafficking convictions related to the sex industry have been made since their introduction.<sup>35</sup> Although prosecutions will not show the whole picture, this low number of trafficking in the Australian sex industry is consistent with research and evidence from sex worker organisations that interface daily with sex workers in their workplaces who assert that exploitation is not the experience for the vast majority of migrant sex workers in Australia. Hence, it is unreasonable to assume that the discrepancy between estimates and actual convictions is due to widespread under-reporting.

Migrant sex workers must be involved in the directing, monitoring and evaluating of studies that aim to generate data about the working conditions, experiences and needs of migrant sex workers, including those experiencing exploitation. These studies must include multi-lingual sex worker peer educators involved in the designs, interviews and/or survey collection. This approach has been extremely effective in producing sound research with positive benefits for the community<sup>36</sup>. Supporting sex-worker led, community-driven research leads to reliable evidence-based data and policies which are effective in reducing disadvantage by supporting the rights of migrant sex workers.

***The Provision of appropriate assistance and services to victims of trafficking including both short term as well as comprehensive, survivor-centred, long-term services.***

Scarlet Alliance submits that migrant workers must be provided with anonymous and free civil legal aid. Often reporting to the police is not a logical option as migrant workers may fear prosecution or deportation upon reporting to the authorities. Migrant workers experiencing exploitation or trafficking require early legal aid to assess their options and consequences and make informed decision.

*Migrant Sex Workers in Australia*, a large study assessing 'the work and migration experiences of migrant sex workers in Australia', highlighted that there are 'intersections of social and structural

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<sup>32</sup> United States Government Accountability Office (GAO). (2006). *Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance U.S Anti-Trafficking Efforts Abroad*. Report to the Chairman, Committee on the Judiciary and the Chairman, Committee on International Relations, House of Representatives. Retrieved from <https://www.gao.gov/new.items/d06825.pdf> on 25/01/19. Pg10.

<sup>33</sup> Kelly, L. (2005). "You can find anything you want": A critical reflection on research on trafficking in persons within and into Europe. *International Migration*, 43(1-2).

<sup>34</sup> Gozdziaik, E. M., & Collett, E. A. (2005). *Research on human trafficking in North America: A review of literature*. *International Migration*, 43(1-2).

<sup>35</sup> Australian Government. (2016). *Trafficking in persons: the Australian Government response* Canberra: the Parliament of the Commonwealth of Australia: Commonwealth of Australia.

<sup>36</sup> Renshaw L, Kim J, Fawkes J & Jeffreys E. 2015. Migrant sex workers in Australia. Research and public policy series No. 131. Canberra: Australian Institute of Criminology. <https://aic.gov.au/publications/rpp/rpp131>

barriers', such as stigma and discrimination that exclude migrant sex workers from mainstream services.<sup>37</sup> The study highlighted the value of peer based migrant sex worker services in bridging cultural and language gaps and providing access to essential services which are tailored to the specific needs of migrant sex workers.

***Challenges in implementing anti-trafficking strategies, including legislation, national action plans and operationalisation of specialised mechanism.***

While it is important to acknowledge that the sex industry is one of the many industries where it is possible for women to experience exploitation and trafficking, it is important not to focus discussions and interventions solely on trafficking in the sex industry. The oversexualisation of trafficking legislation and discourse is a significant barrier to ensuring appropriate strategies are implemented to identify and address trafficking in all industries. In Australia, the 'de-sexualising' of trafficking offences has meant that anti-trafficking measures can now apply to all forms of trafficking, not just trafficking in the sex industry. Since the broadening of trafficking offences to ensure it applies to all forms of trafficking, detection of trafficking in other industries have significantly increased.

There is also concern that undue focus on trafficking in the sex industry can have the unintended consequence of endangering the human rights of migrant sex workers. For example, anecdotal evidence collected by sex worker organisations in Thailand and Australia demonstrate that sex worker visa applicants are routinely discriminated against upon disclosing their sex work, in part due to the perception that migrant sex workers from the Asia-Pacific region are trafficking victims. In her November 2011 visit to Australia, the UN Special Rapporteur on Trafficking in Persons, Ms. Joy Ngozi Ezeilo, noted that:

'There is need to move away from over-sexualizing the discourse on trafficking, which invariably contributes to the common stereotype of victims of trafficking as being women and girls forced into prostitution or other forms of sexual exploitation. Furthermore, awareness is required to ensure that anti-trafficking policies do not have the unintended consequence of causing gender discrimination against women'<sup>38</sup>

Contrary to protecting the human rights of migrant sex workers, anti-trafficking approaches that focus on police surveillance and prosecutions have increased stigma and marginalised migrant sex workers. The over-policing, raids and compliance checking of migrant sex workers in the guise of investigating trafficking has heightening migrant sex workers distrust of authorities and further deters migrant sex workers from seeking assistance in fear that it will result in further scrutiny, prosecution or deportation.

Anti-trafficking responses that make it more difficult for migrant sex workers to independently travel and sex work abroad increases migrant sex workers vulnerabilities to trafficking. Immigration

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<sup>37</sup> Renshaw, L., & Kim, J. (2015). *Migrant sex workers in Australia*. AIC reports. Research and Public Policy series. Pgxii.

<sup>38</sup> Ezeilo, J. N. (2011). *Australia has demonstrated strong leadership in combating trafficking in persons regionally and domestically, however it needs to devote greater attention to the rights and needs of victims*. The UN Special Rapporteur in Trafficking in Persons, especially Women and Children concludes her country visit to Australia. United Nations Human Rights Office of the High Commissioner. Retrieved from <https://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11664&LangID=E> on 25/01/19.

restrictions impede regular migration for many seeking a better life or working conditions. *The Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention Against Transnational Organised Crime* (the Protocol) highlights the need to discourage the demand that fosters exploitation that leads to trafficking.<sup>39</sup> Increasing immigration scrutiny and reducing legitimate migration pathways in effect, feeds this demand. Increasing access to safe, legal channels migrant sex workers can independently travel will reduce that potential avenue for exploitation.

### ***Case examples of good practices on implementing a gender-based approach to combatting trafficking.***

The Scarlet Alliance Migration Project was funded by the Australian Government in its package of grants designed to support NGOs in trafficking prevention and support efforts from 2009-2017. It was staffed and managed entirely by migrant sex workers. The Migration Project aimed to fill the evidence gap in trafficking issues and represent the actual experiences of migrant sex workers in Australia. The project worked to support development of evidence-based policy and legislation on trafficking, capacity development of sex worker peer educators in delivering services to migrant sex workers, and the production of translated information for distribution to sex workers of Thai, Chinese and Korean language backgrounds, especially around issues of legal and migration rights and responsibilities. The 2017 inquiry into establishing a Modern Slavery Act in Australia report, *Hidden in Plain Site*, acknowledged the significance of community organisation's, such as Scarlet Alliance's, work in supporting victims of trafficking, providing expertise and building strong relationship with the State to ensure effective anti-trafficking responses.<sup>40</sup>

The success of a sex worker self-regulatory board (SRB) in India was recognised in The Lancet as part of their series on sex work and HIV. The SRB was developed by the sex worker organisation, Durbar Mahila Samanwaya Committee (DMSC), in response to the problem of 'underage girls trafficked into sex work sites and of unwilling women duped/coerced/forced into sex work'. As the members of SRB are sex workers who live in the sites where sex work happens, these members are in a privileged position to detect and prevent trafficking. The Lancet article notes that the SRB "reports better anti-trafficking and anti-violence results at every stage—identification, protection, case management, and follow-up—compared with the raid and rescue model" and "shows substantial advantages that can result from building an anti-trafficking response on a strong community platform with developed peer networks."<sup>41</sup>

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<sup>39</sup> United Nations Human Rights Office of the High Commission (OHCHR). (2000). Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Retrieved from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx> on 25/01/19. Pg172.

<sup>40</sup> Joint Standing Committee on Foreign Affairs Defence and Trade. (2017). *Hidden in Plain Sight: An inquiry into establishing a Modern Slavery Act in Australia*. Commonwealth of Australia. Retrieved from [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Foreign\\_Affairs\\_Defence\\_and\\_Trade/ModernSlavery/Final\\_report](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/ModernSlavery/Final_report) on 25/01/19

<sup>41</sup> Steen, R., Jana, S., Reza-Paul, S., & Richter, M. (2015). *Trafficking, sex work, and HIV: efforts to resolve conflicts*. The Lancet, 385(9963).