

Companies are using the Modern Slavery Act to discriminate against sex workers

The *Modern Slavery Act 2018* (Cth) (*MSA*) creates obligations for large entities (with revenues of +\$100 million) operating in Australia to implement and report on policies aimed at reducing modern slavery. The *MSA* and its Reporting Guidelines fail to provide sufficient guidance on creating effective anti-slavery strategies, or any mechanism for evaluating them. Entity self-reporting regularly conflates sex work with modern slavery, and uses the identification and exclusion of sex workers as evidence of compliance. **This is a clear failure of implementation and is due to a lack of guidance.**

The Australian Government is undertaking a review of the *MSA* without first evaluating its impact. **We need to evaluate the *MSA* before making any changes.** This review should not be a knee-jerk reaction to broaden the scope of the *MSA* without any evidence.

The *MSA* review Issues Paper observed that the efficacy of the *MSA* is currently being undermined by entities failing to understand the actual drivers of modern slavery within their supply chains.¹

The *MSA* and its Reporting Guidelines do not specifically refer to sex work or the sex industry, and evidence demonstrates that most trafficking and modern slavery offences in Australia occur outside of the sex industry.² However, many reporting entities fail to distinguish sex work from modern slavery, and **attempt to meet their *MSA* obligations by introducing policies and procedures that directly harm sex workers.**

Policy Examples

Without evidentiary basis, or requirement from the *MSA* or Reporting Guidelines, **many entities in the accommodation, mining and financial services sectors self-identify as being 'high risk' for occurrences of sex industry labour exploitation,** and develop policies that result in:

- Sex workers being denied or ejected from short-stay accommodation, regardless of whether the accommodation is being used for sex work.³
- Sex workers who work as part of the fly-in, fly-out (FIFO) and drive-in, drive-out (DIDO) workforces being subjected to invasive scrutiny and stigma from other members of the

¹ Australian Government, 'Review of Australia's Modern Slavery Act 2018: Issues Paper' (2022), p 58.

² For the period 2017-2020, 85% of case referrals to the Australian Federal Police and the Support for Trafficked People Program were unrelated to the sex industry - see Australian Government, Interdepartmental Committee on Human Trafficking and Slavery, 'Trafficking in Persons: The Australian Government Response 1 July 2017 – 30 June 2020' (2021) <<https://www.homeaffairs.gov.au/criminal-justice/files/report-of-the-interdepartmental-committee-on-human-trafficking-and-slavery-2017-2020.pdf>>.

³ Hospitality entity Accor (which owns a wide range of brands including Sofitel, Pullman, Mantra, Novotel, Mercure and Ibis) states that it will "ensure no businesses or premises are used for organised prostitution." See Accor Pacific, 'Modern Slavery Statement 2021' (2021) <https://modernslaveryregister.gov.au/statements/?company_name=AAPC%20LIMITED&>.

community,⁴ and their clients subjected to scrutiny from their employers,⁵ which may lead to clients being evasive in complying with sex workers screening and safety measures.

- Sex workers experiencing discrimination and surveillance from financial service providers, including seizure of funds, without-notice account closure, lack of access to other financial products or services, and denied merchant services available to workers in other industries.⁶

Recommendations

1. Reporting Guidelines must include clear guidance on the definitions and differences between sex work, labour exploitation and modern slavery, as well as guidance for developing evidence-based policies and practices that do not increase harm or risk for sex workers. This guidance must be developed in consultation with Scarlet Alliance.
2. Develop and implement rigorous evaluative mechanisms to measure impacts of *MSA* reporting entity policies. This process must be developed in consultation with Scarlet Alliance.

About Us

Scarlet Alliance, Australian Sex Workers Association, is the national peak sex worker organisation. Our membership includes state and territory-based and national sex worker organisations, and individual sex workers throughout unceded Australia.

Through our work and that of our members, we have the highest level of contact with sex workers in Australia of any agency, government or non-government. Our programs and community development work allow us access to sex industry workplaces, both in major cities and many regional areas. Many of our member sex worker peer organisations also employ bilingual project and outreach workers who engage with migrant sex workers throughout Australia, across a range of workplaces.

For over three decades we have provided expertise on sex work, and the impacts of legislation like the *MSA* on sex workers in a variety of Federal, jurisdictional, research, service provision, and civil society arenas, including on the National Roundtable on Human Trafficking and Slavery.

⁴ Mining company Rio Tinto states that it conducts “site-specific security risk assessments, which include[s] consideration of...sex work in local communities.” See Rio Tinto, ‘Respecting Human Rights, Our Statement on Modern Slavery 2020’ (2020) <<https://www.riotinto.com/-/media/Content/Documents/Sustainability/Corporate-policies/RT-Slavery-human-trafficking-statement-2020.pdf>>.

⁵ Mining company Jervois states that “risks may exist related to the possible behaviours of employees, consultants and contractors in their respective home communities and/or in communities around our areas of operation, for example related to sex work...Near future considerations relate to worker’s rights where movements to surrounding communities may be restricted outside of working hours.” See Jervois, ‘2021 Modern Slavery Statement’ (2021) <<https://modernslaveryregister.gov.au/statements/8021/>>.

⁶ Riana Whitson, "Sex workers, adult shops and gun businesses say they are being denied banking services" *ABC News* (12 October 2021) <<https://www.abc.net.au/news/2021-10-12/debanking-sex-industry-gun-shops/100523118>>.