



Phone – 02 9517 2577

Fax – 02 9517 2488

Post – PO Box 854,

Newtown NSW 2042

Street – Suite 203, 1 Erskineville Road,

Newtown NSW 2042

Email – info@scarletalliance.org.au

Web – www.scarletalliance.org.au

ABN - 86 612 112 065

Select Committee on Job Security
Department of the Senate
PO Box 6100
Canberra ACT 2600

To the Select Committee on Job Security,

Thank you for the opportunity to submit our feedback regarding sex worker experiences of job security in Australia. Sex work is largely insecure work in Australia due to the lack of consistent and enabling legal environments across jurisdictions, which can create significant barriers to accessing fair working conditions, mechanisms of redress, and other labour rights afforded to other workers in Australia. Due to the criminalisation and licensing of sex work in most of the states and territories, sex workers have highly variable experiences of workplace health and safety, workplace rights, and relationships between workers and business owners, managers and other authorities.

We welcome an inquiry into the conditions faced by Australian workers, particular in light of the COVID-19 pandemic. Sex work has long been stigmatised work in Australia and globally, and despite having some of the best laws in the world for sex workers in two jurisdictions where sex work is decriminalised, it is still a long way from providing sex workers throughout Australia with the conditions necessary to access our industrial rights.

Formed in 1989, 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 Australia. Scarlet Alliance uses a multifaceted approach to strive for equality, justice and the highest level of health for past and present workers in the sex industry. We achieve our goals and objectives by using best practices including peer education, community development, community engagement and advocacy.

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 work and that of our member organisations and projects, we have the highest level of contact with sex workers and access to sex industry workplaces throughout Australia of any agency. Scarlet Alliance represents sex workers on a number of government and non-government committees and advisory mechanisms.

Please do not hesitate to contact us if we can provide any further information. We look forward to working further with the government on improving access to fair and equitable experiences for all Australian workers.

Regards,



Chief Executive Officer

TABLE OF CONTENTS

EXECUTIVE SUMMARY

1. INTRODUCTION

2. DEFINING SEX WORK AS WORK

3. RESPONSES TO THE TERMS OF REFERENCE:

3.1 The extent and nature of insecure or precarious employment in Australia

3.2 The risks of insecure or precarious work exposed or exacerbated by the COVID-19 crisis

3.3 Workplace and consumer trends and the associated impact on employment arrangements in sectors of the economy including the 'gig' and 'on-demand' economy

3.4 The aspirations of Australians including income and housing security, and dignity in retirement

3.5 The effectiveness, application and enforcement of existing laws, regulations, the industrial relations system and other relevant policies

3.6 Accident compensation schemes, payroll, federal and state and territory taxes

CONCLUSION

RECOMMENDATIONS

EXECUTIVE SUMMARY

This submission defines and reports on the impact of insecure or precarious employment in the sex industry on the economy, workplace rights and conditions, and social cohesion. Sex work is not inherently precarious; rather, the precarity of sex work in the Australian labour market is primarily dependent on the surrounding legislative and social contexts.¹ The impacts of insecure or precarious work facing sex workers are exacerbated by the criminalisation of sex work and the historical and ongoing stigma and discrimination we experience.

In many ways, the current state of sex work legislation and policy in Australia blurs boundaries between different types of employment relationships, causing a lack of clarity about the conditions of work and challenges to accessing redress. This, of course is exacerbated by sex work's status as one of the most stigmatised occupations in Australia, and the resulting discrimination and vilification sex workers experience.

In many parts of Australia, sex work is still regulated by police. Police are never suitable regulators of industry, and this remains one of the greatest barriers to sex workers access to industrial protections and redress. In order to reduce precarity of work for sex workers in Australia, sex work must be recognised across all jurisdictions as work. Uniform laws and policy across Australia, enabled by the full decriminalisation of sex work, will improve sex worker access to industrial rights, including legal options for skilled migration.² This requires significant jurisdictional law reform, and the ability of the current Australian government agencies regulating work to become more dynamic and adaptable to the informal nature of the modern sex industry in Australia.

Sex worker voices must be centered in discussions about how to improve access to these labour rights and human rights.³ We view this submission as the beginning of a conversation with the Select Committee, and look forward to further engagement with this process.

INTRODUCTION

As the labour market in Australia is increasingly casualised, precarious and fragmented, we support a labour and human rights framework for policy that extends industrial rights and protections to all workers regardless of formality, 'legality' or social acceptability. It is well documented that the current economy comprises informal, precarious, and 'on-demand' as well as formal status workers. As it is estimated that around 50% of Australia's workforce is in insecure or non-standard employment arrangements, policy and legislation around workplace rights reflects an outdated conception of the labour market.⁴

The International Labour Organisation (ILO) acknowledges that there is a widespread deficit of 'decent work'. Decent work refers to opportunities for work that provide fair income, security in the workplace, social protections for families, personal development and social integration opportunities, freedom to express concerns, organise and participate in decisions that affect their lives, and equality of

¹ C. Benoit 'Understanding Exploitation in Consensual Sex Work to Inform Occupational Health & Safety Regulation', 2021, *Current Issues and Policy Implications*, p. 5

²Ibid, p. 7

³ Ibid, p. 238

⁴Australian Bureau of Statistics, 'Labour force Australia: 6202.0', 2018, *Australian Bureau of Statistics*, <https://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/6202.0Main+Features1Dec%202018?OpenDocument=> accessed 17 Aug 2021; The Australia Institute, 'The Dimensions of Insecure Work: A factbook', 2018, *The Australia Institute*, Canberra

opportunity and treatment across all genders.⁵ All workers, regardless of their formal working status, should have access to industrial rights at work, including sex workers.

Sex workers comprise of a diverse group of people in a wide range of contexts. Similar to the broader labour market, whether sex work is precarious or not depends on a wide range of factors. What is clear however, is that there is a lack of access to formal workplace rights for sex workers across Australia. This is heavily impacted by jurisdictional differences in laws that criminalise some or all sectors of the sex work labour market, cutting off access to industrial rights. Where sex work is regulated with a whole-of-government approach in a decriminalised framework, however, there remain a number of other intersecting issues that also affect this access. The decriminalisation of sex work is an important agenda of the sex worker rights movement, but is only one step of many towards access to industrial rights and secure employment.

SEX WORK IS WORK

Sex work is an economic enterprise involving the trade of services engaging ‘different levels of sexual and corporeal labour, as well as a variety of interpersonal, emotional and physical skills’.⁶ Sex work in Australia takes diverse forms, with a range of types of labour, workplaces, employment arrangements, and levels of formality. Some sex workers may come and go from the industry, and others may work consistently with sex work as their sole, primary or secondary source of income. Not all people who do sex work identify as sex workers, and many people who trade sex for goods, housing, food, or anything other than income, may see this more as a form of trade than as formal labour. This is often described as ‘informal’ or ‘opportunistic’ sex work.

The work of Scarlet Alliance and our member organisations is informed by the principle that sex work is work, and that all workers must be able to access industrial rights. Much of our advocacy calls for legislative reform to reframe sex work not as criminal activity requiring extensive regulation, but as work which is sufficiently addressed by the same laws and regulations (taxation, industrial rights, workplace health and safety, planning, etc) as other industries. The overregulation of sex work and the installation of police as the regulators of our industry is perhaps the strongest factor influencing the experiences of labourers in the sex industry, particularly regarding precarious work.

“Understanding sex work as ‘work’ – in law and policy – brings a range of industrial and occupational health and safety protections to sex workers. Legislation that recognises sex work as a legitimate occupation affords sex workers better control over our working rights and conditions, improves our abilities to implement safer sex practices, enhances opportunities for collective bargaining and advocacy (for holiday pay, sick leave, superannuation, parental leave, industrial awards), recognises contracts made for working purposes (between sex worker and client, or in the hiring of premises, drivers or security), legitimises income (paying taxes, claiming work-incurred expenses and applying for loans), and gives sex workers better legal redress unfair dismissal and other injustices in the workplace. Recognising sex work as legitimate occupation also has important flow-on effects for Australia’s whole-of- government approach to Social Inclusion, which envisages an inclusive society in

⁵ International Labour Organisation, ‘Decent Work and the 2030 Agenda for Sustainable Development’, https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_436923.pdf accessed 17 Aug 2021.

⁶International Committee on the Rights of Sex Workers in Europe, ‘Exploitation Unfair labour arrangements and precarious working conditions in the sex industry’, *ICRSE*, p. 6

which ‘all Australians feel valued and have the opportunity to participate fully in the life of our society.’⁷

Understanding the labour of sex work

The materiality of sex work encompasses a broad range of workplaces, services and types of employment arrangements. The sex work workplace, for example, can be physical, as in the case of brothel, parlour, or club workers, street-based sex workers, opportunistic sex workers and home-based sex workers. It may also be virtual, including webcam workers, adult content creators, platform workers, and phone sex operators. Sex workers may organise our own work, or engage a third party like an agency, receptionist or manager to arrange the work for us. Many sex workers work across multiple digital or physical workplaces, and are influenced by a range of factors including the legal environment, access to capital, and workplace health and safety considerations when making decisions about where, how and when to work. Some sex workers may work as fly-in, fly-out (FIFO) workers who travel to urban, regional and remote locations to engage in sex work in establishments or independently.

Sex workers who work in establishments (brothels, parlours, clubs, etc) may work under owners or managers who exercise some control over and profit from the labour of sex workers, or may work in a more co-operative model, sharing costs and resources with other sex workers in a more ‘lateral’ structure where each individual has autonomy over their work. Other sex workers might work independently, with or without the engagement of subcontractors supporting things like advertising, security, or administrative assistance.

The types of sex work are myriad and include stripping and erotic entertainment, sexual service provision, escorting, social and companionship services, BDSM services, pornography performance, webcam work, phone sex work, striptease and peep show work, nude or erotic waiter or waitress work, and erotic massage work. The services provided in any given sex work exchange vary highly but are rarely understood. Sex work is skilled work and has been included on the ANZSCO skills list. Many sex workers have small business skills in addition to the social, WHS, erotic, care, support, negotiation, administrative and customer service skills exercised in the course of conducting sex work.

Status of employment in the sex industry

Sex work employment arrangements fall primarily into sole traders, independent contractors (some of whom fall under ‘sham contracting’ arrangements)⁸, formal employees, and also as informal traders for housing, goods and other non-monetary things. We comprise diverse economic classes, genders, sexualities, nationalities, abilities, and occupations across all geographic locations.

Most sex workers are considered, for the purposes of taxation and employment law, to be independent contractors or sole traders. The lack of access to industrial rights borne from criminalisation, stigma and discrimination can create asymmetrical power dynamics where a manager or owner may control the conditions of a sex worker’s labour, engage in sham contracting and / or establish informal policies. In these situations, an owner or manager has no obligation to provide a safe working environment, industrial rights mechanisms or worker’s compensation, or is able to get away without providing them.

⁷ Scarlet Alliance, 2014, ‘The Principles for Model Sex Work Legislation’, https://scarletalliance.org.au/library/principles_2014 accessed 17 Aug 2021

⁸ Fair Work Ombudsman, ‘Independent contractors and employees’, <https://www.fairwork.gov.au/find-help-for/independent-contractors> accessed 17 Aug 2021

Contractual arrangements in the sex industry

Some sex workers who work in agencies, clubs, brothels, parlours, and other establishments have reported experiences of employment arrangements that blur the categories of 'employee' and 'sole trader' that currently frame these relationships in Australia. In many cases, some combination of the characteristics of both types of relationships are present. For example, a sex worker working in a brothel may be:

- required by a manager to attend set shifts;
- be fined for particular behaviours including late attendance;
- be charged a fee to be able to work a shift;
- be required to wear particular clothing;
- be required or pressured to see a client who they do not wish to see; *and*
- be barred from working in other establishments or agencies.

These types of conditions are characteristic of an employer-employee relationship. However, that manager may in the same instance not consider themselves responsible for providing things like PPE, leave entitlements, superannuation, workers' compensation or other benefits, hiring workers from particular racial, gender, ability or nationality demographics, and may not adhere to WHS standards or guidelines, nor provide adequate facilities or breaks.

Whether or not an actual written or verbal contract is in place, these arrangements constitute sham contracting. Other examples of sham contracting include workers who are provided with contracts but not allowed to take them out of the premises, have them reviewed by a lawyer, or negotiate their terms.

Sex workers have diverse experiences of this blurring of labour classifications, as they materialise differently for each in contexts of legality of work and personal circumstance, but agree that the ability to self-advocate, organise and exercise choice over the conditions of our labour are the highest priorities for us. There are a number of potential enablers of these, which we will discuss further in our recommendations.

PRECARIOUS EMPLOYMENT IN THE SEX INDUSTRY

Precarious work is characterised as work that lacks job security. Any labour performed on a temporary, casual, contract, or informal basis, particularly without a rigorous industrial rights framework, has the potential to be precarious. If workers are being denied or do not have access to basic working rights such as appropriate levels of workers compensation, the right to organise, and recourse after unfair dismissal, for example, we would conclude that their work is or can be precarious.⁹

Sex work in and of itself is not innately precarious - it is instead the legal and social environment in which it takes place that most significantly impacts its precarity. A sex worker's experience of precarious work may be influenced by a number of factors, including experiences of marginalisation across class, race, ability, migration status, sexuality and gender that impact sex working experience, the degree to which we depend on sex work for survival, the legal framework in which we conduct sex work, and the accessibility of things like advertising, workplaces, and peer support.

For many sex workers, the ability to work casually, temporarily or informally in the sex industry is part of what makes the industry appealing. Stigmatised and / or criminalised work may not be a safe

⁹A. Orchiston, 'Precarious or Protected? Evaluating Work Quality in the Legal Sex Industry', 2016, *Sociological Research Online*, 6.4

permanent occupation for many workers, particularly those of us with concerns over visa status, custody matters, prior criminal convictions for example. Sex workers living with disability or chronic health issues may be drawn towards sex work because it allows us to earn income on a casual basis, when we are able to work, without being tied to an employer or the expectations of conventional work.

The strongest industrial policy framework for sex workers is one that best enables worker choice and does not prescribe narrow contractual models in order to access industrial rights and protections.

The extent to which a worker has agency over the labour process is a key determinant of precarity. This agency is maximised through the enabling legal environment that accompanies a decriminalised framework for regulating sex work, which enables sex workers greater autonomy over our work and allows government bodies and regulations that govern industry to be referenced or accessed.

Sex workers who experience precarious work in the sex industry may characterise this through a lack of control over shifts, schedules, and pay rates; unreasonable rules around personal appearance or behaviour; disciplinary measures taken by managers or receptionists including fines or bonds; lack of power to advocate for better working conditions; instability of income; and/or whether workers are expected to perform unpaid labour.¹⁰ The nature of the regulatory environment surrounding work is also a key factor, which in this instance is whether the legality of work or social context in which work is performed creates barriers to accessing minimum workplace conditions and rights.¹¹ It is important, however, to not conflate 'atypical employment' with precarity. Being self-employed or working less than full time hours does not necessarily imply precarity for sex workers; rather, precarity is determined by degree to which laws and regulations surrounding sex work enable choice.

Not all sex work is precarious or insecure, nor is sex work innately prone to exploitation of workers by third parties or clients. As is the case in other industries, precarious or insecure sex work does not occur in a vacuum. It is instead informed by the laws and regulatory bodies that limit access to labour rights for contractors, sole traders, and platform workers, the involvement of third party intermediaries, and laws that criminalise forms of labour or workers themselves.

Precarity of sex work is further influenced by the criminalisation and licensing of sex work, stigma and discrimination against sex workers, and misinformed panics over sexual exploitation and trafficking, which leads to unwanted and unhelpful intervention from government, law enforcement, immigration authorities and welfare services. We elaborate below on how these factors individually influence precarious labour and job insecurity, and how they function in tandem to create concrete barriers that sex workers must navigate when attempting to access our industrial rights.

Legal frameworks influencing precarious labour in the sex industry

Sex workers are burdened by the differing legal frameworks across Australian states and territories that criminalise, license, or decriminalise our work or fail to recognise our labour as work. This is contradictory to a range of Australian federal government departments that do treat sex work as work, such as the Australian Taxation Office. This leaves many sex workers without access to basic industrial rights and protections, yet with the same obligations as workers who do have access to rights.

¹⁰ A. Orchiston, 'Precarious or Protected? Evaluating Work Quality in the Legal Sex Industry', 2016, *Sociological Research Online*, 3.1

¹¹ A. Orchiston, 'Precarious or Protected? Evaluating Work Quality in the Legal Sex Industry', 2016, *Sociological Research Online*, 1.9

Within Australia, there are three general models of sex work legislation: criminalisation, licensing and decriminalisation. In any given jurisdiction, one or more of these models may be in practice. There are major inconsistencies between Australian jurisdictions as to how sex work is legislated, meaning that sex workers' theoretical and / or actual access to industrial rights are highly variable. Sex workers with experience working in multiple jurisdictions report drastic changes in their experiences of working conditions including access to workplace health and safety, ability to negotiate with clients or managers, and earning capacity from place to place. We note that both federal and jurisdictional agencies responsible for regulating work, even where sex work is decriminalised, may lack the knowledge of sex work contexts and employment arrangements to provide adequate services and information to sex workers, and believe that this is an area that necessitates change.

Legal frameworks regulating sex work can present barriers to sex workers accessing industrial rights, which in turn influences the prevalence of precarity within the Australian sex industry.¹² Other legal factors that seek to narrow access to sex industry work can increase precarity for sex workers. These include federal laws that take a discriminatory approach to the issuing of working visas, jurisdictional laws that criminalise people living with HIV and other blood borne viruses (BBVs), laws that restrict or criminalise advertising of services, and laws that restrict workers from employing drivers and other safety personnel. These laws directly contribute to job insecurity by restricting who can access sex work, and under what conditions.

1. Criminalisation

Criminalisation positions sex work as a criminal act and can criminalise any combination of sex workers, our clients and associates, and / or our workplaces. Criminalisation fails to recognise that sex work is work, forming the largest barrier to accessing justice, safety and job security for sex workers. It places police in the role of regulators of industry, often resulting in targeted, corrupt and predatory policing with no benefit to the worker. The need to prioritise avoiding law enforcement comes at the cost of safer, well-negotiated and more secure work.

Criminalisation forces sex workers to choose between reporting violence and exploitation in our workplaces with the prospect of being criminally charged ourselves, or not reporting or seeking justice. Like in other industries where aspects of work are criminalised (such as undocumented workers or those working outside of visa conditions), this places a disproportionate amount of power into the hands of third parties who are able to threaten criminal intervention and law enforcement interaction if workers are non-compliant.

Sex work that takes place in a criminalised environment leaves workers with little to no access to workplace rights, lending to insecure work. Clients, managers and third parties hold power over workers who are less empowered to negotiate better working conditions and pay rates, assert boundaries, or leave an exploitative workplace without facing increased labour precarity. Sex workers who work in criminalised environments are barred access to any formal industrial standards or mechanisms.

The criminalisation of sex work, in full or in part, leads to sex workers reporting experiences of:

- Having to sacrifice working safely or maximizing earning capacity to avoiding law enforcement.
- Not having access to any form of support from police or government agencies, instead turning to peers for support when something goes badly for us at work.

¹² C. Benoit 'Understanding Exploitation in Consensual Sex Work to Inform Occupational Health & Safety Regulation', 2021, *Current Issues and Policy Implications*, p. 238.

- Having clients or managers use their knowledge that we are working illegally to pressure us into particular services, working conditions, etc by threatening reporting to the authorities if we do not comply.
- Experiencing a fluctuation in the availability of work based on the level of police enforcement activity at a particular time.

2. Licensing

Licensing models for sex work legislation prescribe a narrow window of legal sex work, requiring sex workers to comply with burdensome over-regulation ranging from restrictions on the types of work or workplaces one may choose, tight controls on advertising, the requirement to register one's details with police or government agencies, and the criminalisation of common sex worker safety strategies and business practices. Licensing creates a two-tiered sex industry where many are forced to work outside of the law in order to work safely. As with criminalised models, licensing takes bargaining power away from sex workers, installs police and other sex work-specific government bodies as regulators of the industry, and fails to support sex worker rights, privacy, or WHS. Sex workers working in licensing environments have few options for legal work, and are often forced to work outside of the narrow licensed framework.

Licensing is based on a presumption that the sex industry requires extra controls that are not required for other industries. It allows for the existence of sex industry businesses and sole traders, but only within very tight restrictions that are unworkable for most sex workers. Like criminalisation, it sets up environments in which police corruption and entrapment can be an everyday workplace concern. In settings where sex work is licensed, continuing stigma and discrimination, lack of control over the conditions of our labour, and concerns for privacy and safety around linking our legal names to sex work status through registration prevent many sex workers from registering and working in the formal sex industry economy.

Some sex workers have reported that the impacts of the licensing model for regulating sex work have resulted in the following factors contributing to precarity:

- Due to the high barriers for entry for licensed businesses, there is a shortage of establishments in which to work legally. This gives the managers of these establishments power, quells worker organising and / or advocating for better working conditions, and forces sex workers to accept unfair or substandard conditions in order to work legally in their chosen sector of sex work.
- Establishments like clubs, parlours and agencies are able to ban particular workers who have been seen to be 'troublemakers' or too demanding.

3. Decriminalisation

Scarlet Alliance's Briefing Paper on the '*Full Decriminalisation of Sex Work in Australia*' describes the model of decriminalisation as follows:

"Full decriminalisation of sex work is the removal of all sex work-specific criminal and licensing laws that apply only to sex workers, our workplaces, clients, and third parties. Criminal laws that apply to everyone are still enforced by police. Civil laws are implemented by government agencies and regulators, not the police. Civil laws protect people's health, safety, privacy, autonomy, human and industrial rights, and are meant to apply to everyone."¹³

¹³ Scarlet Alliance, 'Briefing Paper: Full Decriminalisation of Sex Work in Australia', https://scarletalliance.org.au/library/briefing_paper_full_decrim, accessed online 17 Aug 2021.

Within a labour rights context, the full decriminalisation of sex work gives us access to industrial rights, WHS protections and avenues of redress where these are absent. It allows for the development of labour standards and gives sex workers access to formal complaints mechanisms when there is a lack of adherence to them. In states like New South Wales and the Northern Territory that have largely decriminalised sex work, support from government agencies when exploitative work practices or sham contracting is taking place is possible, though stigma, discrimination and misinformation can sometimes create friction for sex workers seeking redress through those mechanisms.

Licensing and criminalisation of sex work are the primary, but far from the only, determinants of labor precarity within the sex industry. Sex workers still remain 'at the margins'¹⁴ of contemporary inquiries into industrial law and policy reform. We welcome this inquiry into job security in Australia as an opportunity for government to consult with sex workers *beyond* this submissions process about what measures, including law reform, might improve our security at work. A necessary step towards doing so would be to fully decriminalise sex work in every state and territory in Australia. Additionally, understanding the unique and diverse forms of sex industry work and the choices sex workers make around our work is essential to developing policy that will secure our rights at work, allow sex workers' choice over forms of employment and relationships to employers, and allow sex workers to enjoy the benefits of casual or temporary employment without waiving our rights to safe and gainful labour.

OTHER IMPACTS ON SEX WORKER EXPERIENCES OF JOB SECURITY

Migration law and policy re: working privileges on visas

Labour migration in the Asia-Pacific region is common across many professions, and the sex industry is no different. Migrant sex workers face the same barriers to job security as other migrant workers, while also dealing with discriminatory visa policies. Some migrant sex workers in Australia come from relatively high-income western countries such as New Zealand, the United Kingdom and the United States, for whom working visas are accessible for those under 30. For individuals travelling from what are perceived as 'developing' countries, however, discriminatory and prohibitive immigration policies often apply.

Sex work is not considered skilled labour under the ANZCOS scheme, limiting options for skilled migration visas for sex workers. Individuals who do not have access to working visas are pushed into other visa pathways. The lack of recognition of sex work as work can lead to discrimination for other visas such as partner visas which can be cancelled due to sex work being used as evidence that the relationship is not 'to the exclusion of all others', allowing either the sponsor or the department of immigration to cancel a visa. This policy, while not formally enshrined in law or policy, has been verbally confirmed in our discussions with immigration authorities.

Through our decades of work advising on policy on sex work and migration, Scarlet Alliance is aware of many instances where migrant sex workers have been discriminated against in immigration process, or where fear of discrimination has caused harm to migrants with sex work experience. Migration policy discussions relating to sex work are frequently derailed by moral and racialised panic about 'sex trafficking'. Sex work labour trafficking into Australia occurs infrequently, but there is still an unnecessary focus on 'sex trafficking' where police and immigration officials conduct sting operations on Asian brothels and massage parlours, racial profiling of sex workers and sex industry businesses, and intimidation of migrant sex workers - particularly in criminalised and licensing environments, where fear of criminalisation is yet another layer of vulnerability for sex workers.

¹⁴ A. Orchiston, 'Precarious or Protected? Evaluating Work Quality in the Legal Sex Industry', 2016, *Sociological Research Online*, 1.8

The result is a lack of job security for migrant sex workers. The recognition of sex work as skilled work and the protection of sex workers applying for visas or permanent residency from stigma and discrimination would create a clear, accessible pathway for migration and give migrant workers greater control over our working conditions. Reform of migration law relating to sex work will require extensive consultation with migrant sex workers and Scarlet Alliance in order to provide migrant sex workers with better access to secure work.

Access to advertising

The ability to advertise is an essential part of conducting business in Australia, for all businesses including for small businesses, sole traders and self employed. For sex workers, advertising also serves as the start of negotiating boundaries and establishing consent to provide services, the first step in forming the contract for a sex work booking. In some jurisdictions, discriminatory controls on sex industry advertising make it difficult for sex workers to advertise in ways that protect our safety and make our services clear. In some jurisdictions, sex workers may be unable to describe our services or use particular words or images. We may also be restricted from discussing our services in any form of communication ahead of an appointment, leaving both the service provider and the client in the dark about what will take place and increasing risk of conflict in those negotiations.

It should be noted that there are already sufficient guidelines within the federal advertising standards to regulate advertising for all industries, including the sex industry.

The ability to advertise is crucial to sex worker autonomy over our work, and enables sex workers to transition between workplaces or to their own independent business or cooperative workplace.

In addition to legislated restrictions on advertising, sex workers in Australia experience discrimination when engaging with advertising platforms. Newspapers, for example, often charge exorbitant rates for adult industry advertisements, extorting sex workers who have no choice but to advertise with them, particularly in rural and regional areas where online advertising is less common. Newspapers may also have arbitrary policies about the content of sex worker advertising. Scarlet Alliance and our member organisations advocate for anti-discrimination protections for sex workers, giving us the ability to challenge such practices.

Online advertising platforms can have similar issues, charging sex workers premium rates, whether the platform is sex industry-specific or otherwise. Accessible online advertising supports job security for sex workers. In 2018, American online classifieds site Backpage went offline. This was one of the most widely-used sites for Australian independent sex workers for many years, in no small part because it was low-cost and widely used. The overnight loss of Backpage left sex workers across the country with no form of accessible advertising and therefore no income, compromising choice and autonomy and forcing many sex workers to return to establishment or other work that we would not otherwise choose.

Stable access to nationally-consistent and non-discriminatory advertising standards and stronger protections against price-gouging and discriminatory policy and practice from advertising platforms would be a valuable contribution to sex worker job security in Australia.

Criminalisation of BBVs and STIs:

The Scarlet Alliance National Needs Assessment of Sex Workers who Live with HIV shows that laws that criminalise working with HIV mean that workers may be afraid to take sexual health tests, fail to recognise that HIV-positive people participating in safe sex do not put our clients at risk, fails to

recognise that undetectable = untransmittable,¹⁵ and remains an ineffective way of reducing transmissions.¹⁶ As a result, criminalisation of sex workers living with HIV has the potential to increase sexually transmissible infection (STI) and BBV transmissions and to increase the stigma and discrimination experienced, increasing the likelihood of sex workers living with HIV having access only to precarious work.¹⁷ Public Health Acts and Criminal Codes from State to State already cover malicious and reckless acts in regards to STI and BBV transmissions; criminalising sex workers who live with HIV only acts to remove WHS and basic working protections for people who already bear dual stigmas associated with sex work and living with HIV.¹⁸

Prior convictions

Many sex workers who operate in states that have criminalised aspects of sex work have convictions relating to this offence. Having sex work-related criminal convictions reduces the opportunities for individuals to participate fully in society, even after many years out of the sex industry. The criminalisation of the sex industry itself creates a setting where only precarious work can take place, and the attachment of criminal convictions to a sex worker's record impedes their attempts to attain secure work in other industries. Many individuals with sex work related convictions abstain from participating in any activity in which criminal records might be checked for fear of being 'outed' in contexts where discrimination and stigma are experienced. In South Australia, sex work offences are ineligible to be removed from your record through the Spent Convictions legislation, even if 10+ years have passed and no other offences have been committed. This continues the heightened risk of precarity in the workplace for workers for the rest of their lives.¹⁹

Global influences

The globalisation of the labour market can put workers in Australia at the mercy of global trends, international law, and other forces that originate outside of Australia. One of the most marked recent examples of this is the impact of US legislation *H.R.1865 - Allow States and Victims to Fight Online Sex Trafficking Act of 2017* (known commonly as 'FOSTA-SESTA') on Australian sex workers. This legislation carved out s230 of the *Communications Decency Act of 1995 (USA)*, which prevented digital services from being held responsible for user content shared on their platform, criminalising platforms for hosting content that could be interpreted to facilitate or promote 'prostitution'.²⁰ This legislation, and other actions taken by the US federal government prior to its passage, resulted in a mass shutdown of digital services used by sex workers across the globe to advertise services, share safety information, organise, and screen clients. Because many of the online services used by Australian sex workers are owned by or hosted in the United States, we experienced the loss of crucial business infrastructure - including one of the most widely-used classified ad services at the time - overnight. This left sex workers in Australia, where at least some aspects of sex work are lawful in many jurisdictions, subject to the impact of the laws of the US, where sex work is criminalised in almost all jurisdictions. Many

¹⁵ UNAIDS, 'Undetectable = Untransmittable, Public Health and HIV Viral Load Suppression', <https://www.unaids.org/en/resources/presscentre/featurestories/2018/july/undetectable-untransmittable> accessed online 17 Aug 2021

¹⁶ K. Matthews, 'The National Needs Assessment of Sex Workers who Live with HIV', 2008, *Scarlet Alliance*.

¹⁷ A. Daniel, 'The Sexual Health of Sex Workers: No Bad Whores, Just Bad Laws', 2010, *Social Research Briefs, NSW Health*, 19, 1.

¹⁸ E. Jeffreys, K. Matthews and A. Thomas, 'HIV Criminalisation and Sex Work in Australia', *Reproductive Health Matters*, 2010, 18:35, pp. 129-136

¹⁹ A. Reid, 'Scarlet Alliance Submission on Spent Convictions Act (SA)' 2009, *Scarlet Alliance* https://scarletalliance.org.au/library/sub1_sa2012 accessed 17 Aug 2021

²⁰ The terms 'prostitute' and 'prostitution' are considered by the Australian sex worker rights movement to be outdated and stigmatising, and laws in several jurisdictions have been changed to reflect this. The terms 'sex work' and 'sex worker' are favoured.

were left without income, lost data in targeted erasure and account closure, and were unable to make connections with one another.

This is a helpful case study for understanding how sex workers' experiences of stability can be impacted by changes in international law and policy. Other international law that can impact sex workers in Australia includes border control (including where a nation-state bars current and past sex workers from entry or has anti-sex work laws in place, which can impact sex workers whether we are travelling for work or personal reasons), and privacy law (as in some of the conflicts between digital privacy laws and identity verification / other data-retention practices).

Deplatforming & censorship

Over the last decade, sex workers in Australia have also found the rise of social media and content-sharing platforms and their increasing influence on the global marketplace to be another factor contributing to precarity in our work. Highly-variable and un-credible data regarding the influence of technology on sex crimes, amplified by increasingly-powerful anti-porn and anti-sex work lobbies, has caused ongoing backlash against all aspects of sexuality expressed online. This has resulted in policies and practices of censorship of sexual cultures from technology platforms and vulnerability to the crude and biased automated decision-making tools they use to action them. There is a marked trend towards the sanitisation and gentrification of online spaces, deplatforming and erasure of sex workers from these spaces²¹, and even legislative incentives to sex worker content and account removal, as is the case of the recently-passed *Online Safety Act 2021 (Cth)*.

Like workers in other industries, sex workers rely on access to digital tools and platforms to conduct our work. Unlike workers in many other industries, these tools may be some of the only ones we have to stay safe at work, particularly in criminalised and licensed frameworks. The loss of access to, or fear of openly using, these services has a direct impact on our sense of precarity in our work. They are essential to our ability to earn income and to our workplace health and safety. Further reading on the impact of deplatforming on sex workers' experiences of our work can be found in our responses to the *Online Safety Bill 2021*.^{22 23}

EXPLOITATION IN THE AUSTRALIAN SEX INDUSTRY

Like all labour markets within Australia and across the globe, the sex industry is susceptible to exploitative practices, but legality issues and access to workers' rights impede sex workers' avenues for redress. Labour arrangements that enable one person to take advantage of the work of another person need to be analysed through the lens of employment and labour exploitation, regardless of the

²¹ D Blunt & Z Stardust, 'Automating whorephobia: sex, technology and the violence of deplatforming', *Porn Studies*, 2021

²² Scarlet Alliance, Submission to Online Safety Bill Inquiry, No. 36, 2021, retrieved from <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/OnlineSafety/Submissions>.

²³ J. Kim and G. Vanting, 'Environment and Communications Legislation Committee Online Safety Bill 2021 Inquiry Public Hearing', Hansard, Commonwealth Government of Australia, Canberra, 05 March 2021, p.19, accessed 15 November 2021, <https://parlinfo.aph.gov.au/parlInfo/download/committees/commsen/c1d55d8b-d39f-4ce4-a094-5c67fd73144d/toc_pdf/Environment%20and%20Communications%20Legislation%20Committee_2021_03_05_8549_Official.pdf;fileType=application%2Fpdf#search=%22committees/commsen/c1d55d8b-d39f-4ce4-a094-5c67fd73144d/0000%22>.

industry. Sex workers cannot be protected from exploitative working conditions as long as our work is not recognised as work and we are not granted access to labour rights accordingly.²⁴

“Exploitation and unsafe and unhealthy working conditions exist in many labour sectors. Work does not become something other than work in the presence of these conditions. Even when performed under exploitative, unsafe or unhealthy conditions, sex work is still work.”²⁵

Exploitation within the sex industry is treated differently in law, policy and interventions than other industries. The nature of exploitation within the Australian sex industry is poorly understood, often conflated with issues of sex trafficking and ‘sexual servitude’ or dismissed by detractors as an ‘occupational hazard’. When exploitation has been found in other industries, such as on-demand platform work or Australia’s agricultural industry or from service providers such as 7-Eleven²⁶ and Dominos²⁷, the societal response has been to grant more industrial rights to workers, not to further marginalise workers by criminalising and stigmatising their work. The difference in how exploitation is perceived in the sex industry is linked to how law and policy merge sex work with issues of sexual exploitation/sex trafficking. This frames sex work as a ‘problem’ and sex workers as either deviants that need to be criminalised and heavily regulated or as victims in need of rescue.

The obscurity generated by the conflation of sex work with sexual exploitation and trafficking allows police, border enforcement, immigration authorities and other state actors such as social workers, health providers and public judicial officers to target sex workers.²⁸ These interventions often occur under the presumption that we must be experiencing exploitation, trafficking or degradation and therefore deserve to be criminalised, regulated, pressured into leaving the industry or deported. This inevitably leads to ‘cracking down on sex work and trafficking’ being utilised as a political tool by state actors and activists within the abolition of ‘prostitution’ movement to appeal to historically embedded prejudice against sex workers in order to justify our differential treatment. The mobilisation of stigmatised presumptions about sex workers are often utilised in tandem with fear mongering or victim-framing of asylum seekers, migrant workers, people who use drugs, queer, trans and gender diverse people, First Nations people and people of colour. This ‘othering’²⁹ and differentiating of sex work and sex workers as distinct from other industries and workers reflects the marginalisation, discrimination, moralism, protectionism and paternalism that has been levied against sex workers throughout history.

This ‘noisy discursive space’³⁰ that focuses only on issues of criminalisation, harm, exploitation and stigma, obscures and distracts from the key issues of working conditions, labour rights, WHS and access

²⁴ International Committee on the Rights of Sex Workers in Europe, ‘Exploitation Unfair labour arrangements and precarious working conditions in the sex industry’, *ICRSE*, p. 6

²⁵ Global Network of Sex Work Projects, ‘Policy Brief: Sex Work is Work’, 2017, https://www.nswp.org/sites/nswp.org/files/policy_brief_sex_work_as_work_nswp_-_2017.pdf accessed 17 Aug 2021

²⁶ Fair Work Ombudsman, ‘More than \$192,000 in penalties for former 7-Eleven operators who underpaid vulnerable workers’ 2018, <https://www.fairwork.gov.au/about-us/news-and-media-releases/2018-media-releases/april-2018/20180410-viper-and-viplus-mr> accessed August 26 2021

²⁷ Fair Work Ombudsman ‘FWO audits 33 Domino’s Stores’ 2018 <https://www.fairwork.gov.au/about-us/news-and-media-releases/2018-media-releases/september-2018/20180907-dominos-media-release> accessed August 26 2021

²⁸ International Committee on the Rights of Sex Workers in Europe, ‘Exploitation Unfair labour arrangements and precarious working conditions in the sex industry’, *ICRSE*, p. 6

²⁹ *Ibid* p. 6

³⁰ F. E. Gilmour ‘Work Conditions and Job Mobility in the Australian Indoor Sex Industry’, 2016, *Sociological Research Online*, 3.1

to legal redress. It also renders our current struggles to secure equal industrial rights invisible as we often have to undergo the educational labour of convincing law and policy makers that our work is legitimate work rather than criminal behaviour. In effect, the licensing and criminalisation of our work only serves to increase the prevalence of precarious and exploitative sex work. Thus, when we refer to 'exploitation' within the context of our labour rights, it is from the perspective that sex work is not inherently exploitative, it is rather the surrounding socio-cultural, political and legal contexts create an environment where workplace exploitation and precarious labour occurs. Instead of introducing further anti-trafficking and sex work offences, governments must decriminalise our work, ensure that we have access to appropriate anti-discrimination protections, and focus on the 'labour market actors [third parties] associated with the avoidance and violation of basic labour standards' within the sex industry workplaces.³¹ The ICRSE provides:

"Only by focusing on sex workers' working conditions, as well as employment practices and arrangements under which sexual services are sold and exchanged can we come to a better understanding of and challenge exploitation in sex industry"³²

Stigma and discrimination

Stigma and discrimination around one's occupation impacts more than just an individual's working life. For sex workers it affects a person's access to health, justice, housing, support networks, social inclusion, economic freedom, child custody status, and migration options, among other aspects.

"Stigma can be understood as a social process of exclusion that involves multiple components—'labeling, stereotyping, separation, status loss and discrimination'—and is shaped by the exercise of social, economic and political power."³³

Evidence shows that stigma continues to affect sex workers' lives in a comprehensive and debilitating way. There are numerous high profile cases of discrimination where sex workers have been fired from other industries after being 'outed' as a worker. Due to limited legal avenues to challenge discrimination, the majority of instances of stigma and discrimination due to our work go unreported. For example, a sex worker from South Australia writes:

"I get petrified of what a history in sex work would mean in front of a judge. I know that sex work isn't supposed to be taken into account, but what about illegal activity? Anyway, the fact that they're not supposed to let sex work affect their decisions doesn't mean that they won't. And how would that affect my ability to do sex work and support us without being detected or risking my family, after having my secrets aired in court? So, when my child's father [ex-partner] says jump, I say how high!"³⁴

Sex workers report that an underlying cause of stigma was that sex work is not recognised as work. There is a lack of access to anti-discrimination laws across the country that allow for workers to combat the stigma and discrimination that is experienced. This is an important aspect of precarity for workers across Australia.

³¹ C. Benoit, 'Understanding Exploitation in Consensual Sex Work to Inform Occupational Health & Safety Regulation', 2021, *Current Issues and Policy Implications*, p. 241

³² International Committee on the Rights of Sex Workers in Europe, 'Exploitation Unfair labour arrangements and precarious working conditions in the sex industry', *ICRSE*, p. 3

³³ Z. Stardust, C. Treloar, E. Cama and J. Kim, 'I wouldn't call the cops if I was being bashed to death: Sex work, whore stigma and the criminal legal system', 2021, *International Journal for Crime, Justice and Social Democracy*.

³⁴ A. Reid, 'Known Prostitute', *Provision: Law Reform*, 7.

COVID-19 AND PRECARIY IN THE SEX INDUSTRY

Precarious work in the sex industry is highlighted for sex workers, as it is for workers in many other industries, in the wake of COVID-19. There is a well-documented downturn in employment as a result of the pandemic, which was concentrated in customer-facing industries and included many forms of sex work. While it can be generalised that all industries in Australia have been impacted, marginalised communities bore disproportionate disadvantage. Sex workers are among these, and also are represented in a number of other communities marginalised by pandemic responses, including migrants, people who use drugs, people with disabilities, and people experiencing homelessness or housing instability.

When sex workers don't work, we don't get paid. For those who did not have savings, access to employment in other industries, or the means to pivot to online work, the lack of income security was incredibly stark, and the cascade of impacts on access to housing, food, medication and childcare was incredibly visible to sex workers and sex worker organisations.

The nature of most employment arrangements in the sex industry and legal frameworks around sex work meant that many sex workers were not able to access things like superannuation withdrawals, leave entitlements from employers, or the various pandemic income support measures provided by state, territory and federal governments. We documented the 2020 pandemic experiences of sex workers in our report 'Sex Work and COVID-19 in Australia'³⁵, which provides an in-depth discussion of things like lack of access to income support (particularly for migrant sex workers), workplace closures, road map exclusions, stigmatising public dialogue, targeted and problematic policing, and sex workers' attempts to find alternative sources of income throughout the pandemic. The impacts of COVID-19 continue to be felt throughout our community, with the most recent concerns around proof of vaccination requirements and the privacy risks they pose to sex workers and our clients being addressed at the time of writing. This report is an important accompaniment to our job security submission, and we have attached it as an appendix as it is an important reflection on the industrial rights and job security issues raised by the pandemic. As it was published in late 2020, we will also raise some additional and ongoing impacts that have arisen since then.

Due to existing stigma, discrimination and criminalisation, many sex workers fear that applying for income support will expose our sex work to one or more government agencies, risking a lifetime of discrimination and potential legal issues for those working in criminalised settings. This would permanently link our legal names with sex work, and sex workers fear this could result in things like deportation, impacts on custody of children, future employment, and other consequences. In the first outlays of COVID-19 relief, the Government waived the requirement for JobSeeker applicants to provide an employment separation certificate from their employer, bank statements and proof of reduced hours. Many sex workers hold concern for the types of schemes that might be used to uncover fraudulent claims on pandemic payments, and what documentation we may need to provide if we were able to receive payments. Sex workers are rarely able to show proof of severance, for example. Most sex workers do not receive pay slips. Many sex workers will not have the means to prove legitimate income loss, and fear being required to return much-needed income support payments.

Availability of work and privacy concerns borne of the surveillance employed to manage the pandemic in Australia are the most significant challenges to job security for sex workers as we continue to endure the pandemic. Cultural shifts required to encourage measures like contract tracing and vaccination compliance, including requirements to provide personal identity details to a wide range of parties, may

³⁵ Scarlet Alliance, 'COVID-19 and Sex Work in Australia' Report, 2020, accessed 23 November, 2021 <https://scarletalliance.org.au/library/COVID_Report>

undermine the privacy / anonymity needs of workers and clients in the sex industry in the medium to long term, impacting the availability of work. Requirements for managers to hold sex workers' sensitive identity details as part of vaccination and contact tracing efforts may provide them with yet more power over sex workers. Scarlet Alliance and our members will continue to advocate, as we have since the start of the pandemic in Australia, to ensure that sex workers are given the appropriate considerations to allow us to participate in pandemic response measures without compromising our needs as workers.

SEX WORK AND THE GIG / ON-DEMAND ECONOMY

While many conceive of the 'gig' or 'on-demand' economy being a new and therefore poorly-regulated section of the labour market, Australian economist Jim Stanford has argued that many of the characteristics of the gig economy hark back to bygone era of precarious work:

'Casual, seasonal, and contract labour were the predominant forms of paid work as capitalism first emerged...these practices were even described as "precarious work" in nineteenth century policy discourse'.³⁶

This indicates a continuing trend of governments not protecting precarious workers in the economy. What is new is the role that technology plays in this process.

The rise of technology in on-demand work has played an important role in the sex industry too. For many workers this has been a positive change, as it has enabled us to advertise independently online, take greater control over our hours, working locations and the clients we see, and engage in online forms of sex work. Platform work, including live webcamming and content production enabled by platforms like Only Fans and Many Vids, has received a great deal of recent media attention, but we do not see this type of work as a 'trend' or an 'emergent' form of sex work - just that it has been made more visible by celebrities and people who do not identify as sex workers using them, and by the increasing desirability of online work during the pandemic. Sex workers have long been early adopters of technology for work, and the types of employment relationships in this type of work are similar to those that have characterised phone sex operation, webcamming, (where the company or platform takes a percentage of income generated by sex work labour) and pornography production and performance work before it (where sex workers may receive payment per-performance or royalties, or may engage in content trades or shares with other producers or performers).

These types of work are not suitable for all sex workers, but provide a valued additional option for many. Some of the benefits of platform work include the ability to set our own hours, work privately in a location of our choosing, and create content that can provide ongoing income. However, many sex workers report this work to require more hours for less pay, or have privacy concerns that preclude being able to be visible in film or video content connected to sex work. Platforms on which online work occurs also require legal identification to verify performer age, and many sex workers are concerned the security of this information may be compromised. The risk of being publicly outed as a sex worker, and the risk of our intimate images being shared without our consent increase with online work, and it can be difficult to seek redress or remedy.

As mentioned above, online sex workers experience precarious work because of hindering legislation. We are routinely pushed off the financial, social media and content-sharing platforms that we need to provide online services, get paid for online services, build and maintain sex worker networks, market

³⁶J. Stanford, 'Historical and Theoretical Perspectives on the Resurgence of Gig Work', 2017, *The Economic and Labour Relations Review*, Vol. 28:3, p. 385

our businesses and services, and share vital information with each other, due to increasingly narrow terms of service, 'community standards', and laws.

INCOME AND HOUSING SECURITY FOR WORKERS IN THE SEX INDUSTRY

Many sex workers experience difficulty obtaining leases, procuring financing for property, accessing income protection, or buying insurance, impacting our access to sustainable futures, liveable retirement, or the stability that comes of owning a home. Income insecurity is largely due to the other determinants of precarity discussed above. We note in particular the lack of leave entitlements and superannuation that characterises our industry.

Financial discrimination

Another dimension to precarity of work for sex workers in Australia is financial discrimination. Instances of financial discrimination are routinely reported to Scarlet Alliance by sex workers in Australia, and are very difficult to challenge due to the lack of anti-discrimination protections and the long-standing acceptability of financial discrimination against the sex industry. The industry itself has long been viewed as corrupt, tainted, and untouchable, and banks have historically categorised sex industry professionals' transactions as 'high risk'. This either prevents access to financial services, forces sex workers to find workarounds to avoid disclosing our sex work in setting up these services, causes our accounts to be frozen and funds seized, or results in discriminatory higher overheads. Brothels and escort agencies also have been frozen out of services.³⁷ Again, this lack of equitable access to basic business infrastructure is a determinant of labour precarity.

According to a 2020 survey on financial discrimination conducted by Scarlet Alliance, sex workers report experiencing discrimination from a range of financial services, including:

- Banks (in particular NAB, CBA, ANZ, Westpac and BankWest)
- Credit unions (such as Queensland country credit union)
- Payment processors (in particular Paypal, Stripe, Square)
- Merchant services (in accessing EFTPOS machines)
- Billing services (in accessing billing for subscription websites)
- Credit card companies (in particular Visa and Mastercard)
- Crowdfunding platforms (for example, GoFundMe)
- Patronage platforms (for example, Patreon)
- Insurance companies (to access life insurance or income protection insurance)
- Mobile phone service providers (Vodafone, Telstra and Optus)
- Superannuation providers

Scarlet Alliance and our members are currently mounting several campaigns to gain or improve anti-discrimination protections for sex workers in the jurisdictions. Our recommendation for best-practice anti-discrimination legislation names 'sex work' and 'sex worker' as protected attributes, attributes dealing with occupation, trade, calling or profession have not been shown to provide adequate protections for sex workers. This is a necessary reform to improve sex workers' access to financial services. Change is also needed to the Banking Code of Practice and to individual financial institutions' policies and procedures. Appropriate regulation of financial services and anti-discrimination legislation that allows sex workers to challenge these rulings will improve sex workers' access to the financial services and opportunities needed to choose retirement funds, receive payments, and insure our businesses and incomes.

³⁷ Australian Financial Complaints Authority, 'Determination', 2020, <https://service02.afca.org.au/CaseFiles/FOSSIC/687972.pdf> accessed 17 Aug 2021

Housing insecurity

Access to housing is a human right to which many sex workers do not have secure access. Discrimination is reported from hotels, body corporates, local councils and neighbours; sex workers report being refused accommodation, evicted, or treated unfairly irrespective of whether the sex worker is operating lawfully or intends to be working from the premises.³⁸ Criminalisation and licensing of sex work is again a key factor. It is still legal in some jurisdictions to discriminate against sex workers when considering them for leases. Local and state governments may place burdensome restrictions upon where home-based sex workers may operate or whether a sex worker may operate from a residential premises they do not reside in. FIFO or DIDO workers may also be discriminated against by short-term accommodation providers.

A clear example of this type of insecurity is a high-profile discrimination case in Queensland, between a sex worker who was operating lawfully and a motel operator. In 2012 the sex worker won a discrimination case against the motel operator after being refused accommodation on the basis of the individual's occupation. However shortly after this successful discrimination case, Queensland's attorney general amended the anti-discrimination act to expressly allow discrimination against sex workers in providing accommodation.³⁹

Sex workers also report being chased out by landlords or other tenants, having their privacy breached by neighbours who suspect that someone is a sex worker and disclose this information to other neighbours or use risk of reporting sex work happening outside the legal framework as a bargaining tool to convince the sex worker to leave the residence. Despite strong evidence that sex work has little to no amenity impact on surrounding properties or neighbourhoods, the 'not in my backyard' attitude informed by sex work stigma can have a profound impact on sex workers' access to housing security. All of this is directly tied to our status as stigmatised and criminalised workers, and is further evidence of the need to decriminalise sex work.

The aforementioned issue of financial discrimination is another factor influencing housing instability for sex workers. Proving income from sex work to prove eligibility for a lease, loan or mortgage can be difficult due to the informal / grey nature of our working arrangements in many jurisdictions and the negative impacts when our sex work income is disclosed to a potential lender, leasing agent or landlord.

EFFECTIVENESS OF EXISTING INDUSTRIAL RELATIONS LAWS AND REGULATIONS FOR SEX WORKERS

There are a number of ways in which the existing industrial relations frameworks in Australia fall short for sex workers. As we have noted, the decriminalisation of sex work is the most significant action that will allow sex work to be regulated as work - a necessary step in improving sex worker access to industrial rights.

We cannot, however, wait for this reform in every state and territory, as sex workers experience unfair working conditions now. We must also begin to expand and reform industrial relations law to accommodate the informality and precarity of the sex industry. It is clear that within the current

³⁸ Scarlet Alliance, & AFAO, 'Unjust and Counter-Productive: The failure of government to protect sex workers from discrimination', 1999, http://www.scarletalliance.org.au/library/unjust_counterproductive. pp 19-20, accessed 17 Aug 2021

³⁹ Z. Stardust, 'Protecting Sex Worker Human Rights in Australia', 2014, *Scarlet Alliance*, https://scarletalliance.org.au/library/stardust_2014, p. 31, accessed 17 Aug 2021

framework the bar for access to redress is simply too high for a criminalised and stigmatised workforce like ours.

Sex workers should not have to establish formal contracting relationships or employer-employee relationships in order to have access to safe work environments, industrial rights and protective laws.

‘Positioning sex work as ‘work’ – in law and policy – brings a range of industrial and occupational health and safety (OHS) protections to sex workers. Legislation that recognises sex work as a legitimate occupation affords sex workers better control over our working rights and conditions, improves our abilities to implement safer sex practices, enhances opportunities for collective bargaining and industrial advocacy (for holiday pay, sick leave, superannuation, parental leave, industrial award coverage), recognises contracts made for working purposes (between sex worker and client, or in the hiring of premises, drivers or security), legitimises income (paying taxes, claiming work-incurred expenses and applying for loans), and gives sex workers better legal redress for unfair dismissal and other injustices in the workplace.’⁴⁰

There are valid reasons why sex workers in Australia may prefer not to be in a formal employee relationship, such as to protect our privacy and a preference for flexibility and mobility in the workplace. As a result, employers or third parties are rarely held accountable for illegal workplace practices such as fines for an independent contractor showing up late for a ‘shift’, or implementing health and safety measures, especially if these efforts might diminish profits.⁴¹ Sex workers in all forms of sex work deserve human rights, labour rights and protections, regardless of their legal or employment status.

The enforcement of laws, regulations, industrial relations systems such as the Fair Work legislation has had a complicated history in the sex industry. The Federal government’s move to a single federal system of industrial relations means that sex workers and our workplaces have a single set of regulations applying to the industry, irrespective of local legislation which may or may not criminalise specific workplaces. Decriminalisation is the leveller, ensuring that these rules apply to the sex industry; without it, there will always be deeply asymmetrical application of the law.

The *Phillipa v Carmel* case in 1996 highlighted that, in theory, the ‘legality’ of the sex industry did not prevent a sex worker from accessing their industrial rights after being unfairly dismissed.⁴² Making formal complaints does pose a risk for sex workers if other authorities choose to take those reports as evidence for sex work related ‘criminal’ activity. This is a huge barrier for workers to report unlawful activity by employers. Whether or not sex workers are entitled to industrial rights is problematically determined on a case by case basis. The *Phillipa v Carmel* case also highlighted that sex workers are expected to pay taxes irrespective of ‘legality’ of the sex industry.⁴³ This has created a situation where sex workers are taxed and audited the same way any other worker is, but sex workers do not hold the same workplace rights as other workers.

Decriminalisation, alongside the implementation of comprehensive anti-discrimination protections and WHS standards, is central to protecting the labour rights of sex workers. Decriminalisation recognises sex work to be work and so ensures sex workers can access the same industrial protections as other

⁴⁰ Scarlet Alliance, ‘The Principles for Model Sex Work Legislation’, 2014, https://scarletalliance.org.au/library/principles_2014 p. 44, Accessed 17 Aug 2021

⁴¹International Committee on the Rights of Sex Workers in Europe, ‘Exploitation Unfair labour arrangements and precarious working conditions in the sex industry’, *ICRSE*, p. 13

⁴² *Phillipa v Carmel* [1996] IRCA 451.

⁴³ *Phillipa v Carmel* [1996] IRCA 451.

workers. Within decriminalisation, sex industry businesses must follow the same regulatory laws and structures as other businesses, resulting in a more transparent sex industry. Further, consideration must be given to providing confidential access to Fair Work Australia and the Fair Work Ombudsman to allow sex workers access to education and to enforce our workplace rights.

ACCIDENT COMPENSATION SCHEMES AND FEDERAL, STATE AND TERRITORY TAXES

Workplace accident compensation schemes are largely inaccessible to sex workers because they are regulated by jurisdiction. Developing schemes around accident compensation for sex workers requires a strong understanding of the nature of sex work and consideration of the individual circumstances of the worker's wages, hours, and other factors. If a worker happens to fall within the coverage of workplace injury compensation in a decriminalised state and has the appropriate employment relationship to be covered,⁴⁴ there is no industry award wage that explicitly covers the numerous occupations within the sex industry. Instead, most sex workers would fall under the 'Miscellaneous Award', which is less than two dollars above the minimum wage.⁴⁵ Coverage by this award fails to recognise sex work as skilled work, and fails to properly examine the wide range of actual incomes earned by workers in the industry.

The whole-of-government approach taken by a decriminalised framework for regulating the sex industry would also clear up inconsistencies between federal taxation law, which treats sex work as work, and jurisdictional law, which may or may not treat sex work as crime. All sex workers in Australia are subject to the same taxation responsibilities as other workers. The Australian Taxation Office expects sex workers and sex industry businesses to pay income tax and Goods and Services Tax, has comprehensive information about tax deductible expenses⁴⁶ and GST obligations,⁴⁷ and regularly audits sex workers. The ATO has classed brothel workers in Sydney as employees unless they have proven otherwise, and issued fines and compliance demands to sex industry businesses. These approaches show that criminal and licensing laws are out of step with the wider acknowledgement of sex work as part of the Australian labour market, with equal labour-related responsibilities, but unequal access to labour-related rights. This tension between rights and responsibilities has woven a thread throughout this submission, and in many cases, sex workers are at a disadvantage on both sides of that tension.

CONCLUSION

Sex work must be thought of as work and recognised across all jurisdictions as such. Sex work is an economic enterprise which involves the sale of various services, all which involve different levels of skill and labour. This work may be a direct sale of services to clients, or managed through third party managers and bosses. Sex work is not inherently precarious.⁴⁸ The precarity of sex work in the

⁴⁴ NSW Government: Safe Work, 'Health and Safety Guidelines for Sex Service Premises in NSW', https://www.safework.nsw.gov.au/resource-library/other-services/health-and-safety-guidelines-for-sex-services-premises-in-nsw?result_397396_result_page=16 Accessed 17 Aug 2021.

⁴⁵ Fair Work Commission, 'Miscellaneous Award 2020', https://www.fwc.gov.au/documents/documents/modern_awards/award/ma000104/default.htm Accessed 17 Aug 2021

⁴⁶ Australian Taxation Office, 'Adult Industry Workers - Income and Work-Related Deductions', <https://www.ato.gov.au/Individuals/Income-and-deductions/In-detail/Occupation-and-industry-specific-guides/Adult-industry-workers---income-and-work-related-deductions/> Accessed 20 Aug 2021

⁴⁷ Australian Taxation Office, 'GST and the Sex Industry', <https://www.ato.gov.au/business/gst/in-detail/your-industry/gst-and-the-sex-industry/> Accessed 20 Aug 2021

⁴⁸C. Benoit 'Understanding Exploitation in Consensual Sex Work to Inform Occupational Health & Safety Regulation', 2021, *Current Issues and Policy Implications*, p. 5

Australian labour market is primarily dependent on the surrounding legislative and social contexts. A sex worker's precarity is shaped by variables such as whether sex work is considered 'lawful' in the worker's jurisdiction, the WHS of the physical settings of the work, and the role of regulatory authorities.⁴⁹

"Recognising sex work as a legitimate occupation at law – through decriminalisation and anti-discrimination protections – would have tangible effects upon how sex workers are perceived and treated in the wider community, vastly improve working conditions, empowering sex workers to collectively organise for occupational health and safety, assist sex workers in negotiating industrial rights, and bring state laws into line with the approach of progressive government departments and industries."⁵⁰

Many of the impacts of insecure or precarious work facing sex workers, are the same as those faced by workers in other precarious jobs, but unique to sex work are negative impacts from criminalisation and stigma. We need uniform policies and laws across Australia that allow for sex workers to access labour rights and human rights, including legal options for migration.⁵¹ Sex worker voices must be centered in discussions about how to improve access to these labour rights and human rights.⁵²

RECOMMENDATIONS

1. The full decriminalisation of sex work as the best practice, whole-of-government approach to regulating sex work in Australia must be adopted in every state and territory. This is necessary to ensure that sex workers have equal access to industrial protections, occupational health and safety standards and opportunities to engage in collective bargaining and workplace advocacy.
2. Anti-discrimination protections must be nationally consistent and provide protected attributes for 'sex work' and 'sex worker'. Reformed law should specifically include past and present sex workers, those presumed to be sex workers, and our families and associates.
3. The federal government must conduct further consultation with Scarlet Alliance to determine how the current framework for industrial relations can be expanded to encompass the diversity of sex work and sex workers and to enable access to labour rights in a variety of informal scenarios, acknowledging that the criminalisation of sex work creates a great deal of 'grey' space where unfair or exploitative working practices may flourish. The priorities for this change are:
 - a. Enabling worker choice over the conditions of our labour, including location, sector, rate of pay, clients, hours, and services.
 - b. Ensuring that our rights and responsibilities are clear, fair, and balanced with those of managers and business owners.
4. The federal government must take action to prohibit financial discrimination against sex workers, as well as policies and practices that prevent sex workers from accessing financial products and services or classifies us without evidence as 'high risk'.
5. Sex workers must be able to access the processes of Fair Work Australia and the Fair Work Ombudsman to allow sex workers to discuss and action unfair working conditions while

⁴⁹ A. Orchiston, 'Precarious or Protected? Evaluating Work Quality in the Legal Sex Industry', 2016, *Sociological Research Online*, 21:4, 1.3

⁵⁰ Scarlet Alliance, 'The Principles for Model Sex Work Legislation', 2014, https://scarletalliance.org.au/library/principles_2014 p. 44, accessed 17 Aug 2021

⁵¹ C. Benoit 'Understanding Exploitation in Consensual Sex Work to Inform Occupational Health & Safety Regulation', 2021, *Current Issues and Policy Implications*, 7

⁵² C. Benoit 'Understanding Exploitation in Consensual Sex Work to Inform Occupational Health & Safety Regulation', 2021, *Current Issues and Policy Implications*, p. 238

maintaining our privacy. This can be achieved through representative action through sex worker peer organisations, for example, or via enabling pseudonymous actions.

6. Sex workers require a legally enforceable set of basic working conditions and an appropriate industrial award that covers people working in all different sectors of the sex industry.
7. Australia must establish legal pathways of migration for migrants wishing to work in the sex industry. This will improve the safety of migrant sex workers and prevent exploitation of vulnerabilities due to migration status.
8. State and territory governments must end the criminalisation of sex workers living with HIV by removing sex worker-specific BBV and STI laws.
9. Amend spent prior convictions legislation to include sex work-related offences as offences that can be removed from records after a certain time period has elapsed, or in cases where sex work has been decriminalised.
10. Improve privacy and information security assurances for ATO, Centrelink, Fair Work, and other government agencies encountered by sex workers.