



# Australian Sex Workers Association

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13 December, 2022

Attorney-General's Department  
Robert Garran Offices  
3-5 National Circuit  
BARTON ACT 2600

To the Attorney-General's Department,

Thank you for the opportunity to submit to the *Review of Australia's Modern Slavery Act 2018*.

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 represents a membership of individual sex workers and sex worker organisations, projects and groups from around 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 in the major cities and many regional areas of Australia. 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.

We have provided expertise on sex work, sexual servitude and modern slavery in a variety of Federal, jurisdictional, research, service provision, and civil society arenas over the last three decades. We sit on the National Roundtable on Human Trafficking and Slavery. We have also housed projects funded by the Australian Government to enhance the capacity of sex worker peer educators in Australia to provide support to migrant sex workers, and have partnered with the Australian Institute of Criminology to conduct research into migrant sex workers in Australia<sup>1</sup>. Between 2009-2018, the Scarlet Alliance Migration Project, staffed entirely by and for migrant sex workers, was funded to provide important representation, advocacy, education and support for migrant sex workers and on anti-trafficking. We continue to convene a Migrant Sex Worker Advisory Group, made up of migrant sex workers and multilingual sex worker peer educators, to inform our work.

This submission is endorsed by the following Scarlet Alliance member organisations and projects:

- Respect Inc QLD
- Sex Workers Outreach Project (SWOP) ACT
- Sex Workers Outreach Project (SWOP) NSW

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<sup>1</sup> Renshaw L et al. 2015. Migrant sex workers in Australia. Research and public policy series no. 131. Canberra: Australian Institute of Criminology. Retrieved from: <https://www.aic.gov.au/publications/rpp/rpp131>

- Sex Workers Outreach Project (SWOP) NT
- Magenta WA
- SIN SA
- Vixen, Victoria's Peer Sex Worker Organisation, VIC
- Scarlet Alliance Tasmanian Sex Worker Project

Please contact our CEO, Jules Kim on (02)9517 2577 or [ceo@scarletalliance.org.au](mailto:ceo@scarletalliance.org.au) if you have any further questions.

Regards,



Jules Kim  
Chief Executive Officer  
Scarlet Alliance, Australian Sex Workers Association

## Executive Summary

Scarlet Alliance is concerned with the trend of entities utilising reporting obligations under the *Modern Slavery Act 2018* (Cth) (*MSA*) to adopt policies and 'risk management strategies' that discriminate against sex workers. The policies and practices undermine our right to work safely, freely, and without discrimination, surveillance, or exclusion.

Scarlet Alliance and our members have observed that the mandatory reporting and performance obligations enshrined within the *MSA* are resulting in companies taking a discriminatory approach to sex workers in a misguided attempt to meet their obligations. We will detail examples from policy and sex worker experiences below. These discriminatory approaches further inhibit sex workers from conducting business activities such as seeing clients, travelling for work, processing payments, establishing digital 'paper trails' with client payments (a common sex worker safety measure), and managing our business finances. In effect, these approaches increase sex worker vulnerability to modern slavery practices, as we are forced to work in ways that are less transparent and safe in order to evade discrimination, exclusion, and in some jurisdictions, criminalisation. Scarlet Alliance observes that the lack of clarification and safeguards within the *MSA* has resulted in broad inconsistencies in how reporting entities meet their obligations. To address this, we recommend that a rigorous evaluative mechanism be implemented, alongside guidelines developed by the National Roundtable on Human Trafficking and Slavery in consultation with sex workers. These guidelines would be issued to reporting entities to assist them to avoid the harmful impacts of their policies and

practices for sex workers and to ensure that these are developed with an evidence- and rights-based framework.

The *MSA* will continue to be limited by Australia's broader anti-trafficking measures and immigration policies. While the Australian government appears to be eager to 'combat modern slavery', the government is simultaneously depriving migrant sex workers of our freedoms through immigration, detention, deportation, and lack of access to: labour rights, affordable accommodation and health care, safer migration pathways, accessible visa processes, and government payments and services such as Centrelink and Medicare. Scarlet Alliance recommends the following actions as necessary to address the drivers of modern slavery.

1. Australia must become a signatory of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families<sup>2</sup>.
2. Sex work must be fully decriminalised in each state and territory of Australia.
3. Anti-discrimination protections must be implemented for sex workers and migrants in all jurisdictions as an urgent human rights issue.
4. Safe and accessible migration pathways must be provided for sex workers. This includes providing migrant sex workers with access to translated information, accessible migration avenues that do not require workers to use the assistance of a third party and more secure visas that recognise sex work as skilled labour.
5. Stronger rights-based mechanisms of redress must be developed to protect the labour rights of migrant sex workers. Migrant sex workers need access to industrial mechanisms to claim compensation, redress exploitative working conditions and access legal aid and support without fear of being affected by anti-trafficking measures.
6. Sex worker organisations must be financially supported to run projects and provide services by and for migrant sex workers. This strengthens the human, civil and political rights of migrant sex workers, increases our autonomy, agency and self-determination, and is the most effective way to address exploitation and trafficking in the sex industry.
7. A support framework for trafficking and slavery must be implemented that does not necessitate engagement with police in order to access support. Effective approaches that address labour exploitation through a focus on prevention, industrial rights, occupational health and safety, civil remedies, statutory compensation, rights-based non-criminal justice pathways, and equitable access to visas, migration channels and support.
8. Replace the current inadequate 'assurance protocol' with a 'firewall' between the Fair Work Ombudsman and the Department of Home Affairs to protect migrant workers from visa-related repercussions when they speak out against exploitation or industrial issues.
9. Create of a new substantive visa to allow migrant workers with outstanding claims for workplace entitlements to remain in the country with working rights until their claim has been settled and lifting of visa restrictions that intensify potential for migrant workers to be exploited.

<sup>2</sup> United Nations Office of the High Commissioner, 'International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families', accessed on 6 December 2022. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-rights-all-migrant-workers>

Scarlet Alliance submits that a human rights and evidence-based approach to sex work, migration and trafficking should be pursued over criminal justice approaches. The most effective approaches aim to address the circumstances that create labour trafficking and prioritise the needs, agency and self determination of victims over criminal prosecutions and increased surveillance. They address labour exploitation through a focus on prevention, industrial rights, civil remedies, statutory compensation, and equitable access to visas, migration channels and support.

## Summary of Recommendations

Scarlet Alliance recommends the following as actions relating to the *Modern Slavery Act* and the Reporting Guidelines:

1. Provide clear guidance to entities regarding the difference between sex work, labour exploitation and modern slavery. This guidance should be led by Scarlet Alliance and developed in consultation with our member organisations and migrant sex workers through our Migrant Sex Worker Advisory Group.
2. Implement evaluation mechanisms that measure the negative and counterproductive effects of reporting entity policy under the *MSA*. These must be developed in consultation with Scarlet Alliance and our Migrant Sex Worker Advisory Group.
3. Investigate the impact of Australia's immigration policy on the functionality of the *MSA* with the aim of addressing policies that enhance worker vulnerabilities to trafficking and exploitation. This must be done in consultation with impacted workers, including Scarlet Alliance and our Migrant Sex Worker Advisory Group.
4. Conduct regular periodic evidence-based evaluation of the Act and its implementation. Evaluation should measure whether the Act is achieving its intended aim and impact.
5. The Australian Government must adopt and implement the national compensation scheme authored by ASA and consulted and endorsed by the NGO parties to the National Roundtable on Human Trafficking and Slavery including Scarlet Alliance and many other civil society organisations.
6. Avoid a decrease of entity thresholds for reporting under the *MSA*, as under-resourced entities are likely to implement policy with unintended consequences.
7. Do not establish an office of the Anti-Slavery Commissioner. This places power into the hands of a single individual who is not accountable to the voting public. The agenda of one official who is not aligned with a right-based approach and/or who does not approach sex work and labour trafficking in line with the best available evidence of its context in Australia can be extremely damaging for migrant sex workers in Australia.
  - a. In the event that an office of the Anti-Slavery Commissioner is established, the following safeguards must be in place to protect sex workers:
    - i. Require regular reporting to Federal Parliament, including information about its engagement with sex workers and/or the sex industry.
    - ii. Limit to an administrative remit in which the office supports entities to be aware of their obligations under the *MSA* and not acting beyond them.
    - iii. The Commission must not serve as an enforcement agency or replace current authorities charged with addressing modern slavery.
8. Strengthen mechanisms to report exploitative work practices for migrant sex workers. This may include:
  - a. Anonymous or representative reporting
  - b. Addressing the drivers of modern slavery by providing access to redress (e.g. a national compensation scheme)

- c. Non-criminal justice pathways to reporting and redress enabled through greater workplace rights for migrant sex workers

## Part 1: The impact of the *Modern Slavery Act 2018* on Sex Workers

### **Consultation Question 1:** *Has the Modern Slavery Act had a positive impact in the first three years?*

The *Modern Slavery Act 2018* (Cth) (*MSA*) requires entities operating or based in Australia (with revenues of +\$100 million) to report annually on the 'risks' of modern slavery that are present in their operations or supply chains, and their intended actions to address those risks. The purpose of the *MSA* is to enforce improved corporate awareness, conduct and investigations into their supply chains and operations in an effort to reduce the prevalence and corporate permissiveness of global modern slavery.

**The *MSA* does not explicitly place reporting obligations on sex work businesses, nor does it specifically target the sex industry as one that is 'high risk'.** Scarlet Alliance is supportive of this approach as one informed by the evidence that modern slavery is uncommon in sex work businesses in Australia. We have long emphasised the detrimental impacts of police and government surveillance of sex workers and advocated for a rights-based approach to preventing trafficking in the sex industry.

Scarlet Alliance is concerned with the trend of reporting entities enacting harmful policies against sex workers in an effort to meet their obligations under the *MSA*. The harm caused to sex workers as a consequence of the *MSA* implementation must be both recognised and guarded against. Several examples of these policies are highlighted across various industries throughout this submission. These harmful policies align with a problematic conflation of sex work with modern slavery and trafficking. This conflation rests on the stigmatising and incorrect assumptions that: sex work is inherently exploitative; sex workers are victims without choice or agency; the sex industry is rife with instances of servitude and slavery and; all migrant sex workers are trafficked 'victims'. These assumptions about sex workers and our work has resulted in incredibly damaging anti-trafficking campaigns that drive sex workers underground, inhibit our access to basic services, consume significant financial and labour resources, and are unsuccessful in improving working conditions for sex workers or identifying trafficking or exploitation. Effectively, anti-trafficking efforts, such as the *MSA*, have negative impacts on sex workers' ability to operate independently, which increases vulnerability to exploitation.

The UNAIDS Advisory Group on HIV and Sex Work recommends that sex work and trafficking for the purpose of sexual exploitation be understood as separate concepts. Anti-trafficking discourse is often utilised by anti-sex work advocates to justify the criminalisation of the sex industry in an attempt to

‘end the demand’ for sex work. This approach, known as the Nordic Model of sex work regulation, has resulted in the deterioration of sex workers rights, health and safety at work.<sup>3</sup>

At its core, the conflation of sex work with modern slavery undermines efforts by sex workers and our representative organisations to have our sex work recognised as legitimate work, enabling access to the same industrial and labour rights as other workers. When sex work is recognised as work, instances of exploitation within our industry can be approached through the appropriate industrial rights mechanisms. For example, the proposed solution to the exploitation of migrant workers in the Australian agricultural industry is not to criminalise, stigmatise and further marginalise the workers - the solution lies in improving access to labour rights. We argue that the same labour rights approach be taken within the sex industry.

We acknowledge that the Reporting Guidelines make very clear that the *MSA* applies only to instances of ‘modern slavery’ not ‘exploitation’. The approaches of many of the entities responsible for reporting under the *MSA*, however, do not reflect this essential distinction. Due to the ongoing stigma and misunderstandings surrounding sex work, especially migration for sex work, many entities have failed to delineate exploitation with the sex industry and modern slavery. Some may even fail to distinguish between legitimate sex work and modern slavery.

## The use of the term ‘prostitution’ by reporting entities

The term ‘prostitution’ is a term that has historically and is contemporaneously used to criminalise, regulate, vilify, delegitimise and stigmatise sex work and sex workers. The term ‘prostitution’ is often used by governments, companies and anti-sex work advocates as an umbrella term to describe sex work *and* labour exploitation *and* trafficking. The text of the *MSA* does not feature the terms ‘prostitution’ or ‘sex work’. Despite this, research conducted by Scarlet Alliance on the Modern Slavery Register indicates that many entities still use language and framing such as ‘prostitution’, ‘forced prostitution’ or ‘forced sex work’. This indicates that some reporting entities are not aware that sex work, trafficking and exploitation are distinct occurrences. This indicates a failure to accurately analyse how modern slavery may actually occur within their operations and supply chains, and a tendency towards conflation of all three concepts. This is confirmed when reviewing the content of their policies.

The Issues Paper also 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.<sup>4</sup> Scarlet Alliance suggests that the careless and damaging use of terms such as ‘forced prostitution’, and the practices that result from the framing in their reporting, is reflective of this trend. The misuse of the terms ‘prostitution’ and ‘forced sex work’ also illustrates the lack of safeguards against overcapture within the *MSA* and the associated *Guidelines* that may prevent entities from enacting modern slavery

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<sup>3</sup> Amnesty International (2022), “*We Live Within a Violent System*”: *Structural Violence Against Sex Workers in Ireland*, < <https://www.nswp.org/sites/default/files/eur2951562022english.pdf>>; International Committee on the Rights of Sex Workers in Europe (ICRSE), 2021. *From vulnerability to resilience: sex workers organising to end exploitation*.

<sup>4</sup> Australian Government, ‘Review of Australia’s Modern Slavery Act 2018: Issues Paper’ (2022), p. 58

policies that result in damaging and unsafe outcomes for sex workers, especially migrant sex workers. Preventing the misuse of the *Act* and *Guidelines* ensures its effectiveness. In the case of sex work, the vulnerabilities created by policy and practice that is misinformed may stand to *increase* sex workers' susceptibility to exploitation and *decrease* our rights when we experience violations of our workplace or human rights.

A search of the Modern Slavery Statements Register, indicates that 32 statements mention the term 'prostitution': 24 of these statements come from entities that are headquartered in Australia, where sex work is considered federally to be a legal occupation. Five are from the USA, two from New Zealand (where again sex work is considered to be a lawful occupation), one from Singapore and one from the United Kingdom. The use of the term 'prostitution' by reporting entities indicates to Scarlet Alliance that many reporting entities have conflated sex work and modern slavery. Entities then operationalise this framing through implementing strategies under *MSA* reporting that are harmful to sex workers. We acknowledge that the *MSA* does not specifically target the sex industry as 'high risk'. However, it seems that the broad ambit of the *MSA* reporting guidelines has left room for entities to enact policies that do. The following subsections include excerpts from Modern Slavery Statements submitted by entities over the 2020-2021 period. These excerpts exhibit:

- the unintended negative impacts the *MSA* and how entities interpret their obligations under the *MSA* has had on sex workers
- the inconsistencies amongst entities in how they report on the 'risks' of the sex industry, and
- the barriers that sex workers face in conducting our practices legitimately due to entities' problematic attempts to meet their reporting obligations under the *MSA*.

Ultimately, the dominant approach currently taken by reporting entities towards sex workers is discriminatory and undermines our labour rights, working conditions and safety. Through aligning sex work with modern slavery, entities contribute to and validate the discourse within the anti-sex work/abolition movement. Through focusing on 'eradicating modern slavery' via approaches that criminalise, exclude and stigmatise our work, sex workers are invisibilised as 'passive victims' or 'criminals'. This framing is paternalistic and detracts from what sex workers across Australia are actually calling for: the complete decriminalisation of sex work, access to industrial rights, access to work health and safety rights, freedom from discrimination and vilification, access to visas and safe migration pathways, access to non-discriminatory services and peer-led sex worker services. Sex workers do not need more 'protection' or 'rescuing' - through modern slavery statements or otherwise - we need access to our labour rights and protections.

Whilst researching policies, it emerged that three industries are commonly adopting explicit policies that are harmful to sex workers: accommodation entities, mining entities and financial institutions.

## Accommodation Industry

Accessing accommodation services is a key aspect of many sex workers' business activities. Sex workers may use accommodation services to conduct our services and for work-related travel. As privacy is a priority for sex workers and our clients, our business activities are often conducted in a

manner that is discreet and unaffecting to accommodation service providers. Despite this, sex workers regularly report discrimination from accommodation providers and experience unfair treatment, whether or not we are operating lawfully or intend to work from the premises.<sup>5</sup>

Sex workers are commonly discriminated against when accessing accommodation. This can include being ejected from short-stay rentals and left without accommodation in isolated or rural areas, evicted at night without access to transport or other accommodation, identified to local authorities and/or forced out of a geographic area. This reduces our ability to exercise choice in our working conditions and locations and prevents sex workers from safely conducting business. Our physical safety can also be compromised when we cannot access safe accommodation. In most jurisdictions, lack of access to anti-discrimination protections also prevents us from challenging this where it occurs.

Within the context of modern slavery, migrant sex workers and sex workers from Asian backgrounds experience compounded discrimination from accommodation providers. Migrant sex workers may be incorrectly perceived as ‘victims of trafficking’ or ‘vulnerable’, which can trigger accommodation providers to act in discriminatory ways. The Modern Slavery Statement submitted by Accor Pacific Network in 2020 is an illustrative example of this discrimination. Accor is a hospitality entity that is partnered with a wide range of accommodation brands such as Sofitel, Pullman, Swissotel, Mantra, Novotel, Mercure and Ibis. In their report, Accor identify ‘prostitution and pandering’ as modern slavery risks. These risks sit alongside ‘exploiting migrant workers’, ‘undeclared labour’ and ‘human trafficking’, again conflating sex work with indicators of trafficking. Accor’s strategy for addressing this risk is two-fold:

- Never encourage, organise or profit from the trafficking of human beings, including for sexual exploitation and;
- Ensure no businesses or premises are used for organised prostitution.<sup>6</sup>

Placing a blanket prohibition on sex work is discriminatory and restricts our ability to engage in sex work in ways that are safe and transparent and allow us to access support and justice if necessary. Banning sex workers from accommodation premises puts sex workers in danger and is counter-productive to identifying and addressing modern slavery. Policies that discriminate against sex workers can also stand alongside stigmatising training campaigns such as those enacted by Marriott, Hyatt and Hilton, which train staff to ‘identify’ modern slavery. These identifiers include ‘guests with minimal luggage and clothing, guests who insist on little or no housekeeping, and multiple men seen being escorted one at a time to a guest room.’<sup>7</sup> These ‘indicators’ fail to

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<sup>5</sup> Scarlet Alliance, & AFAO, ‘Unjust and Counter-Productive: The failure of government to protect sex workers from discrimination’ (1999), pp 19-20. Retrieved from: <<http://www.scarletalliance.org.au/library/unjust-counterproductive>> see also *Dovedeen Pty Ltd v GK [2013] QCA 116 - QHRC*.

<sup>6</sup> Accor Pacific, ‘Modern Slavery Statement 2021’ (2021). Retrieved from: <[<sup>7</sup> Tiffany Diane Tso, ‘Can Marriott Employees Combat Sex Trafficking? Why Sex Workers Don’t Think So’, \*Refinery 29\*, \(2019\). Retrieved from: <<https://www.refinery29.com/en-us/2019/08/237011/marriott-international-hotel-chain-trains-employees-sex-trafficking-indicators>>.](https://modernslaveryregister.gov.au/statements/file/c11493b0-f699-40b4-ac2f-780d9c2164ea/#:~:text=Modern%20slavery%20has%20no%20place,do%2C%20has%20never%20been%20greater.></a>></p></div><div data-bbox=)

distinguish between sex work and modern slavery, are not founded in evidence and capture activities that are typical of sex work. They also show a failure to understand both the difference between sex work and modern slavery, and presume that they are able to tell the difference between the behaviour of sex worker guests and guests who are not sex workers.

Grant Broadcasters on behalf of GB Group, another hotel chain, stated in their 2020 Modern Slavery Statement, that they identify sex work as a high risk area and are 'evaluating those risk areas against our own operations and supply chains'.

These cases exemplify how entities enact inconsistent, unevidenced and discriminatory practices in an effort to meet their modern slavery reporting requirements, which ultimately create further barriers for sex workers to conduct our work legitimately and safely. Sex workers across Australia are very familiar with the impact of these policies, the resultant surveillance from accommodation industry staff and management, and the risks they present to our workplace health and safety. This can hardly be understood as effective implementation of the MSA, and should instead be considered as evidence of its failures and the need for stronger guidance informed by Scarlet Alliance.

## Mining Industry

Sex workers, like other workers, travel for work and are a valid part of the fly-in, fly-out (FIFO) and drive-in, drive-out (DIDO) workforces. Like other professionals, sex workers may travel and migrate for work opportunities, career advancement and improved conditions and pay. This travel can correspond with other FIFO and DIDO workforces, such as in the mining industry. Travelling to clientele is not uncommon and is a key source of income for some sex workers. However, sex workers who conduct FIFO and DIDO work to mining areas, as well as sex workers who may live in mining areas, face barriers such as discrimination, privacy concerns, isolation from non-stigmatising health care and limited access to in-person sex worker peer support services. Discrimination from accommodation providers also poses an ongoing threat to sex workers accessing accommodation whilst working in mining communities.

The Modern Slavery Statements of mining industry entities such as Rio Tinto and Jervois included concerning language and assumptions regarding sex work, which further stigmatise FIFO and DIDO sex workers in mining areas. For example in Rio Tinto's 2021 report they state:

'We could be at risk of contributing to modern slavery if, for example, our people enabled or facilitated the engagement of exploited people in a local community (such as for domestic work or sex work).'<sup>8</sup>

In Rio Tinto's 2020 Statement they state:

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<sup>8</sup> Rio Tinto, 'Modern Slavery Statement 2021', (2021). Retrieved from <<https://www.riotinto.com/-/media/Content/Documents/Sustainability/Corporate-policies/RT-Slavery-human-trafficking-statement-2021.pdf>>.

‘We also undertake site-specific security risk assessments, which include consideration of relevant modern slavery risks such as human trafficking and sex work in local communities.’<sup>9</sup>

This conflation of sex work and modern slavery could not be more clear. Rio Tinto treats them as one and the same. **This is in direct contradiction to the MSA’s framework for modern slavery.**

In Jervois’ 2021 Report they state:

‘For example, we recognize 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 or domestic work. Near future considerations relate to worker’s rights where movements to surrounding communities may be restricted outside of working hours.’<sup>10</sup>

These statements directly equate ‘exploited people’ and ‘modern slavery risks’ with sex workers and our work. This conflation is damaging and further stigmatises sex workers who work in mining industry areas. Stigma against sex workers has been identified as a negative health determinant that affects the mental and physical health of workers,<sup>11</sup> our ability to access non-judgemental health care<sup>12</sup> and our access to basic needs like housing, financial security and legal support.<sup>13</sup> Sex work stigma within rural/regional mining industry areas is compounded by isolation, lack of anonymity and privacy and lack of access to services and peer support.

The Jervois statement also references the possibility of restricting employees’ movements and engagements with sex workers. In addition to being a violation of the privacy of its employees during non-work time/on non-work sites, it also perpetuates stigma against sex workers working in mining locales and stands to detrimentally impact sex workers’ access to conducting legal and legitimate business. Such policy would increase surveillance of sex workers and encourage clients associated with Jervois to act to avoid company surveillance and/or disclosure of their identities, including by withholding necessary screening details required by sex workers as part of our safety strategies.

## Financial Institutions

Sex workers already experience a wide range of instances of financial discrimination and surveillance from financial services, even in circumstances where we are working within the confines of the sex

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<sup>9</sup> Rio Tinto, ‘Respecting Human Rights, Our Statement on Modern Slavery 2020’, (2020). Retrieved from: <https://www.riotinto.com/-/media/Content/Documents/Sustainability/Corporate-policies/RT-Slavery-human-trafficking-statement-2020.pdf>.

<sup>10</sup> Jervois, ‘2021 Modern Slavery Statement’ (2021). Retrieved from <https://modernslaveryregister.gov.au/statements/8021/>.

<sup>11</sup> C. Treloar et al., ‘Rethinking the Relationship between Sex Work, Mental Health and Stigma: A Qualitative Study of Sex Workers in Australia’ (2021) 268 *Social Science & Medicine* 113468.

<sup>12</sup> Cecilia Benoit et al., ‘Prostitution Stigma and Its Effect on the Working Conditions, Personal Lives, and Health of Sex Workers’ (2018) 55(4–5) *The Journal of Sex Research* 457, 458.

<sup>13</sup> For an in-depth account of examples of discrimination against sex workers see - Scarlet Alliance, ‘Unjust and Counter-Productive’, Report, 1999 <<https://scarletalliance.org.au/library/unjust-counterproductive>>.

work legislation in a particular jurisdiction. This leads to the seizure of funds, closing of accounts, inability to open new accounts or purchase other financial products or services, and inability to obtain merchant services that are available to workers in other industries.

Our research indicates that many financial institutions have adopted policies for the purpose of fulfilling their obligations under the *MSA* which exacerbate existing surveillance and discrimination against sex workers who are accessing (or attempting to access) financial services. These policies are not informed by the best available evidence on labour trafficking and servitude in Australia. The lack of clarity provided by the *MSA* and its *Reporting Guidelines* encourages financial services providers, who already conduct a wide range of discriminatory practices<sup>14</sup> against sex worker customers<sup>15</sup>, to further scrutinise our transactions, our racial or ethnic backgrounds, and our relationships to others using a set of criteria that are so broad as to capture most everyday business conduct for sex workers, as well as activity commonly conducted by people working in other industries or just going about their daily lives.

This approach was echoed in a 2022 AUSTRAC publication which provided guidance to financial institutions on ‘detecting and stopping forced sexual servitude in Australia’<sup>16</sup>. This publication, which was not provided to Scarlet Alliance for consultation ahead of its release, identifies a wide range of typical business practices of sex workers and our colleagues and managers as possible evidence of modern slavery. This ‘Financial crime guide’ was intended to inform business practice within the financial services sector, and released with a claim, without evidence or citation, that ‘forced sexual servitude is a form of slavery and represents around 30% of slavery cases in Australia’<sup>17</sup>. With messaging like this coming from a government entity like AUSTRAC, it is understandable that entities responsible for reporting under the *MSA* would find such practices acceptable, or even consider them effective. Messaging that identifies modern slavery in the form of ‘sexual servitude’ as a widespread problem in Australia also defies the approach taken by the *MSA*. This is of great concern to sex workers, and in particular migrant sex workers, who are most likely to be subject to the surveillance encouraged by both the AUSTRAC publication and the types of policies and practices common among financial institutions registering reports under the *MSA*.

Lack of access to payment processing and other financial services has a negative impact on sex workers’ ability to operate independently and transparently, which *increases* vulnerability to exploitation. This is already exacerbated by staff of financial services who are inadequately trained and working from the problematic brief provided by this publication or their own company’s policies

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<sup>14</sup> <https://www.abc.net.au/news/2021-10-12/debanking-sex-industry-gun-shops/100523118>

<sup>15</sup> Sarah Simpkins, ‘Ombudsman slams banks for adult industry discrimination’, *Investor Daily*, (2019). Retrieved from: <https://www.investordaily.com.au/markets/45677-ombudsman-slams-banks-for-adult-industry-discrimination>

<sup>16</sup> AUSTRAC, ‘Financial crime guide – Detecting and stopping forced sexual servitude in Australia’ (2022). Retrieved from [https://www.austrac.gov.au/sites/default/files/2022-02/AUSTRAC\\_FCG\\_DetectingAndStoppingForcedSexualServitude\\_web.pdf](https://www.austrac.gov.au/sites/default/files/2022-02/AUSTRAC_FCG_DetectingAndStoppingForcedSexualServitude_web.pdf)

<sup>17</sup> AUSTRAC, Media release for the release of the ‘Financial crime guide – Detecting and stopping forced sexual servitude in Australia’ (2022). Retrieved from <https://www.austrac.gov.au/news-and-media/media-release/austrac-and-business-working-together-stop-forced-sexual-servitude>

flagging transactions or individuals engaging in sex work as potentially linked to cases of sexual servitude. In this sense, the *MSA* stands to work counter to its stated purpose.

Examples of modern slavery statements from financial institutions that exemplify discriminatory and counter-productive approaches to sex workers include:

- **ANZ 2021 Modern Slavery Statement**<sup>18</sup>: Under the ‘due diligence in transaction monitoring’ section, ANZ present two case studies titled ‘detection of possible sexual servitude activity linked to massage parlours’ and ‘labour hire and sexual servitude’.<sup>19</sup>
- **NAB 2021 Modern Slavery Statement**<sup>20</sup>: ‘The ways in which humans can be exploited differs greatly, for example **sex trafficking within escort services** has different characteristics to labour trafficking of farmworkers. Each crime typology has unique strategies for recruiting and controlling victims and concealing the crime.’
- **Citigroup 2020 Modern Slavery Statement**<sup>21</sup>: In Hong Kong, in general, prostitution is not illegal, however running a brothel or trafficking persons for the purpose of prostitution are illegal. The Citigroup statement claims that, ‘Research indicated that organized crime groups – to circumvent legislation targeted at business-owned brothels – have established one-woman brothels characterized by a woman taking a lease on a small apartment in specific locations in Hong Kong and operating from that location in a situation of sexual servitude. Utilizing transactional and demographic characteristics and red flags associated with this activity, APAC GIU identified activity consistent with this typology and appropriate action was taken.’ No clarification is provided as to the ‘research’ nor the ‘appropriate action taken’. It is our experience that this type of response does not differentiate between sexual servitude and independent sex workers and results in overcapture.

Policy and practice that positions sex work as a signifier of modern slavery or sexual servitude results in financial institutions taking an exclusionary approach to the provision of financial products and services to sex workers by refusing to provide them, closing accounts and/or seizing funds without appropriate cause or explanation, or surveilling sex workers’ transactions and spending habits. The result is that sex workers may be hesitant to transact *or* barred from transacting (impacting our financial independence), feel that we need to avoid disclosure of our work, or may even lose hard-earned income to funds being frozen. This can have an immediate material impact on sex workers, and is an unacceptable consequence of the financial services sector’s understanding of their responsibilities under the *MSA*.

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<sup>18</sup>ANZ, ‘Modern Slavery Statement 2021’, (2021). Retrieved from: <https://www.anz.com/content/dam/anzcomau/documents/pdf/aboutus/esg/human-rights/modern-slavery-statement-2021.pdf>

<sup>19</sup> Ibid, p. 12

<sup>20</sup> NAB, ‘Modern Slavery Statement 2021’, (2021). Retrieved from: <https://www.nab.com.au/content/dam/nabrwd/documents/pds/social-impact/nab-modern-slavery-statement-2021.pdf>

<sup>21</sup> Citi Group Australia, ‘Modern Slavery Statement 2020’, (2020). Retrieved from: <https://www.citigroup.com/australia/aboutus/pdf/Citi-Australia-2020-Modern-Slavery-Statement.pdf>

Each policy's assertions about sexual services, regardless of their context, replicate those associated with the criminalisation of sex work and the barriers they create for sex workers to report criminal or unfavourable/exploitative workplace practices, access appropriate health and social services, access justice, and live self-determined lives. It does this by targeting individual sex workers for surveillance, and by presuming suspicious activity as a default if it is conducted by someone who is or appears to be a sex worker. This approach must be addressed through our recommended adaptations to and ongoing evaluation of the implementation of the *MSA*.

## Other entities

Other entities also included statements that demonstrate conflation between sex work and modern slavery. These include:

- **Twitter Australia 2021 Modern Slavery Statement:** 'Twitter's Adult Sexual Content Policy<sup>22</sup> prohibits the promotion of adult sexual content. This includes paid advertising for prostitution / escort services / mail order bride services.'<sup>23</sup>
- **Tetra Tech<sup>24</sup> 2021 Modern Slavery Statement:** 'The adverse effects of COVID-19 have driven women to jeopardise their health and safety by engaging in activities such as debt bondage, sex work and human trafficking. These highlight the importance of inclusive and accessible quality healthcare, with a focus on reproductive healthcare.'<sup>25</sup>

These statements further exemplify that the *MSA* does not give adequate guidance to reporting entities and does not implement enough mechanisms to safeguard sex workers from being targeted by modern slavery policies. These policies are further compounded by the lack of robust anti-discrimination protections for sex workers across Australia.<sup>26</sup>

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<sup>22</sup> Twitter, 'Content Policy: Adult or Sexual Products and Services', Retrieved from <<https://business.twitter.com/en/help/ads-policies/ads-content-policies/adult-or-sexual-products-and-services.html>>.

<sup>23</sup> Twitter Asia Pacific PTE LTD, 'Joint Modern Slavery Statement 2021' (2021). Retrieved from <<https://modernslaveryregister.gov.au/statements/9109/>>.

<sup>24</sup> Tetra Tech is a provider of consulting, engineering, program management, construction management and technical services worldwide.

<sup>25</sup> Tetra Tech, 'Modern Slavery Statement 2021' (2021). Retrieved from <<https://modernslaveryregister.gov.au/statements/9627/>>.

<sup>26</sup> Scarlet Alliance, *Anti-Discrimination and Vilification Protections for Sex Workers in Australia*, (2022). Retrieved from <[https://scarletalliance.org.au/library/anti\\_discrim2022/](https://scarletalliance.org.au/library/anti_discrim2022/)>

## Addressing the negative impacts of the Modern Slavery Act on sex workers

Need for evaluative mechanism that considers both positive and negative impacts of the Modern Slavery Act

There is currently a lack of evaluative mechanisms that measure whether any of the approaches developed by reporting entities in their statements have any impact on modern slavery. It is essential to ensure that the *MSA* is doing what it sets out to do, and not overreaching that remit. Given the negative ramifications that modern slavery statements are currently having on sex workers, especially migrant sex workers, we urge design and implementation of an objective evaluation mechanism measuring both the positive impacts of efforts of reporting entities *and* whether the policy has had negative and counter-productive consequences. Scarlet Alliance also suggests that any evaluation process involve an assessment of how Australia's 'hostile environment'<sup>27</sup> towards migrant workers also undermines the functionality of the *MSA*.

The conflation of exploitation and trafficking with sex work is a backwards step for Australia's trafficking legislation. Moreover, the operation of the legislation as it is understood by reporting entities, conflates a variety of criminal acts with sex work. The amendments in the Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act in 2012 removed direct linkages to only the sex industry from a number of key offences, such as "servitude" and "deceptive recruiting". This was an important step in recognising that anti-trafficking legislation has had a skewed focus on the sex industry. Singling out sex work and 'trafficking' places an undue focus on the sex industry as a site of unique modern slavery risks. This disproportionate allocation of risk not only contributes to anti-sex work discourse that characterises much of the trafficking measure but also will drive sex workers underground, inhibit sex workers' access to basic services, consume significant (financial and labour) resources, and will be unsuccessful in improving working conditions for sex workers or identifying trafficking or exploitation.

Entities must be responsible for developing policies and practices that do not harm sex workers

Scarlet Alliance considers that entities should be responsible for demonstrating an understanding of the distinction between sex work, labour exploitation, and trafficking in their approach to developing compliance measures. This includes demonstrated consideration of how their policies and practices may materially and adversely affect sex workers, including migrant sex workers. Sex workers and our representative organisations must inform these understandings and provide feedback to government about the negative consequences of misinformed or harmful approaches of any given entity. Entities demonstrating a discriminatory and misinformed approach should be monitored and supported to adapt to an evidence- and rights-based approach.

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<sup>27</sup> Molly Millar, 'Five years on, is the UK's landmark anti-slavery law fit for purpose?', *Reuters*, (2019). Retrieved from: <https://www.reuters.com/article/us-britain-slavery-expertviews-trfn-idUSKBN1WX02J>

Implementation and evaluation mechanisms must be developed with sex worker input and be responsive to the needs of the sex worker community

Evaluations must be evidence-based and conducted periodically, every 5 years. The evaluation of the *MSA* must capture whether the Act is achieving its intended aim, having its intended impact and not resulting in unintended negative consequences. Sex workers and our representative peer-led organisations are best placed to consult with migrant and non migrant sex workers, provide expert advice on policy frameworks that impact sex workers, and document and analyse impact of all aspects of the *MSA*'s implementation. Any mechanism for evaluation must engage Scarlet Alliance and our Migrant Sex Worker Advisory Group. The most effective way to engage Scarlet Alliance as a partner in addressing modern slavery is to resource project-based work with the migrant sex worker community that allows us to continue to robustly represent those most impacted by the *MSA* and provide an ongoing feedback loop with the government and the National Roundtable on Human Trafficking and Slavery.

## Part 2: The Modern Slavery Act 2018 does not address the drivers of modern slavery

Scarlet Alliance is supportive that the *MSA* represents a shift away from a criminal enforcement approach to modern slavery. Scarlet Alliance does not support amending the Modern Slavery Act to adopt further enforcement measures, as we are concerned that this will lead to entities developing further policies that are discriminatory and harmful for sex workers. We also do not support the establishment of a Commissioner charged with implementation of modern slavery law and policy.

The *MSA* will continue to be limited by Australia's broader anti-trafficking measures, as they do not address the drivers of modern slavery. The *Issues Paper* that accompanies this Review states that the drivers of modern slavery include: 'poverty, economic shocks, gender inequality, disability, lack of access to education, exploitative business practices, and unregulated labour migration.'<sup>28</sup>

Increasingly, research into the causal elements of trafficking and slavery find that it is the strict immigration and anti-trafficking policies that comprise Australia's 'border control' approach that

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<sup>28</sup>Australian Government, 'Review of Australia's Modern Slavery Act 2018: Issues Paper' (2022), p. 30.

increase migrant sex worker vulnerability to trafficking and slavery.<sup>29</sup> Within the context of Australian immigration law, the current approach is incredibly selective, difficult to navigate and inaccessible to many people. In addition to this, the cumulative effects of globalisation, colonialism, imperialism and capitalism have led to extreme precarity in employment, migration and access to justice. While the Australian government appears to be eager to ‘combat modern slavery’, the government is simultaneously depriving migrant workers of our freedoms through immigration detention, deportation, lack of access to labour rights and lack of access to services such as Centrelink and Medicare.<sup>30</sup> This immigration system is designed to allow ‘state-sanctioned traffic in the labour-power of migrant workers but at the same time prevent those workers from accessing the rights and protections formally assured to worker citizens’.<sup>31</sup> Within the context of migrant sex workers, we face the additional barriers of our work being criminalised, heavily regulated and/or stigmatised, which leads to police and immigration officials’ targeting and harassment.

The Australian state currently supports a migration model that actively undermines the human and labour rights of migrant workers, all while claiming to address the underlying drivers of modern slavery. Within this context, scholars have argued that government approaches to modern slavery are both ‘dishonest’ and ‘ineffective’ as they ‘do not challenge the role of states or existing modalities of wealth and resource allocation upon which states depend.’<sup>32</sup> As such, it is integral that the Australian government takes accountability for the negative consequences that current immigration and labour policies have on the prevalence of both trafficking and migrant labour exploitation within Australia. If the government continues the current approach to individuals (in criminal proceedings) or corporate entities (as in the MSA) without addressing the structural drivers created by Australian immigration and labour policies and maldistribution of wealth, anti-trafficking efforts will remain limited and in many cases, misguided or even harmful.

Scarlet Alliance would amend the ‘drivers of modern slavery’ in the Issues Paper to include:

‘Australian immigration policies, lack of access to industrial rights, inaccessible migration pathways, lack of access to government services such as Centrelink and Medicare and

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<sup>29</sup> Jefferys, E. (2009). Anti-trafficking Measures and Migrant Sex Workers in Australia. *Intersections: Gender and Sexuality in Asia and the Pacific* (19), Section 2; Pearson, E. (2007). Australia. In Global Alliance Against Traffic in Women (GAATW) (Ed.), *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights Around the World*. Thailand GAATW, pp. 52; Agustin, L.M., 2007. *Sex at the Margins: Migration, Labour Markets and the Rescue Industry*. London, UNITED KINGDOM: Zed Books, Limited; Busza, J., Castle, S., & Diarra, A. (2004). Trafficking and health. *BMJ : British Medical Journal*, 328(7452), 1369-1371, Pp. 1370; Frontline Defenders, ‘Sex Worker Rights Defenders At Risk, (August 2021), see Chapter 4.0 on Anti-Trafficking, pp. 96. Retrieved from: [https://www.frontlinedefenders.org/sites/default/files/fld\\_swrdr\\_final\\_english.pdf](https://www.frontlinedefenders.org/sites/default/files/fld_swrdr_final_english.pdf); Mai, N., Maciotti, P.G., Bennachie, C., Fehrenbacher, A.E., Giametta, C., Hoefinger, H., and Musto, J., 2021. Migration, sex work and trafficking: the racialized bordering politics of sexual humanitarianism. *Ethnic and Racial Studies*, 44 (9), 1607–1628; Jennifer Musto et al. ‘Anti-Trafficking in the Time of FOSTA/SESTA: Networked Moral Gentrification and Sexual Humanitarian Creep’ (2021) 10(2) *Social Sciences* 58.

<sup>30</sup> Julia O’Connell Davidson (2016) Decanting ‘Trafficking in Human Beings’, *Recentring the State, The International Spectator*, 51(1), 58-73, pp. 58.

<sup>31</sup> Julia O’Connell Davidson (2016) Decanting ‘Trafficking in Human Beings’, *Recentring the State, The International Spectator*, 51(1), 58-73, pp.68

<sup>32</sup> Bravo, K. E. (2019). Contemporary State Anti-Slavery Efforts: Dishonest and Ineffective. *Northern Kentucky Law Review*, 46(2), 106-131, 107; Julia O’Connell Davidson (2016) De-canting ‘Trafficking in Human Beings’, *Recentring the State, The International Spectator*, 51(1), 58-73; Laura Agustin, *Framing Mother Tac, Sexual Humanitarianism*

expensive and lengthy visa processes.’

Scarlet Alliance submits that a rights-driven and evidence-based approach to sex work, migration and trafficking should be pursued over criminal justice approaches. The most effective approaches aim to address the material circumstances that create vulnerability to trafficking and prioritise the needs, agency and self-determination of victims over criminal prosecutions and increased surveillance. They address labour exploitation through a focus on prevention, industrial rights, civil remedies, statutory compensation, and equitable access to visas, migration channels and support.

## The decriminalisation of sex work is the most effective anti-trafficking approach

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>33</sup> Research demonstrates that in criminalised jurisdictions sex workers’ ability to seek information, support and health care is ‘severely limited by the risk of prosecution’<sup>34</sup> and ‘illegal sex workers were more likely to report being harassed (42% compared with 13% of legal sex workers)’ by police, and that this harassment included verbal abuse, racial insults, stalking, phone calls and requests for sexual favours.<sup>35</sup>

In addition, over-policing and compliance checking in the guise of investigating trafficking in the sex industry deters migrant sex workers from seeking supportive, legal and health assistance for fear that detection by the authorities will result in deportation, increased policing of our workplaces, increased immigration scrutiny and prosecution. The Scarlet Alliance Migration Project, staffed and managed by migrant sex workers with input from the wider migrant sex worker community, has reported that contact with Department of Immigration and Border Protection officers has often resulted in increased policing of their workplaces, heightening tensions between migrant sex workers and the authorities, and further deterring migrant sex workers from seeking assistance when it’s needed.

Decriminalisation has proven to create the most enabling environment to ensure migrant sex workers are afforded workplace rights; have access to legal, health and supportive services and bilingual peer educators; and has proven to reduce organised crime and police corruption.<sup>36</sup>

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<sup>33</sup> New South Wales 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>, Pg 13.

<sup>34</sup> Harcourt, C., Egger, S., & Donovan, B. (2005). Sex work and the law. *Sexual health*, 2(3), 121-128, Pg 123.

<sup>35</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, 16-18, Pg 17.

<sup>36</sup> Donovan, B., Harcourt, C., Egger, S., & Fairley, C. K. (2010). Improving the health of sex workers in NSW: maintaining success. *New South Wales Public Health Bulletin*, 21(4), 74-77.

## Anti-trafficking approaches must not contravene human rights.

Evidence from sex worker organisations, evidence based research and government statistics<sup>37</sup> consistently support that trafficking and exploitation is not the experience for the vast majority of migrant sex workers in Australia.<sup>38</sup>

Criminal justice based anti-trafficking approaches have jeopardised sex workers' support and safety structures, workplaces and undermined efforts to address labour exploitation. 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. For example, criminalising the support and safety structures of sex workers sends the message that associates of sex workers are by default exploitative.<sup>39</sup> Consequently, sex workers and our support and safety structures are forced to operate covertly and sex workers are often forced to work alone, decreasing our access to support structures, increasing isolation and undermining sex workers right to freedom of association.

## Migrant sex workers need access to safer migration channels

Migrant sex workers need increased access to safe migration pathways. However, instead of creating safer migration channels for migrant sex workers, the Australian anti-trafficking response has made it more difficult by increasing border security and implementing stricter visa conditions. Making migration more difficult for migrant sex workers increases vulnerabilities to trafficking. Immigration 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>40</sup> Increasing immigration scrutiny and reducing legitimate migration pathways in effect, feeds this demand.<sup>41</sup> Increasing access to legal channels by which migrant sex workers can independently enter Australia reduces that potential avenue for exploitation.

Migrant workers often need to use the services of agents to apply for expensive and complicated visas. However, research indicates that the use of brokers and agents to travel significantly

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<sup>37</sup> Joint Standing Committee on Foreign Affairs Defence and Trade Human Rights Sub-Committee. (2013). *Trading lives: modern day human trafficking*. Canberra: Parliament of the Commonwealth of Australia, Pg 22.

<sup>38</sup> Australian Government. (2016). *Trafficking in persons: the Australian Government response* Canberra: the Parliament of the Commonwealth of Australia: Commonwealth of Australia, Pg 4.

<sup>39</sup> Global Network for Sex Worker Projects (NSWP). (2017). *The Decriminalisation of Third Parties*. Retrieved from UK: <http://www.nswp.org/resource/policy-brief-the-decriminalisation-third-parties>.

<sup>40</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>> Part III article 9 section 5.

<sup>41</sup> Hathaway, D. S. (2012). *Human Trafficking and Slavery: Towards a New Framework for Prevention and Responsibility*. Portland State University, Pg 7.

increases migrant sex workers' vulnerability to trafficking.<sup>42</sup> When provided with accessible and safe migration pathways, migrant sex workers are able to access visas without the need to use a broker or a third party, thereby, reducing migrant workers' vulnerability to trafficking.<sup>43</sup>

In order to support the efficacy of the *MSA*, the government must invest in non-carceral approaches to anti-trafficking and slavery, including bolstering avenues for compensation and providing alternative referral pathways that do not involve police as a first contact point. The government should also amend its hardline approach to migration, especially for asylum seekers and refugees.

## Protect the labour rights of migrant sex workers and their capacity to seek redress

Instead of remaining hyper-focused on criminal approaches to trafficking, the Australian Government should strengthen its labour protections for all migrant workers. An integral place to begin is for the Australian government to become a signatory of the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*. Migrant sex workers need access to industrial mechanisms to claim compensation, redress exploitative working conditions and access legal aid and support without fear of being affected by anti-trafficking measures.

Furthermore, migrants must be able to freely report instances of exploitation, trafficking and slavery without fear of deportation. In a survey conducted by Unions NSW, rife underpayment and exploitation of migrant workers across Australia was found. Scarlet Alliance supports calls from Unions NSW for the creation of a firewall between the Fair Work Ombudsman and the Department of Home Affairs so that vulnerable workers are not prevented from taking action against their employer for fear of visa cancellation or deportation. We further support their calls for a new substantive visa to allow migrant workers with outstanding claims for workplace entitlements to remain in the country with working rights until their claim has been settled and for visa restrictions that intensify potential for migrant workers to be exploited to be reformed.<sup>44</sup>

## Develop robust responses to trafficking outside of the criminal justice system

Scarlet Alliance has long advocated for reporting mechanisms and pathways to justice that do not involve reporting to police or immigration authorities. This includes mechanisms for reporting exploitative work practices *without* being funnelled into the criminal justice and/or border control

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<sup>42</sup> Renshaw, L. (2016). Migrating for work and study: The role of the migration broker in facilitating workplace exploitation, human trafficking and slavery. *Trends & Issues in Crime & Criminal Justice* (527). See also Joint Standing Committee on Foreign Affairs Defence and Trade Human Rights Sub-Committee. (2013). *Trading lives : modern day human trafficking*. Canberra: Parliament of the Commonwealth of Australia, Pg 22.

<sup>43</sup> Global Alliance Against Traffic in Women (GAATW). (2010). *Beyond Borders: Exploring the link between trafficking and migration* Retrieved from Thailand: [http://www.gaatw.org/publications/WP\\_on\\_Migration.pdf](http://www.gaatw.org/publications/WP_on_Migration.pdf). See also, Taran, P. A., Chammartin, G. M. F., & International Labour Office: International Migration Branch. (2002). *Getting at the Roots: Stopping Exploitation of Migrant Workers by Organized Crime*: International Labour Office, Pg 11.

<sup>44</sup> UNIONS NSW (2022) Wage Theft, The Shadow Market. Accessed 12 December 2022 <https://www.unionsnsw.org.au/wp-content/uploads/2022/12/Wage-Theft-The-Shadow-Market-Empowering-Migrant-Workers-to-Enforce-Their-Rights.pdf>

systems. It is also imperative that people who do experience trafficking are materially supported to recover and receive redress through compensation. **We strongly recommend that the Australian government adopt and implement the national compensation scheme authored by Anti Slavery Australia and endorsed by the NGO parties to the National Roundtable on Human Trafficking and Slavery and endorsed by Scarlet Alliance and many other civil society organisations.**

At a federal level, enormous resources have been spent on a criminal justice response to trafficking. The Australian Government has primarily sought to combat trafficking as a transnational criminal issue, adopting punishment as a primary means of deterrence.<sup>45</sup> Yet the necessity of police involvement in cases 'has resulted in a set of insurmountable barriers'<sup>46</sup> for migrant sex workers.

Expert researcher on migration, sex work, and trafficking Dr. Laura Agustin terms this international movement the 'rescue industry'<sup>47</sup> - a sizable industry built upon a concept of 'rescue' These policies, laws and enforcement have not been effective in addressing trafficking. Instead, they pose an immediate threat to the health, safety and human rights of migrant sex workers, increasing stigma and marginalisation, and leading to or replicating the criminalisation of our workplaces.

International human rights organisations increasingly report that the greatest threat to the health, safety and human rights of migrant sex workers is government anti-trafficking policy.<sup>48</sup> Increasing bodies of literature from international human rights organisations have reported on the significant human rights impacts of anti-trafficking campaigns worldwide. Research citing migrants in Mali and Cambodia supports conclusions that trafficking interventions, both at entry level and once in the destination country, 'often ignore the cultural context of migration and can increase migrants' risk of harm and exploitation.'<sup>49</sup>

Research shows that criminal justice approaches to trafficking rarely affect anyone other than individual sex workers. Instead, they act to curtail sex workers' freedom of movement, restrict our choice of occupation, create barriers to migrant sex workers accessing essential services, undermine opportunities to negotiate suitable workplace conditions and impede access to outreach and community service providers, who have far more difficulty gaining our trust.<sup>50</sup>

Empower Foundation write:

Nowadays there are laws about human trafficking. These laws, consequently, get us arrested. Because of these laws, we are put in jail and sent back to our home town. These laws don't help or respect us. On the other hand it is like a wall so we can't reach our dreams or access our rights.

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<sup>45</sup> Sarah Steele, 'Trafficking in People: The Australian Government's Response' (2007) *Alternative Law Journal* 32 (1), 18.

<sup>46</sup> Scarlet Alliance, *Submission to the Attorney General on the Criminal Justice Response to Slavery and People Trafficking; Reparation; and Vulnerable Witness Protections*, February 2011, accessed at [http://www.scarletalliance.org.au/library/subagd\\_2011a/](http://www.scarletalliance.org.au/library/subagd_2011a/) on 6 September 2011, 2.

<sup>47</sup> Laura Agustin, *Sex at the Margins: Migration, Labour Markets and the Rescue Industry*, Zed Books, 2007.

<sup>48</sup> Jeffrey Dabhadatta et al., 'Changes in Migration Status and Work Patterns in Asian Sex Workers attending a Sexual Health Centre', 2008, 43; Scarlet Alliance, *Submission to Commonwealth Attorney General's Department*, 2004, 4; Elaine Pearson, 'Australia', *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights Around the World*, Global Alliance Against Traffic in Women, October 2007, 52; Busza, Castle et al., (2004) 'Trafficking and health', *British Medical Journal* 328: 1269-1371.

<sup>49</sup> Busza, Castle et al., (2004) 'Trafficking and health', *British Medical Journal* 328: 1269-1371.

<sup>50</sup> Elaine Pearson, *Collateral Damage*, above n9 at 52.

It's good that they want to help us but I've got some questions for those people who think that they rescue us. How would you help us? Do you really help us to reach our dreams? Do you ever care about what happens to us after all?<sup>51</sup>

## Appointment of an Anti-Slavery Commissioner

Scarlet Alliance does not support the establishment of an office of an Anti-Slavery Commissioner and strongly believes that enforcement of the MSA must remain under its current remit, particularly given the current issues with the Act and its implementation. This allows for active engagement from affected communities with an accountable government. A Commissioner appointment would place a high degree of power into the hands of an individual who is not accountable to the voting public. We view the establishment of a Commissioner to be a surface-level administrative fix to a deeply-fraught immigration and industrial relations system that creates the conditions for the exploitation of migrant workers in all industries.

Resourcing created for this office would be better allocated to addressing the significant knowledge deficits of those already working within the modern slavery response and improving their practice. Many frontline staff that interact with sex workers, including the Department of Immigration and Border Protection, State and Federal Police, and NGOs specifically funded to support victims of trafficking, like the Salvation Army, do not necessarily know the legality of the sex industry or indicators to identify actual cases of trafficking. The continued conflation of sex work with trafficking in media sources perpetuate harmful stereotypes at the detriment of actually investigating trafficking. The outcomes are damaging to sex workers and result in the continued stigmatisation, surveillance, harassment, discrimination and deportation of migrant sex workers. Additionally, media misrepresentation of trafficking in the sex industry perpetuate misunderstandings of the nature and prevalence of trafficking in the sex industry.<sup>52</sup> It is not uncommon for Scarlet Alliance and our member organisations to receive calls from distraught sex workers stating that police dismissed them when reporting crime and were told that sex work is illegal when the sex worker was in fact working in compliance with the law.

Scarlet Alliance submits that training provided to authorities to identify slavery and exploitation must be driven by affected communities and engage us in understanding the actual indicators for trafficking and appropriate responses. Likewise, community awareness raising campaigns must be driven by affected communities to accurately reflect indicators of exploitation and appropriate responses. 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, including communities in training frontline staff and community awareness raising campaigns will ensure effective, tailored approaches

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<sup>51</sup> Empower Foundation, 'Travel to Build a Better Life' Presented at an anti-trafficking networking day facilitated by Scarlet Alliance, printed in *Pravica*, 5-28. <sup>52</sup> Take, for example, recent [60 Minutes](#) reporting that broadcast non-consensual footage of migrant sex workers at work, disclosing their identities on national television, violating their human rights, and spreading harmful misinformation conflating sex work and trafficking on a national stage. Such reporting informs a national consciousness about modern slavery that perpetuates the harmful approaches common in entity reports under the MSA and stands to continue to gain momentum without intervention. For further information on this instance of harmful reporting and how it impacts migrant sex workers, see our member Respect Inc's statement '[Sex workers respond to 'exploitation' allegations by Major Organised Crime Squad and sensationalist media](#)'.

that are cost effective, culturally appropriate and will result in a coordinated response that does not contravene the rights of the community.

In the event of the establishment of an office of the Anti-Slavery Commissioner, safeguards must be put in place to prevent this office from taking further steps backwards into a framework that targets the sex industry. Ensuring that the work of such a commission is informed by the best available evidence, engaged with the communities its decisions and activities impact, working collaboratively with civil society stakeholders, and in line with the intentions of the MSA would be imperative. Should this be discussed in another process, Scarlet Alliance and our migrant sex worker peers must be invited to work closely with government in the development of these safeguards.

### Resource sex worker peer organisations to run projects and provide services by and for migrant sex workers

There is significant need to fund the work of migrant sex workers and sex worker peer organisations in supporting sex workers experiencing exploitation, responding to the harms of anti-trafficking responses, and providing information and advocacy for migrant sex workers.

In 2017, *An inquiry into human trafficking, slavery and slavery-like practices* report acknowledged the success of the Scarlet Alliance Migration Project.<sup>53</sup> This project was managed and staffed by migrant sex workers. It aimed to produce and deliver translated information on legal and migration rights and responsibilities to migrant sex workers in Australia and their country of origin as well as providing community education about migrant sex work and trafficking, and a resource and support hub for peer educators in our member organisations providing support across the states and territories. The project was a highly successful, cost-effective, and practical way to increase community awareness in Australia and abroad and support trafficking prevention efforts. As the modern slavery response evolves, direct engagement through funded programmatic work is required to ensure that its evolution is in step with the needs of migrant workers in all industries, including sex workers.

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<sup>53</sup> Parliamentary Joint Committee on Law Enforcement. (2017). *An inquiry into human trafficking, slavery and slavery-like practices*. Retrieved on 090819 from [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Law\\_Enforcement/Humantrafficking45/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Law_Enforcement/Humantrafficking45/Report)