



**Australian
Sex Workers
Association**

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

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Dear Committee on the Protection of the Rights of All Migrant Workers and Members of their Families,

Re: Draft General Comment No. 6 (2022) on the Convergence of the Convention and the Global Compact for Safe, Orderly and Regular Migration

Scarlet Alliance welcomes the opportunity to make a submission to the Committee on Migrant Workers regarding the draft version of General Comment No. 6. We appreciate the work that the Committee undertakes in pushing for states to act in compliance with the Convention. We acknowledge the limitations that the Convention has in Australia due to its refusal to ratify the Convention and to sign the Global Compact. Unfortunately migrant workers in Australia continue to face state-enacted discrimination and an inability to access social protections, health and justice. Scarlet Alliance is committed to supporting the call for Australia to ratify the Convention so that the human rights of all migrant workers, including migrant sex workers, are protected.

In saying this, we advise that in its current form, General Comment No.6 will not adequately address the barriers that migrant sex workers face in asserting our human rights in Australia and globally. We urge the Committee to consider our submission, as well as the submissions of other sex worker organisations and to implement our recommendations.

Given its global influence, the Committee is presented with an excellent opportunity to model best practice migration policy, which must actively recognise the unique and compounding barriers that migrant sex workers face. If migrant sex workers continue to be unrecognised as workers or only recognised when conflated with anti-trafficking measures, the efficacy of the Convention, Global Compact and the Committee's work will be undermined and result in the continued violation of the human rights of migrant sex workers.

About Scarlet Alliance

Scarlet Alliance, the Australian Sex Workers Association, is the peak national sex worker organisation in Australia. Formed in 1989, the organisation represents a membership of individual sex workers and sex worker organisations. Scarlet Alliance and our member organisations and projects have the highest level of contact with sex workers in Australia of any agency, government or non-government. Through our project work and the work of our membership, we have consistently maintained high levels of access to sex industry workplaces in the major cities and many regional areas of Australia.

Scarlet Alliance and many of our member sex worker organisations and projects within Australia have CALD (culturally and linguistically diverse) projects employing bi-lingual project workers resulting in extremely high levels of engagement with CALD and migrant sex workers throughout Australia across a range of workplace types.

The Scarlet Alliance Migration Project, which was first funded in 2009, was staffed and managed entirely by migrant sex workers. The Migration Project aimed to fill the evidence gap in trafficking issues and represent the actual experiences of migrant sex workers in Australia. The project worked to support evidence-based policy development, capacity development of sex worker peer educators in delivering services to migrant sex workers, and the production of translated information for distribution to sex workers of Thai, Chinese and Korean language backgrounds, especially around issues of legal and migration rights and responsibilities.

Migrant sex workers must be included in the scope of General Comment No.6

We note that both the Global Compact and the Convention (via the work of the Committee) endorse measures to prevent 'irregular or clandestine migration movements' primarily via anti-trafficking measures. The approaches outlined in Objective 10 of the Global Compact promote the eradication of trafficking through actions such as 'monitor irregular migration routes which may be exploited by human trafficking networks', 'share relevant information and intelligence through transnational and regional mechanisms' and 'apply measures that address the particular vulnerabilities of women, men, girls and boys, regardless of their migration status'.

At present, the Global Compact and draft General Comment address the risk of human trafficking at various points and yet do not address the human rights consequences of anti-trafficking measures upon migrant sex workers, including the risks of deportation and detention. We note that it is often the combination of the criminalisation of sex work, restrictive state migration policies and punitive anti-trafficking measures that increase migrant sex workers' vulnerability to trafficking and exploitation. This combination also occurs within the context of migrant sex workers being included in anti-trafficking international discourse solely as 'victims of trafficking', which denies migrant sex worker's autonomy as workers and functions to undermine our ability to access support without facing the presumption that we are victims. These approaches, along with others listed in Objective 10, represent a punitive and carceral approach to trafficking, which, in Australia, has resulted in migrant sex workers being targeted and surveilled by police and immigration authorities and subsequently detained and deported, sometimes under the assumption that we are 'victims of trafficking'.

General Comment No.6 must explicitly differentiate between migrant sex work and trafficking.

This presumption of our status as 'victims' is reflected in this question in the General Comments scope: *What measures do the Convention and the Global Compact take to prevent irregular or clandestine migration movements and employment of migrant workers in an irregular situation?* It is integral that the General Comment acknowledge that the underlying factors that increase our vulnerability to exploitation and trafficking are the criminalisation of sex work and the limited access that we can have to 'regular' and/or legal avenues of migration, which can place sex workers in situations where we are forced to choose third parties to help us move across borders. As such, we recommend that the General Comment specifically endorse the decriminalisation of sex work, the recognition of sex work as legitimate labour and safe migration routes as essential measures to minimising the 'clandestine' nature of our available migration avenues. Adopting a punitive approach that seeks to prevent migration for those who have limited regular pathways will fail to support migrant sex workers in accessing human rights and justice mechanisms.

If the Committee fails to delineate explicitly between migrant sex work and trafficking, the convergence of the Global Compact and the Convention will continue to ignore the rights of migrant sex workers. Current debates in Australia and globally often conflate terminology such as trafficking, debt bondage, sexual servitude, deceptive recruitment and forced labour, and fail to recognise sex

work as distinct from these concepts. Advocates for the abolition of the sex industry continue to use these terms interchangeably in a way that suggests all sex work is tantamount to sexual exploitation or that the term 'migrant sex worker' is synonymous with 'victim'.

The Empower Foundation in Thailand writes:

If we were travelling from a rich country with documents, we could be tourists, experts, consultants, researchers, exchanged students or attending a meeting (just like me, I'm here today). But if we were from a poor country and have no documents we would become illegal migrants, smugglers, criminals or even terrorists. But if we are sex workers, it doesn't matter if we have document or not. We will be called victims, sex slaves or prostitutes and nowadays we are called 'victims of human trafficking.'¹

The presumption that migrant sex workers are 'victims of human trafficking' has undermined efforts to address trafficking and labour exploitation. In a 2018 report to the UN General Assembly, the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, noted that conflation of 'sexual exploitation' with all sex work denies sex workers agency and treats them as victims.

"Laws, policies and services that are "gender-sensitive" have often been protectionist in nature, particularly in the anti-trafficking and sexual exploitation spheres. These instruments may reinforce harmful stereotypes about women as victims of slavery without any agency and also lead to the gender-specific causes of the many contemporary forms of slavery being overlooked."²

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.³ 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.

The ICRSE states:

The conflation of (migrant) sex work with human trafficking permits states' arrests and prosecutions of migrant sex workers that do little or nothing to address egregious forms of exploitation. Evidence shows that police raids and rescue operations often result in migrant sex workers having to work clandestinely, rendering them particularly vulnerable to exploitation and abuse.⁴

¹ Empower Foundation, 'Travel to Build a Better Life' Presented at an anti-trafficking networking day facilitated by Scarlet Alliance, printed in *Provision*, 5, 28.

² UN General Assembly, 10th July 2018, "Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences," A/73/139.

³ 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

⁴ *Ibid.*

In their present forms, the draft General Comment, the Global Compact and the Convention fail to address the obscurity generated by anti-trafficking debates. The experiences and demands of migrant sex workers are often ignored or sidelined as secondary to anti-trafficking advocates during consultative processes, domestically and internationally. It is essential that migrant sex workers and our representative sex worker organisations are actively included and listened to during the development of global and domestic policy and law.

The decriminalisation of sex work is the most effective anti-trafficking measure.

Mounting national and international evidence suggests that criminal law consistently fails to address issues of exploitation, trafficking, coercion and violence within any industry and in many cases, only increases vulnerability to exploitation.⁵ When sex work, clients or our workplaces are criminalised, our ability to access 'legal' avenues of migration and labour rights mechanisms is limited. Like any industry, when states adopt a criminalised approach to a perceived 'social issue', such as migration, this creates a two-tiered system wherein those who cannot migrate and work 'legally' face a series of barriers to accessing basic legal and social protective mechanisms and their human rights. For too long, global approaches to migrant sex work have been punitive and preventative rather than supportive of migrant sex workers' industrial and labour rights. This has undermined efforts to address exploitation.

The ICSE 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 the sex industry. The most effective way to address exploitation is to improve the labour protections available to the workers involved and their ability to organise.⁶

Improving labour protections and conditions for sex workers can only occur when our work, clients and workplaces are completely decriminalised. As long as any form of criminalisation or discriminatory regulation exists, migrant sex workers face the precarity of working 'illegally', which inevitably results in migration precarity as well.

Criminalising sex work clients is a damaging and counter-productive anti-trafficking measure.

The General Comment must confirm that the language of 'prevention' should not extend to preventing sex work through criminalisation or decreasing demand for sex work as appropriate approaches to decreasing trafficking.

⁵Amnesty International, "We live within a violent system." Structural violence against sex workers in Ireland', 2022, <<https://www.amnesty.org/en/documents/eur29/5156/2022/en/>>.

⁶ International Committee on the Rights of Sex Workers in Europe, 'From vulnerability to resilience: sex workers organising to end exploitation', May 2021, <https://d3n8a8pro7vhmx.cloudfront.net/eswa/pages/83/attachments/original/1622042222/Exploitation_per.pdf?1622042222>.

Despite claims that the criminalisation of clients, also known as the Swedish or Nordic Model, will protect sex workers while driving down demand for commercial sexual services and sex trafficking, research conducted in countries where similar legislation to the Swedish model has been introduced reveals that the model has:

- hindered sex workers ability to report crime to the police.⁷
- forced sex workers to operate in more isolated settings.⁸
- not reduced the number of sex workers.⁹
- rushed sex workers' client negotiations and screenings of potentially dangerous clients.^{10,11}
- made sex workers more vulnerable to violence.^{12,13}
- deteriorated sex workers' living conditions.¹⁴

The impact of criminalising one of the two parties involved is that police detection and surveillance inevitably impacts both the client and the sex worker. The Global Network of Sex Work Projects states:

The criminalisation of clients has been shown to increase violence against sex workers and decrease earnings by pushing sex work to the margins of society to avoid detection by law enforcement. Sex workers operating under this framework are also far less likely to report violence and abusive or coercive practices. It impedes access to health and social services and isolates sex workers from their support networks. **There is no conclusive evidence to suggest that criminalising clients eliminates or significantly reduces sex work.**¹⁵

Engage sex worker-peer organisations to develop law, policy and governance that will not harm migrant sex workers.

The Committee should actively engage and consult with sex worker peer organisations across the world to ensure that the Committee's work does not inadvertently harm migrant sex workers and to ensure that sex workers are able to access the intended benefits of the Convention and Compact. In a social and political climate that is contentious about sex work and migration, it is essential that the

⁷ Amnesty International. (2016a). The human cost of 'crushing' the market: Criminalisation of sex work in Norway. Retrieved from https://www.amnestyusa.org/wp-content/uploads/2017/04/norway_report_-_sex_workers_rights_-_embargoed_-_final.pdf on 03/04/19. Pg 55.

⁸ Bail, H. L., & Giametta, C. (2018). What do sex workers think about the French prostitution act: a study on the impact of the law from 13th April 2016 against the 'Prostitution System' in France. <https://hal-sciencespo.archives-ouvertes.fr/hal-02115877/document> Pg 7.

⁹ Ibid

¹⁰ Amnesty International, "“We live within a violent system.” Structural violence against sex workers in Ireland’, 2022, <<https://www.amnesty.org/en/documents/eur29/5156/2022/en/>>

¹¹ Amnesty International. (2016b). Amnesty International policy on State obligations to respect, protect and fulfil the human rights of sex workers. Retrieved from <https://www.amnesty.org/en/documents/pol30/4062/2016/en/> on 03/04/19.

¹² Ibid

¹³ Amnesty International, "“We live within a violent system.” Structural violence against sex workers in Ireland’, 2022, <<https://www.amnesty.org/en/documents/eur29/5156/2022/en/>>

¹⁴ Bail, H. L., & Giametta, C. (2018). What do sex workers think about the French prostitution act: a study on the impact of the law from 13th April 2016 against the 'Prostitution System' in France. <https://hal-sciencespo.archives-ouvertes.fr/hal-02115877/document> Pg 7.

¹⁵ NSWP Sex Work is not Sexual Exploitation, NSWP - 2019 https://www.nswp.org/sites/default/files/briefing_note_sex_work_is_not_sexual_exploitation_nswp_-_2019_0.pdf p.3

Committee consider and prioritise the voices of migrant sex workers who have the experience and knowledge best suited to direct the work of the Committee. Sex worker organisations are beginning to be globally recognised as instrumental actors in addressing trafficking. A recent report published by the International Committee on the Rights of Sex Workers in Europe outlines the importance of sex work peer organisations and projects in the field of anti-trafficking.¹⁶ However, it is important that the Committee recognise that sex worker peer organisations are equipped to advise on further topics such as migrant labour rights and avenues of migration.

Recommendations for the General Comment No.6:

Scarlet Alliance recommends that the Committee integrate the following points into the scope of General Comment No.6:

- Clarify that Objective 10 of the Global Compact must not be interpreted as means to justify law and policy that seeks to 'prevent' sex work.
- Explicitly acknowledge that the conflation of trafficking and sex work is detrimental to migrant sex workers and counter-productive to anti-trafficking measures.
- Explicitly acknowledge that the full decriminalisation of sex work is the most effective anti-trafficking measure.
- Explicitly acknowledge that the criminalisation of sex work clients is an ineffective and dangerous anti-trafficking measure.
- Clarify that preventative measures taken by States must consult with sex workers and our organisations.

¹⁶International Committee on the Rights of Sex Workers in Europe, 'From vulnerability to resilience: sex workers organising to end exploitation', May 2021, <https://d3n8a8pro7vhmx.cloudfront.net/eswa/pages/83/attachments/original/1622042222/Exploitation_per.pdf?1622042222>.