

Submission  
No 17

## INQUIRY INTO HUMAN TRAFFICKING

**Organisation:** Scarlet Alliance, Australian Sex Workers Association

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# Australian Sex Workers Association

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To: The Chair  
The Hon. Paul Green  
NSW Legislative Council Select Committee on human trafficking  
Parliament House  
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19<sup>th</sup> February 2017

RE: The Inquiry into Human Trafficking

Thank you for the opportunity to submit to the NSW Legislative Council select committee inquiry into human trafficking in New South Wales.

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 work place types.

This includes the Scarlet Alliance Migration Project that was first funded in 2009. The Scarlet Alliance Migration Project, staffed and managed entirely by migrant sex workers, aims to fill the evidence gap in trafficking issues and represent the actual experiences of migrant sex workers in Australia. The project works 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.

Our submission is informed by these experiences and those of the Scarlet Alliance Migration Project Steering Committee, enabling the direct input of migrant sex workers, who have been most impacted by anti-trafficking interventions.

We look forward to providing further information as part of the hearing process. In the meantime, if you require further information please contact our Chief Executive Officer, Jules Kim on

Regards,

Ryan Cole  
President

## **Executive Summary**

Australia has maintained a primarily criminal justice approach to trafficking with a focus on policing and surveillance. Increasing regulation, policing and surveillance are not effective approaches to combating trafficking or exploitation for the small number of cases that have been identified. We need to shift to a comprehensive multi-faceted and evidence-based prevention approach, which supports culturally and linguistically appropriate sex worker peer education, in country partnerships with sex worker organisations at countries of origin, the decriminalisation of sex work, and the accessibility of civil remedies for those who have experience labour exploitation.

### **(a) the role and effectiveness of New South Wales law enforcement agencies in responding to human trafficking including: (i) how New South Wales law enforcement agencies respond to human trafficking, including slavery, slavery like practices such as servitude, forced labour, and people trafficking**

The sex industry in NSW is subject to regular compliance visits from a variety of different agencies, both government and non-government. Migrant sex workers in particular report regular visits by both police and immigration. Functionally a system of compliance checking for visas and sex industry regulations is far from the ideal means of eliciting sex workers to come forward if they are experiencing workplace exploitation. By contrast, consultation via the steering committee and through a survey on outreach conducted by SWOP NSW has found that sex workers report being far more willing to come forward to peer based organisations to seek support. SWOP NSW is a peer based sex worker organisation that employs bi lingual staff who conduct regular outreach to sex workers in their workplaces and are able to provide relevant, culturally appropriate referrals, information and support. SWOP NSW works closely with the Scarlet Alliance Migration Project when instances of suspected trafficking or exploitation arise to provide appropriate and timely responses that meets the needs of sex workers. Referrals are made to police when necessary. Currently the Support for Trafficked People Program (STPP) requires a referral by the AFP in order to gain access to the support program. Additionally the trafficked person must be willing to participate in a criminal investigation in order to access the support through the STPP and the person must be an Australian citizen or hold a valid visa. The conditions to access support through the STPP create significant barriers to sex workers wishing to gain support.

### **(ii) the influence of organised crime in human trafficking in New South Wales**

Large scale organised crime and 'pimping' is not a characteristic of the sex industry in Australia.<sup>1,2</sup> The Australian Crime Commission produces biennial reports that presents the current picture of

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<sup>1</sup> B. Donovan, et al (2012). *The Sex Industry in New South Wales: A Report to the NSW Ministry of Health* Kirby Institute, University of New South Wales, Sydney.

the serious and organised crime and outlines the existing and emerging organised crime threats impacting the Australian community and national interests. Consistently the sex industry has not been identified as an area of current or emerging organised crime environment or threat in any of those reports.

Research and anecdotal evidence from the Scarlet Alliance member organisations, who actively interface with sex workers in their daily operations, and our membership of individual sex workers supports this. The practice of peer sex worker organisations providing peer support to sex workers and outreach to sex worker workplaces has successfully supported a culture of occupational health and safety whereby sex workers can access information and support when needed.

Various government inquiries have also been unable to find the presence of organised crime in the sex industry; instances identified in the 1980's in the Wood Royal Commission and Fitzgerald Inquiry led to reforms, and subsequent investigations have been unable to find any evidence of organised crime in the sex industry.<sup>3</sup>

Often the absence any evidence of widespread organised crime and trafficking in the sex industry is seen as evidence of a large hidden problem. However, the sex industry is visible in operation, requiring advertising and a customer base in order to operate. The UNODC in their 2009 *Global Report on Trafficking in Persons* states:

*"... most of the victims of forced labour often work in hidden locations, such as agricultural fields in rural areas, mining camps and garment factories or within the closed environment of a house in the case of domestic servitude. As a consequence, the detection of victims of trafficking for forced labour is less probable than the identification of victims of trafficking for forced prostitution."*

It is frequently the case that comments about the existence of organised crime in the sex industry come from moral viewpoints and misperceptions of the sex industry from people who do not actually engage with the majority of sex workers, if any. Large scale organised crime and 'pimping' is not a characteristic of the sex industry in NSW.

## **(b) the prevalence of human trafficking in New South Wales**

Trafficking in the sex industry is not widespread in NSW nor in Australia generally. This has been affirmed by various sources of evidence. Anecdotal evidence from our member organisations who conduct outreach regularly into sex worker workplaces and from the Scarlet Alliance Migrant Sex Worker Steering committee supports that the vast majority of sex workers are not trafficked, coerced or forced. The number of convictions for trafficking cases further supports this. Between 2004-2016, there have only been 18 individuals convicted under the federal

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<sup>2</sup> C Harcourt (July 1999). 'Whose Morality? Brothel Planning Policy in South Sydney' *Social Alternatives* 3.

<sup>3</sup> State of Victoria, *Inquiry into Prostitution, Final Report* (1985) 59–60: to the extent permitted by the terms of reference, the inquiry was unable to find evidence of organised crime group control of prostitution in Victoria; Criminal Justice Commission, *Regulating Morality? An Inquiry into Prostitution in Queensland* (1991); Select Committee of the Legislative Assembly upon Prostitution, Parliament of New South Wales, *Report of the Select Committee of the Legislative Assembly upon Prostitution* (1986) 229–33: the inquiry found limited and declining involvement of organised crime groups in prostitution in New South Wales.

trafficking, servitude, slavery, and slavery like crimes in the criminal code.<sup>4</sup> Of those 18 people convicted, 13 relate to the sex industry, with a number of those 13 people being co-defendants in the same incidents. Additionally, there have been a number of federal and state government inquiries that also supports that trafficking is a relatively isolated phenomenon in the sex industry in NSW and in Australia. The most recent government inquiry into trafficking in NSW in 2013, 'the Inquiry into the exploitation of people through trafficking, in all its forms in NSW', affirmed in its final report that, *"The focus of the media is typically on exploitation of women in the sex industry, in particular Asian women migrants working in brothels. In contrast, the Inquiry heard from community groups and service providers that exploitation more frequently occurs in family homes and businesses."*<sup>5</sup> In the Eight report of the Interdepartmental Committee on Human Trafficking and Slavery in 2016, the Ministers for Justice, Foreign Affairs, Immigration, Women and for Social Services all acknowledge that *"...identified instances of human trafficking, slavery and slavery-like practices, such as servitude, forced labour, debt bondage and forced marriage, remain relatively rare in Australia..."*<sup>6</sup>

Frequently the presence of trafficking in the sex industry in Australia is inferred from inflated global statistics that is not relevant in the Australian context. The evidence base in Australia is vastly different to other nations. This is in part due to sex worker organisations, strong peer education and the recognition of sex work as work within aspects of certain policies. Additionally the AIC warns, *"extreme caution should be exercised in extrapolating from the under-reporting of domestic crimes to transnational crimes, as Australia enjoys the natural protection provided by being both an island and geographically remote and has extensive border protection mechanisms."*<sup>7</sup>

Despite the multitude of evidence that trafficking is not characteristic of the sex industry in NSW, media focus has consistently been on trafficking in the sex industry. The federal government has within its National Action Plan on trafficking four pillars that are the foundation of the national response, "Prevention and Deterrence; Detection and Investigation; Prosecution and Compliance; Victim Support and Protection"<sup>8</sup>. In practice, Australia predominantly adopts a criminal justice approach, with an emphasis on enforcement especially within the sex industry. However, it must be acknowledged that the almost sole focus on the sex industry adopted in the past has been recognised as unwarranted and misguided and the current scope of Australia's response has broadened to encompass other industries and consideration of other forms of trafficking. Although this welcome shift has occurred at a policy level, there is still a misperception of widespread trafficking in the sex industry. It has often been the case that during government inquiries into trafficking, a large number of the public submissions will focus on trafficking in the sex industry. A significant portion of these will be submitted by people who do not have regular contact with sex workers or the sex industry, if at all.

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<sup>4</sup> Australian Government (2016). Trafficking in Persons: The Australian Government Response, 1 July 2015 – 30 June 2016, The Eight Report of the Interdepartmental Committee on Human Trafficking and Slavery, pg 27.

<sup>5</sup> Community Relations Commission (2013). Inquiry into the Exploitation of People through Trafficking, in all its Forms in NSW, pg 4.

<sup>6</sup> Australian Government (2016). Trafficking in Persons: The Australian Government Response, 1 July 2015 – 30 June 2016, The Eight Report of the Interdepartmental Committee on Human Trafficking and Slavery, piii.

<sup>7</sup> Putt, J. 'Human Trafficking To Australia : A Research Challenge', *Trends & Issues In Crime And Criminal Justice* no. 338. Australian Institute of Criminology: Canberra, June 2007.

<sup>8</sup> Australian Government (2014). National Action Plan to Combat Human Trafficking and Slavery 2015-19, pg 19.

By contrast, our submission is based on current and regular contact with sex workers in Australia. As a peer based organisation we maintain a high level of contact with a diverse representation of sex workers in Australia, including migrant sex workers, some of whom have experienced travel for work under contract and trafficking like conditions.

It is not reasonable to assume that the small numbers of cases of trafficking in the sex industry are due to difficulties in surveillance, prosecution or laws being inadequate. What we know from anecdotal evidence and from our extensive contact with sex workers is that trafficking in the sex industry is not a widespread phenomenon in Australia.<sup>9</sup>

Despite the significant financial resources invested into identifying trafficking in Australia, consistently low government statistics show that the media estimated incidence of trafficking in Australia is inflated.

### **(c) the effectiveness of relevant legislation and policies**

Current legislation makes support conditional upon the victim's assistance on a trafficking case and excludes the majority of victims of exploitation who are unwilling or unable to assist in a criminal justice investigation. There are a myriad of reasons why sex workers may not want to participate in criminal justice proceedings. For example, trafficking investigations are lengthy, invasive and often do not address the needs of the trafficked person. In addition, migrant workers who participate in criminal proceedings are often further victimised by increased immigration scrutiny if they want to return to Australia.

Treating labour exploitation in the sex industry as trafficking is not helpful to migrant sex workers. The current criminal justice approach to anti-trafficking legislation and policies and the over-focus on obtaining more successful prosecutions needs to be seriously re-examined. Evidence shows that increasing regulation, policing and surveillance of the sex industry are not effective approaches to preventing and combating trafficking.

The decriminalisation of sex work is a whole-of-government approach, whereby a number of government authorities and agencies play a role in contributing to the effective regulation of the different components of businesses, making for a highly transparent sex industry. The regulation of sex industry businesses occurs in the same manner as regulation of many other businesses. Decriminalisation has resulted in better workplace health and safety outcomes and rights for all sex workers, including migrant sex workers who may be subject to exploitation and trafficking.

### **(d) the practical measures and policies including security measures to protect New South Wales identity documents that would address human trafficking in New South Wales**

Migrant sex workers who experience poor working conditions often do not have access to industrial rights mechanisms for fear of prosecution or deportation. The Fair Work Ombudsman provides remedies regardless of a persons' citizenship status but fears around reporting of

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<sup>9</sup>. Scarlet Alliance, 'Submission to Joint Standing Committee on Foreign Affairs, Defence and Trade Inquiry into Slavery, Slavery-like conditions and People Trafficking', September 2012.

irregular migration status remain persistent barriers. If migrant sex workers want to access victim support, they can only do so with AFP referral and if they are willing to make a contribution to a criminal prosecution.

Avenues for statutory compensation must be established to redress exploitative work conditions that do not require contribution to a criminal investigation. Migrant sex workers need equitable access to Australian justice mechanisms, arbitration processes and industrial rights protections, akin to Australian citizens, without fear of arrest or deportation. The criminal justice system is not the appropriate place to resolve migration and workplace issues. If given the option, people would opt for quicker, less invasive ways to access justice, such as through the Industrial Relations system and including access to victims compensation.

The practice of peer sex worker organisations providing peer support to sex workers and outreach to sex worker workplaces has successfully supported a culture of occupational health and safety whereby sex workers can access information and support when needed.<sup>10</sup>

Peer education and support in Australia, by and for sex workers, has been successful in creating positive norms in the sex industry and promoting a culture where sex workers can seek support if required. Evidence supports that decriminalisation has brought improved work safety, high rates of safer sex practices, low rates of sexually transmitted infections, and no evidence of organised crime or serious group based offending on an ongoing basis. Decriminalisation means sex workers can access police and other justice support in the event of a crime.

The success of a sex worker self-regulatory board (SRB) in India was recognised in *The Lancet* as part of their series on sex work and HIV. The article notes that the SRB “reports better anti-trafficking and antiviolence results at every stage—identification, protection, case management, and follow-up—compared with the raid and rescue model” and “shows substantial advantages that can result from building an anti-trafficking response on a strong community platform with developed peer networks.”<sup>11</sup> The article also explains the lack of success of raid and rescue models:

*“Common so-called raid and rescue actions and related police responses destabilise sex worker communities and drive sex workers underground, increasing vulnerability and risk for all sex workers, disrupting HIV and STI prevention efforts, impeding access to services, and severing relations with service providers. Such actions often fail to uphold human rights or improve the situation of sex workers who have been trafficked, and have not been critically assessed.”<sup>12</sup>*

#### **(e) other related issues.**

A decriminalised environment supported by sex worker peer organisations providing culturally and linguistically appropriate sex worker peer education is the best way to support good working

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<sup>10</sup> B. Donovan, et al. *The Sex Industry in New South Wales: A Report to the NSW Ministry of Health* (2012) Kirby Institute, University of New South Wales, Sydney.

<sup>11</sup> Richard Steen et al. ‘Trafficking, sex work, and HIV: efforts to resolve conflicts’ (2014) 385 *The Lancet*, 94-96.

<sup>12</sup> Richard Steen et al. ‘Trafficking, sex work, and HIV: efforts to resolve conflicts’ (2014) 385 *The Lancet*, 94-96.



conditions and prevent organised crime and trafficking. The outcomes of a study of migrant sex workers in Australia have highlighted the “intersection of social and structural barriers that may marginalise migrant sex workers from accessing services and resources, such as the stigma associated with sex work, limited access to safe migration pathways, fear of deportation and language barriers.”<sup>13</sup> Peer projects like the Scarlet Alliance Migration Project and SWOP NSW Multicultural Team are key in facilitating the effective link between affected migrant sex worker communities and governments. Investing in the expertise and established partnerships of the Migration Project is a cost-effective, evidence based approach to trafficking policy and prevention.

Decriminalisation is world renowned as a best-practice model, recognised by the United Nations Secretary General, United Nations Population Fund, UNAIDS, Amnesty International and sex worker communities globally as best for sex worker occupational health and safety, industrial rights and human rights. Since decriminalisation, NSW has achieved ‘one of the healthiest sex industries’ ever recorded,<sup>14</sup> including among migrant sex workers. Evidence from the Kirby Institute, Australia’s National STI and HIV Strategies and case studies demonstrate that decriminalisation has brought improved work safety, high rates of safer sex practice, low rates of sexually transmissible infections, low incidence of trafficking and no evidence of organised crime. Evidence shows that these health and safety outcomes are *because* of decriminalisation, community-driven health promotion and peer education.

Any approaches to trafficking must be rights based and support prevention of the circumstances that create vulnerabilities to trafficking such as access to safe migration, culturally appropriate peer support, translated information and services. Workplace rights and safety are best supported through the decriminalisation of sex work.

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<sup>13</sup> L. Renshaw, J. Kim, J. Fawkes, and E. Jeffreys, ‘Migrant sex workers in Australia’ (2015) *AIC Reports Research and Public Policy Series* 131, xi.

<sup>14</sup> Professor Basil Donovan, ‘The Sex Industry in NSW’ (Media Release, 23 March 2012).

