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Tim Wilson
Human Rights Commissioner
Australian Human Rights Commission
rights2014@humanrights.gov.au
31 October 2014

Dear Mr Wilson

Rights and Responsibilities Consultation: Sex worker human rights must be on the agenda

Thank you for the opportunity to provide a submission as part of the Rights and Responsibilities consultation. We have read and understand the Discussion Paper and the Commission's Submission Policy and provide the following information from Scarlet Alliance policy documentation developed in consultation with our Executive, membership and staff.

Sex worker human rights and freedoms are not well protected in Australia. There are many examples of legislation, policies and practices by government that unduly restrict the exercise of human rights and freedoms by sex workers. There are a number of steps the government can take to improve sex workers access to human rights and promote a culture of respect for human rights of sex workers in Australia.

Scarlet Alliance is the Australian Sex Workers' Association, formed in 1989. Scarlet Alliance is Australia's national peak body representing a membership of individual sex workers, and sex worker networks, groups and community-based projects and organisations from around Australia. Each year a National Forum and Annual General Meeting is held, where key policies are developed, an Executive and spokespersons are elected and workshops on issues for sex workers are conducted.

Our attached submission outlines the ongoing and systemic human rights issues affecting sex workers in Australia and recommends the immediate decriminalisation of sex work across all state and territories alongside the establishment of anti-discrimination protections for sex workers at federal and state levels. The evidence presented below demonstrates that these measures are necessary to ensure Australia meets its international human rights obligations.

Please do not hesitate to contact me at our head office in Sydney to discuss these issues further. We look forward to working with you to improve sex worker access to human rights in Australia as a matter of priority and international significance.

Yours faithfully,

Janelle Fawkes
Chief Executive Officer

Executive Summary

Sex worker human rights are of international concern. An increasing number of United Nations bodies and reports are calling for the decriminalisation of sex work and anti-discrimination protections for sex worker as a matter of public health, public morality and public policy. At the International AIDS Conference in July, sex workers from over 30 countries developed a Consensus Statement demanding a decriminalised legal environment and end to stigma and discrimination.

In 2013 the Global Network of Sex Work Projects ascertained key human rights for sex workers through a global consultation. In 2012 the Global Commission on HIV and Law found that punitive laws against sex work create a state-sanctioned culture of exploitation and police violence. That same year, UNAIDS, UNFPA, UNDP found that decriminalisation is necessary for health and safety at work, and that sex workers should be supported to participate in setting national priorities. The 2011 UN Political Declaration on HIV and AIDS committed signatories including Australia to protect and promote human rights for sex workers as a critical element in combating HIV. The 2009 UNAIDS Guidance Note on HIV and Sex Work recognises that sex workers face substantial obstacles to accessing HIV prevention where sex work is criminalised.

Sex workers in Australia continue to face systemic discrimination. Sex workers experience discrimination on the basis of occupation when accessing goods and services (loans and insurance), advertising (facing higher advertising costs, special conditions and arbitrary discretions), housing and accommodation (having difficulty obtaining housing, facing unfair treatment and eviction), seeking other employment (stigma affecting employers decision making alongside criminal record discrimination) and access to justice (facing barriers to reporting crimes to police or giving evidence at hearings).

Current legislation means that sex workers in Australia are denied the right to protection from discrimination (including facing discrimination and criminalisation on the basis of HIV status); the right to work, to free choice of employment and to just and favourable conditions of work (criminal and licensing laws force sex workers to work in unsafe environments and promote a culture of police entrapment); the right to freedom of movement (sex workers face pressure to relocate to industrial areas, face move-on orders and exclusion zones and lack pathways for safe migration); the right to freedom of association (consorting laws prevent sex workers from working together, making referrals or hiring security, while new laws against protesting and criminal organisation and a push for the Swedish Model criminalise sex workers families and support structures) and the right to take part in government (sex workers are systematically excluded from debate, funding, policy and research).

The decriminalisation of sex work is essential to sex workers in Australia accessing human rights. The outcomes of almost twenty years of decriminalisation in NSW include extremely low rates of STIs and HIV; better access to health promotion; little to no amenity impacts (recognised by Crofts and Prior); no evidence of organised crime; better access to Occupational Health and Safety and no increase in the size of the sex industry.

Scarlet Alliance recommends the decriminalisation of sex work in every state and territory, combined with anti-discrimination protections at federal and state levels as an essential component of improving human rights. Decriminalisation includes the removal of police as regulators of the sex industry; repealing criminal laws specific to the sex industry (including laws that criminalise sex workers, our workplaces, clients and support structures); regulating sex industry businesses through standard business, planning and industrial codes; and not singling out sex workers for specific regulation. All jurisdictions should amend their anti-discrimination legislation to include 'profession, trade, occupation or calling' as a protected attribute. This is the only way to ensure that sex workers are not left behind in human rights reforms.

Scarlet Alliance Submission

About Scarlet Alliance

Scarlet Alliance is the Australian Sex Workers' Association, formed in 1989. Scarlet Alliance is Australia's national peak body representing a membership of individual sex workers, and sex worker networks, groups and community-based projects and organisations from around Australia. Each year a National Forum and Annual General Meeting is held, where key policies are developed, an Executive and spokespersons are elected and workshops on issues for sex workers are conducted.

Scarlet Alliance is a leader when it comes to advocating for the human rights of Australian sex workers. Scarlet Alliance member organisations and projects have the highest level of contact with sex workers in Australia of any agency, government or non-government.

Scarlet Alliance and our member organisations represent the diversity of Australian sex workers through projects, peer educators and spokespersons that reflects the current sex worker population in Australia. This includes but is not limited to female, male, trans and gender diverse, CALD, migrant, ATSI and street based sex workers.

Scarlet Alliance has played a critical role in informing governments and the health sector, both in Australia and internationally, on issues affecting workers in the Australian sex industry. Scarlet Alliance represents sex workers on a number of Commonwealth committees and ministerial advisory mechanisms, including the Ministerial Advisory Committee on Blood Borne Viruses and the Commonwealth Roundtable on Trafficking.

Sex worker human rights are essential

This consultation must address human rights for sex workers. United Nations Secretary General Ban Ki-Moon states that 'In most countries, discrimination remains legal against women, men who have sex with men, sex workers, drug users, and ethnic minorities. This must change.'¹ Former Australian High Court judge the Hon. Michael Kirby AC CMG states that 'We will insist on human rights for all, including for sex workers. Nothing else is acceptable as a matter of true public morality.'² UNAIDS and the United Nations Population Fund state that it is essential for governments to create an enabling legal and policy environment which insists upon universal rights for sex workers and ensures our access to justice.³ As a signatory to the 2011 United Nations Political Declaration on HIV and AIDS, Australia has committed to protect and promote human rights for sex workers and to 'intensify national efforts to create enabling legal, social and policy frameworks'.⁴

The Scarlet Alliance submission to the National Consultation on Human Rights in Australia in 2009 stated that 'sex worker human rights are intrinsically linked to our ability to negotiate with our clients.'⁵ A human rights approach is recognised at a national and international level as the best strategy for health promotion and sex industry regulation, supporting sex workers in peer education, labour organising and self-determination. One of the six objectives of the Commonwealth Department of Health's Seventh National HIV Strategy 2014-17 is to eliminate the negative impact of human rights issues on people affected by HIV. Sex workers are a priority population in the Strategy.⁶

The premise of human rights is that they are universal and inalienable. Sex workers are a part of the Australian community and as such are entitled to the protection of our basic human rights.

¹ UNAIDS, Joint United Nations Program on HIV/AIDS, UNAIDS Guidance Note on HIV and Sex Work, Geneva, 2009, 2.

² UNAIDS and UNFPA, Building Partnerships on HIV and Sex Work: Report and Recommendations from the first Asia and the Pacific Regional Consultation on HIV and Sex Work, 2011, 14.

³ UNAIDS and UNFPA, Building Partnerships on HIV and Sex Work: Report and Recommendations from the first Asia and the Pacific Regional Consultation on HIV and Sex Work, 2011, 13.

⁴ United Nations, Resolution adopted by the General Assembly 65/277. Political Declaration on HIV and AIDS: Intensifying Our Efforts to Eliminate HIV and AIDS, s80, s39.

⁵ Scarlet Alliance, *Submission to the National Consultation on Human Rights in Australia*, Sydney, 2009, 2, accessed at http://www.scarletalliance.org.au/library/humanrightsconsultation_09/ on 1 October 2014.

⁶ Australian Government Department of Health, *Seventh National HIV Strategy 2014-2017*, Commonwealth of Australia, Canberra, 2014 at 4.2.

The right to protection from discrimination

Sex workers experience discrimination in Australia that affects our personal lives, professional lives, families, health, wellbeing, workplace conditions and our access to justice. We are subject to systemic vilification, including severe ridicule and serious contempt, which is largely accepted and endorsed by media, policy and laws. As one sex worker writes, we experience 'years of overt, systemic, structural, ongoing, accepted, supported, celebrated discrimination.'⁷ As Scarlet Alliance's submission to the National Consultation on Human Rights states:

Governments, the public sector and the private sector all discriminate against sex workers. This discrimination results in a general acceptance of social stigma against sex workers and internalised stigma among the sex worker community.⁸

Sex workers' daily and ongoing experiences of discrimination signal the crucial need for legislative reform. Although some states protect sex workers from discrimination on the basis of 'lawful sexual activity' or 'profession, trade, occupation or calling', these protections are limited.⁹ Protections exist only in some jurisdictions (not at a federal level). Coverage remains incomplete and only provides coverage for some sex workers – often leaving the most marginalised within our community without protection.

In 1999 a National Survey was conducted by Scarlet Alliance in collaboration with the Australian Federation of AIDS Organisations to identify discrimination in the employment conditions and personal lives of sex workers in Australia. Their subsequent report, *Unjust and Counter-Productive: The Failure of Governments to Protect Sex Workers From Discrimination*, found that sex workers experienced discrimination on the basis of occupation in a large number of areas. Whilst there has not been resourcing to support more recent research, our membership describes levels of discrimination demonstrating that these areas remain unchanged.

Goods and services

Sex workers reported discrimination in their access to personal and professional goods and services, such as when attempting to access credit or loans, due to 'banks not applying the same business standards as they would to other service industries.'¹⁰ Applications for credit cards often sought information about the applicant's occupation rather than their income, and sex workers reported having their applications refused despite no evidence of bad credit rating or unstable or low income. In loan applications banks often required business records covering a longer period for sex workers than other occupations.¹¹

Similarly, sex workers documented discrimination in securing home, contents and mortgage insurance against loss of income, despite proven good credit ratings. They reported being refused private health insurance or facing higher superannuation premiums due to an assumption they were at greater STI/HIV risk, despite evidence that sex workers have consistently demonstrated lower rates of STIs/HIV than the general population. Mobile phone companies had denied sex workers applications for phones because their income and address were not considered stable.¹² These restrictions to banking and business facilities, based on discrimination rather than financial circumstances, continue to prevent sex workers from access to small business opportunities and hinder the development of workplace safety mechanisms.

⁷ Because I'm a Whore, 'An Open Letter to Australian Feminists Concerned about Sex Worker Exploitation', *Feminaust: Contemporary Australian Feminism*, 20 August 2011, accessed at <http://feminaust.org/2011/08/20/open-letter-to-australian-feminists-concerned-about-sex-worker-exploitation/> on 30 October 2014.

⁸ Scarlet Alliance, *Submission to the National Consultation on Human Rights in Australia*, Sydney, 2009, accessed at http://www.scarletalliance.org.au/library/humanrightsconsultation_09/ on 30 October 2014.

⁹ Anti Discrimination Commission Queensland, 'Lawful Sexual Activity Discrimination', accessed at <http://www.adcq.qld.gov.au/complaints/discrimination/lawful-sexual-activity> on 19 August 2011.

¹⁰ Scarlet Alliance and the Australian Federation of AIDS Organisations, *Unjust and Counter-Productive: The Failure of Governments to Protect Sex Workers From Discrimination*, Sydney, 1999, 19, accessed at <http://www.scarletalliance.org.au/library/unjust-counterproductive> on 30 October 2014.

¹¹ Scarlet Alliance and the AFAO, *Unjust and Counter-Productive*, above at 19.

¹² *Ibid* at 19-20.

Advertising

Regardless of the legal status of our work, sex workers reported discriminatory advertising policies. Complaints included newspapers refusing to accept advertising for sexual services, publishers failing to place advertisements or making unapproved changes to pre-paid advertising, regularly changing policy, and creating special conditions applying to sex industry advertising such as advance payment, higher fees, limits on running length or having to place the advertisement in person rather than by telephone.¹³ Despite often being small business owners and sole traders, sex workers are regularly charged disproportionately to advertise our services, facing fees that are much higher than if we were to advertise in other sections of the newspaper. Discriminatory advertising costs has been consistently raised as an issue at Scarlet Alliance annual National Forums, and in their investigation Triple J radio's Hack program have noted that the NSW *Daily Telegraph* was one of the papers that charged several times more for sex worker advertisements.¹⁴ These arbitrary discretions and conditions appear to apply only to sex workers solely by virtue of occupation.

Housing and accommodation

When accessing housing or accommodation, the survey revealed that sex workers experienced difficulties in obtaining rent agreements or housing once their occupation was known, regardless of whether they intended to be working from the premises. Sex workers had experienced eviction from hotels as well as private rental accommodation, rude treatment by accommodation staff, and council staff informing landlords about their occupation. The majority of respondents indicated they would 'never put my occupation [on housing applications] because I feel sure my application will be rejected.'¹⁵

Seeking other employment

Stigma surrounding sex work continues to affect the decisions of employers when recruiting and dismissing staff. A number of high profile cases illustrate that discrimination against sex workers, seeking to work in additional or alternate occupations is ongoing. In 2011 a New Zealand teacher was de-registered after she appeared in Australian Penthouse magazine.¹⁶ In November 2005, a high school teacher in Brisbane was found to be working lawfully as a sex worker in a licensed Gold Coast brothel. The teacher had been seen by a colleague of hers, a male teacher, who was attending the brothel as a client.¹⁷ Forrest writes, 'In an astounding act of moral hypocrisy the prospective client informed the school principal what he had discovered about the woman's second job. Still more astounding, while both of the teachers were 'counselled' about the appropriateness of their behaviour, only the female sex worker was penalised.'¹⁸ Forrest details the trauma imposed on the teacher, while in the meantime Premier Peter Beattie sought advice on whether the Government could require all its employees to be *approved* before taking another job:

[T]he teacher/sex worker was uprooted from her job and home, forced to change her name and asked not to resume sex work – a process that I have no doubt would have caused her a lot of trauma. The 'counselling' she received and her subsequent ostracism from her job constitutes the very type of discrimination [the Queensland Anti-Discrimination Act] was meant to counter.¹⁹

In Australia, information provided to Scarlet Alliance illustrates that when applying for jobs outside the sex industry, sex workers are reluctant to inform potential employers about our work history for fear of discrimination throughout the interview process. Navigating this discrimination means that sex workers may then have gaps on our resumes or have trouble explaining skills we have acquired during our working lives.

¹³ Scarlet Alliance and the AFAO, *Unjust and Counter-Productive*, above at 17.

¹⁴ Scarlet Alliance Media Release, 'International Whores Day 2009: Sex Workers Take to the Streets to Fight Discrimination; Sex Workers Paying Too Much For Their Box; Bonking Not Good Enough for Banks, 2 June 2009, accessed at http://www.scarletalliance.org.au/media/News_Item.2009-06-01.2711 on 26 May 2011.

¹⁵ Scarlet Alliance and the AFAO, *Unjust and Counter-Productive*, above at 20.

¹⁶ Tamara McLean, 'NZ Teacher Deregistered Over Penthouse Pic', AAP, 3 May 2011, accessed at <http://www.educationhq.com.au/news/15815/pac-teacher-deregistered-over-aussie-mag-porn/> on 30 October 2014.

¹⁷ Roger Maynard, 'A Teacher Finds a Colleague Working in a Brothel. She is Suspended. He Keeps his Job', The Sunday Times, 9 November 2005, accessed at <http://www.thetimes.co.uk/tto/news/world/article1981796.ece> on 30 October 2014.

¹⁸ Candi Forrest, '(Anti) Discrimination in the Sunshine State', Provision 2, Stigma, Scarlet Alliance, 13.

¹⁹ Candi Forrest, '(Anti) Discrimination in the Sunshine State', Provision 2, Stigma, Scarlet Alliance, 13.

Seeking other employment may be particularly difficult where one has a criminal conviction because the place or nature of our employment as a sex worker has been deemed illegal. Criminal Record Discrimination is lawful federally, but unlawful in some states. In their summary of the Discussion Paper on Criminal Record Discrimination, the Australian Human Rights Commission (then Human Rights and Equal Opportunity Commission) wrote that 'Australians who have a criminal record often face significant barriers to full participation in the Australian community. Trying to find a job is one of the areas of greatest difficulty for former offenders.'²⁰ Sex workers are more likely to have a criminal record because vast sections of our industry are or have been criminalised. Even when sex workers do not have a criminal record, in some states compulsory registration for sex workers on a permanent database means that sex work history can hinder a sex worker's ability to find alternate employment. Discrimination in seeking employment and during the course of employment remains a pertinent issue that disproportionately affects sex workers, and one which is ripe for legislative reform.

Access to justice

Discrimination and stigma against sex workers continues to impede our access to justice. Widespread prejudices, including in the legal and criminal justice system, act as barriers to sex workers reporting crimes to police or giving evidence at hearings. In Australian cases, judges have stated it was less 'heinous' to rape a sex worker than it was a 'happily married' or 'chaste' woman.²¹ Sex workers also report that our profession is often taken into account in legal proceedings as a negative indication of our character. As one sex worker writes of their experience:

About 10 years ago some girlfriends and I flew to the Northern Territory with the intention of earning mega bucks working as sex workers. We didn't know much about the legislative requirements of working in the NT and to our surprise discovered upon arriving in Darwin that brothels were illegal and escort work was the only legal form of sex service on offer. As there was only one escort agency in town we undertook interviews with the owner, only to discover that it was a legal requirement for escort workers to register with NT police... Although my girlfriends and I were hesitant to register, we were assured by the owner of the agency that our registrations would not be available to ordinary police and would not be included in a police computer data base.

Content in my belief that my registration application was gathering dust in the cop-shop basement, several years later I moved to Darwin and became involved in an activist group which attracted a great deal of police attention (i.e. harassment)... [On one occasion we were arrested]. After being released from the police station and given bail I was shocked to find that my bail papers stated my profession as 'prostitute', despite me stating my profession to police as a 'student' and not having worked in the NT sex industry for several years! Upon demanding an explanation from police, I was told that I had held a police file since registering as an escort!

Once in court, police witnesses stated that she was a 'known and notorious prostitute!' The sex worker felt that the relevance of her sex work experience to the charges was 'questionable at best' and only mentioned 'in an attempt to discredit [her] character to the presiding magistrate.'²² There remains no method to have your details removed from the Police register in the Northern Territory.

Sex workers report a culture of stigma that affects judicial decision-making – our profession negatively being taken into account in demonstrating what is considered a 'good' or 'bad' parent. Although family law decisions are bound to take into account the best interests of the child, sex workers fear that where we disclose our work in parenting cases, we risk being discredited as witnesses or losing custody of our children. This was the experience of a sex worker in Queensland when her past sex work experience was subpoenaed from the Northern Territory police and used as evidence to argue she was an 'unfit parent' in the Family Court. This also means that sex workers may be reluctant to seek assistance from child welfare services for fear of being deemed an unfit parent.²³ Having wider anti-discrimination protections for sex workers would send a symbolic message to the general

²⁰ Australian Human Rights Commission, *Discrimination on the Basis of Criminal Record*, http://www.humanrights.gov.au/human_rights/criminalrecord/index.html, accessed 30 October 2014.

²¹ *The Attorney-General v Leonard Richard Harris* [1981] SCV in Michelle Fisher and Fahna Ammett, 'Sentencing of Sexual Offenders When Their Victims are Prostitutes and Other Issues Arising Out of Hakopian' (1992) 18, *Melbourne University Law Review*, 683 – 684.

²² Anonymous, 'My wrath-inducing experience of institutional misogyny and whore-hatred', Provision 2, Stigma, Scarlet Alliance, Sydney, 8.

²³ Scarlet Alliance, *Submission*, above at 5.

community and have flow on effects for the ways sex workers are treated in wider society, improving our access to justice and encouraging our social inclusion.

The right to work, to free choice of employment, and to just and favourable conditions of work

Article 23 of the Universal Declaration of Human Rights provides that everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. The International Labour Organisation's Employment Policy Convention 122 provides in Article 1 that there is freedom of choice of employment and the fullest opportunity for workers to use their skills in jobs for which they are well suited.

Criminal laws and licensing of sex work have negative implications for the rights of sex workers to free choice of employment and to just and favourable conditions of work. The research findings of *Unjust and Counter-Productive* strongly indicate that sex workers who operate under highly restrictive or criminalised frameworks have the least opportunity to utilise existing remedies to address discrimination.²⁴ Where sex work is criminalised or licensed, laws may prevent sex workers from taking measures to protect our own safety. For example, where sex workers must choose between working for a licensed escort agency (and having our name recorded on a police register) or working privately (where we are prohibited from hiring drivers or security, or working with another person), we effectively bear the burden of balancing the risks of giving up our confidentiality or our safety. Either way, we are denied our right to free choice of employment and to just and favourable conditions of work. Sex workers therefore may have to break the law in order to protect our safety. The LASH (Law and Sex Worker Health) report to the NSW Health Department in 2012 recommends that the licensing of sex work represents a 'threat to public health' and should not be regarded as a viable legislative response.²⁵

Sex workers often have limited legal remedies to address unfair work practices because criminalised legal settings have acted to 'erode relations with the police and judicial system.'²⁶ Experiences of police entrapment (posing as potential clients before charging sex workers for 'procuring' sex)²⁷ as well as police violence, corruption, raids and harassment of sex workers had lead to a fear of public retribution and a perception that crimes against sex workers are not taken seriously. In some states the positioning of police as industry regulators means that sex workers have limited access to legal remedies to address crimes of violence. Criminalisation means that sex workers may have difficulty organising and advocating for industrial benefits (leave entitlements, superannuation or worker's compensation), and are less likely to use available industrial remedies in cases of unfair dismissal for fear of being 'outed' or facing criminal penalties as a sex worker.²⁸ Sex workers may be discouraged from contacting police when a crime is committed if we are working in unlicensed places, so as not to attract unwarranted attention to the business.²⁹ Similarly, the fear of being 'outed' may prevent sex workers from being candid with health professionals.³⁰ By contrast, the Prostitution Law Reform Committee in New Zealand found that the decriminalisation of sex work meant 'the majority felt sex workers were now more likely to report incidents of violence to police'.³¹ The continued criminalisation and licensing of sex work denies sex workers the human rights to free choice of employment, the full opportunity to use our skills in jobs to which we are well suited, and to just and favourable conditions of work.

The right to freedom of movement

Article 13 of the Universal Declaration of Human Rights stipulates that everyone has the right to freedom of movement and residence within the borders of each state and the right to leave any country. Discrimination, criminalisation and Australia's anti-trafficking response significantly affects

²⁴ Scarlet Alliance and AFAO, *Unjust and Counter-Productive*, above at 11.

²⁵ Basil Donovan, C Harcourt, S Egger, L Watchirs Smith, K Schneider, JM Kaldor, MY Chen, CK Fairley, S Tabrizi, *The Sex Industry in New South Wales: A Report to the NSW Ministry of Health*, Kirby Institute, University of New South Wales, Sydney, 2012.

²⁶ Scarlet Alliance and AFAO, *Unjust and Counter-Productive*, above at 12.

²⁷ *Ibid* at 11-12.

²⁸ *Ibid* at 15.

²⁹ Scarlet Alliance, *Submission*, above at 5.

³⁰ Jan Jordan, *The Sex Industry in New Zealand: A Literature Review*, Ministry of Justice, 2005, 62-3.

³¹ New Zealand Government, *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003*, Ministry of Justice, Wellington, 2008, 14.

sex workers' freedom of movement. Disclosing our profession may restrict sex workers when we seek to travel, study, work or become involved in community activities, limiting our mobility across employment, geographic and social spheres.

At a local level, street-based sex workers may experience pressure to relocate – we may be tolerated when working in more remote industrial areas but may be arrested when working on busy, well-lit or more public streets, which has consequences for our safety.³² In some states and territories street based sex workers are subject to what is termed variously as move on orders, banning orders or exclusion zones which give police powers to ban a sex worker from entering a certain geographical area for a designated period of time (i.e. 24hours, 30days, 1year, etc). These exclusion orders fail to recognise that sex workers are members of the community and there may be a multitude of legitimate reasons, aside from work, for sex workers to be in an area, such as medical, social or residential. At a national level, laws restrict workers from moving across various sectors of the industry – prohibiting advertising, sharing premises, street work or operating privately.³³ At an international level, sex workers can be prevented from entering certain countries if we list our occupation on our visa or passport, while those who work in unlicensed/illegal sectors risk sex-industry related offences which creates a criminal record and may significantly restrict our movement between countries.³⁴ Whoretic explains:

I have participated in many movements – peace and non-violence, environmental issues, feminism, queer visibility. However, sex work has been the reason for my criminal record; this can affect travel between countries and my ability to work in different areas.³⁵

Australia's anti trafficking approach fails to recognise that limited access to safe migration pathways for sex workers exacerbates vulnerabilities to trafficking and impinges on the right to freedom of movement. Anti-trafficking investigations have resulted in the detention and deportation of sex workers. Furthermore, an unjustified focus on the sex industry against evidence of a general absence of trafficking in the Australian sex industry has meant racial profiling at the border of Asian women, particularly women travelling alone. Many migrant sex workers report increased scrutiny by immigration and arbitrary refusal of visas when seeking to travel. If a sex worker has been involved in any capacity in a trafficking investigation, regardless of how peripheral their involvement, they are subject to increased immigration scrutiny if they attempt to return to Australia for any reason. Following her visit to Australia in 2012, the United Nations Special Rapporteur on Trafficking Joy Ngozi Ezeilo stated that 'Australia must commit to developing and maintaining strong pathways for safe and legal migration'. Increasing legal visa options would mean workers are less inclined to go through a broker or third party. Providing genuine migration opportunities for sex workers – and recognising sex workers as *skilled* workers – will bring increased transparency and must be a key step in Australia's anti-trafficking response and would alleviate some of the outlined limitations of sex workers human rights.

The right to freedom of association

Freedom of association is recognised by Article 20 of the Universal Declaration of Human Rights as well as International Labour Organisation Convention 87 on the Freedom of Association and Protection and the Right to Organise. Criminal and licensing laws prevent association between sex workers and restrict our abilities to organise and engage in political, industrial and collective advocacy. In some states, laws require private sex workers to work alone. These consorting laws, which prevent sex workers from working together, making referrals or hiring drivers, receptionists or security, deny sex workers the right to freedom of association and have obvious impacts on the safety of sex workers and our access to mentoring, support networks and opportunities for advocacy and unionising. There has been a concerning trend towards laws that infringe on our right to association, such as the amendments to the Summary Offences Act passed in March this year in Victoria which contravenes Victorian's democratic human right to assemble and conduct non-violent protest and Queensland's new criminal organisation laws that assume guilt and discriminate against people based upon their association to a group, even if no crimes have been committed. Reducing our

³² Scarlet Alliance, *Submission*, above at 3.

³³ *Ibid* at 11-12.

³⁴ Scarlet Alliance and the AFAO, *Unjust and Counter-Productive*, above at 15.

³⁵ Whoretic, cited in Alina Thomas, 'Up Close and Personal: Lesbian Sex Workers', *Provision*, 1, Scarlet Alliance, Sydney, 22 at 26.

abilities to come together to express, promote or defend our common interests denies us the right to freedom of assembly.

Laws which prohibit 'living off the earnings of prostitution' have implications for families, partners, adult children and kin who are partially or wholly supported by the earnings of sex workers. The *Unjust and Counter-Productive* report revealed that sex workers' partners had been threatened with 'living off the earnings of prostitution', and one friend was charged and convicted for attending a brothel when visiting for coffee.³⁶ While sex workers may shield our partners from criminal prosecution or police attention by not disclosing our work, secrecy presents other obstacles to sex workers' accessing support.

Recently there has been an increased push for the 'Swedish Model' despite evidence this model of sex industry regulation has had a negative impact on the human rights of sex workers, in particular on our right to freedom of association. In Sweden, it is illegal to rent a room to a sex worker, meaning that sex workers' autonomy is impacted and legal rights reduced for fear of detection. Adult children living at home supported by their parents' earnings have been charged with 'pimping'. Sex workers cannot work together for greater safety, advertise so they can screen clients before meeting them, or hire security – all measures that improve sex worker safety. Police stake out sex workers' workplaces and, as a result, clients will only meet in public locations of their choosing to avoid detection. In Sweden, laws criminalising clients are actively and maliciously used against sex workers. Petra Ostergren and Susanne Dodillet report that in Sweden they have found 'serious adverse effects' of the legislation despite the fact that the lawmakers stressed that it would not have a detrimental effect on sex workers.³⁷ In a paper studying the Swedish system of sex work regulation, The Prostitution Licensing Authority Queensland reported that the prohibition on the purchase of sexual services in Sweden has 'driven the sex industry underground', leaving sex workers 'at greater risk of violence'.³⁸

Discrimination on the basis of HIV status

Sex workers face discrimination in relation to assumed HIV risks based on occupation rather than actual risk behaviour. Policies for donating blood illustrate how sex workers are discriminated against on the basis of assumed health status. Despite the need for blood donors, the Red Cross prohibits potential donors from giving blood for 12 months after they have been a sex worker, despite evidence that sex workers have lower rates of STIs and HIV than the general population. As Rachel Wotton writes, this discriminatory policy 'perpetuates myths that current sex workers are vectors of disease... and that we are unable to perform our work activities safely, minimising all elements of transmission just like doctors, nurses and surgeons do every day'.³⁹ Although the Red Cross Blood Service has recommended a change in blood donation deferral period for sex workers from one year to six months, there is no evidence to support any deferral period on the basis of sex work.

In some jurisdictions, sex workers are criminalised for working when we are HIV positive. Despite the fact that sex workers are more likely to undergo STI/HIV testing, have greater awareness of what constitutes risk behaviour, exercise and negotiate safer sex practices, sex workers suffer stringent mandatory testing requirements and aspects of our work are criminalised. Criminalisation of sex workers and STIs and HIV is not based on actual risk or practice but on the fact of being a sex worker. This is despite decades of evidence demonstrating high rates of condom use and low rates of STIs and HIV amongst sex workers in Australia.

Laws which criminalise HIV positive sex workers discriminate against sex workers on the basis of our health status, without reference to whether individual workers practice safe sex, cater to specifically HIV positive clients, or offer non-penetrative services. The National Needs Assessment for Sex Workers Who Live with HIV recommends that legislation for HIV positive sex workers reflect

³⁶ Scarlet Alliance and the AFAO, *Unjust and Counter-Productive*, above at 16.

³⁷ Susanne Dodillet and Petra Ostergren, 'The Swedish Sex Purchase Act: Claimed Success and Documented Effects' Conference paper presented at the International Workshop *Decriminalizing Prostitution and Beyond: Practical Experiences and Challenges* The Hague, March 3 and 4, 2011, page 3, accessed at <http://www.petraostergren.com/upl/files/54259.pdf> on 30 October 2014.

³⁸ Bob Wallace (Principal Policy Officer), *The Ban on Purchasing Sex in Sweden*, Office of the Prostitution Licensing Authority Queensland, 19 accessed at <http://www.pla.qld.gov.au/Resources/PLA/reportsPublications/documents/THE%20BAN%20ON%20PURCHASING%20SEX%20IN%20SWEDEN%20-%20THE%20SWEDISH%20MODEL.pdf> on 30 October 2014.

³⁹ Rachel, 'Bleedin' Ridiculous –The Red Cross Policy' *Provision*, Issue 2, Scarlet Alliance, 2007, 16 at 18.

legislation relating to private sex.⁴⁰ The criminalisation of sex workers living with HIV impedes health promotion, marginalises workers, poses barriers to effective outreach, and perpetuates discrimination against people who already suffer the dual stigma attached to sex work and HIV. Criminalisation is contrary to Australia's National HIV and STI Strategies. Additionally, Australia's migration policy and mandatory screening for HIV unfairly discriminates against people living with HIV and perpetuates HIV related stigma.

The right to take part in government

Article 21 of the Universal Declaration on Human Rights states that everyone has the right to partake in government, directly or through freely chosen representatives. Yet sex workers are regularly excluded from debate, funding, policy and research in relation to sex work law reform. The exclusion of sex worker voices contributes to the creation of damaging policy that is divorced from experiences of those most affected. It perpetuates myths and stigmas around the sex industry and denies sex workers involvement in processes to protect our rights and freedoms. The Rights and Responsibilities Consultation should listen to the voices of sex workers calling for human rights and law reform. Sex workers are the key stakeholders and the experts in any discussion on issues that affects sex workers. Meaningful consultation is a principle inherent to the human rights framework and sex workers must be at the centre of any issues that impact us.

How Australia can best protect human rights for sex workers

Recommendation 1 - Decriminalise sex work

Sex workers have identified decriminalisation of sex work in every state and territory, combined with anti-discrimination protections at federal and state levels as an essential component of improving human rights.

Decriminalisation in all states and territories in Australia means governments should:

- Remove police as regulators of the sex industry;
- Repeal criminal laws specific to the sex industry, including laws that criminalise sex workers, our workplaces, our clients and our support structures;
- Regulate sex industry businesses through standard business, planning and industrial codes;
- Not single out sex workers for specific regulation.

The decriminalisation of sex work is essential to sex workers in Australia recognising our human rights. Sex work has been decriminalised in NSW since 1995 – nearly 20 years – and NSW is world-renowned as having a best practice model. The outcomes of decriminalisation in NSW are:

- Extremely low rates of STIs and HIV (recognised by Australia's National Strategies and the Kirby Institute Annual Surveillance Report);⁴¹
- Better access to health promotion (finding of the Law and Sex Worker Health Study, which compared the health impacts of legal frameworks across Victoria, NSW and WA);⁴²
- Little to no amenity impacts (recognised by Crofts and Prior);⁴³
- No evidence of organised crime (recognised by the Land and Environment Court);⁴⁴

⁴⁰ Kane Matthews, National Needs Assessment of Sex Workers who Live with HIV, 2008, accessed at <http://www.scarletalliance.org.au/library/hiv-needsassessment08/> on 30 October 2014.

⁴¹ Australian Government Department of Health and Ageing, *Sixth National HIV Strategy 2010-2013*, Commonwealth of Australia, Canberra, 2010, 16; Australian Government Department of Health and Ageing, *Second National STI Strategy 2010-2013*, Commonwealth of Australia, Canberra, 2010, 16. Kirby Institute, HIV, Viral Hepatitis and Sexually Transmissible Infections in Australia Annual Surveillance Report, University of New South Wales, 2011, p8, Figure 46, Figure 34.

⁴² Christine Harcourt, J O'Connor, S Egger, C Fairly, H Wand, M Chen, L Marshall, J Kaldor, B Donovan, (2010), 'The Decriminalisation of Prostitution is Associated with Better Coverage of Health Promotion Programs for Sex Workers', *Australian and New Zealand Journal of Public Health*, 34:5 at 482.

⁴³ Prior and Crofts, 'Effects of sex premises on neighbourhoods: Residents, local planning and the geographies of a controversial land use' (2012) 68 *New Zealand Geographer* 130.

⁴⁴ *Martyn v Hornsby Council*, cited in Nothing About Us Without Us, 'North Sydney Council Prohibits Home Occupation (Sex Services) in All Zones under the New Draft LEP', accessed at <http://nothing-about-us-without-us.com/tag/urban-realists/> on 30 October 2014.

- Better access to Occupational Health and Safety (WorkCover and NSW Health worked with sex workers to create Health and Safety Guidelines for Brothels, which have been translated to Thai, Chinese and Korean);⁴⁵ and
- No increase in the size of the sex industry (Kirby Institute report to Ministry of Health)⁴⁶
- Current evidence from AIDS 2014 presented by the Lancet has supported that the decriminalisation of sex work would have the greatest impact on the HIV epidemic, reducing HIV by up to 46% in the next decade and resulting on cost saving thresholds of tens of millions of dollars globally.⁴⁷

Decriminalisation means that if sex workers experience violence at work, we are more likely to report to the police without fear of arrest or deportation. If we experience unfair working conditions, we can go to Fair Work Australia and know that they will take our concerns seriously. Decriminalisation is the only model to afford us human rights.

Recommendation 2 – Anti-discrimination protection covering sex workers

Nationally consistent anti-discrimination protections on the basis of ‘profession, trade, occupation or calling’ as a protected attribute would provide invaluable results for sex workers and other workers across the nation.

- All jurisdictions should amend their anti-discrimination legislation to include ‘profession, trade, occupation or calling’ as a protected attribute.

Sex workers in Australia have been actively lobbying for social, legal, cultural, economic and political justice and equality for all sex workers. This has been through the work of Scarlet Alliance and our member sex worker organisations and projects in the states and territories that have been conducting both personal and systemic advocacy, combating the stigma and discrimination against us, campaigning for law reform, improved working conditions and for the recognition of our work and our rights.

It cannot be said enough: sex workers are people – they are your friends, your family members, they are wage earners, tax payers and parents – and they deserve the same human rights as everyone else.

- Ally Daniel ⁴⁸

We hope that you will address these ongoing human rights issues for sex workers and we look forward to seeing this data recorded in the Rights and Responsibilities official report.

⁴⁵ NSW Government and Workcover, ‘Health and Safety Guidelines for Brothels’, accessed at http://workcover.nsw.gov.au/formspublications/publications/Documents/brothels_health_safety_guidelines_English_0120.pdf on 30 October 2014.

⁴⁶ Basil Donovan, C Harcourt, S Egger, L Watchirs Smith, K Schneider, JM Kaldor, MY Chen, CK Fairley, S Tabrizi, *The Sex Industry in New South Wales: A Report to the NSW Ministry of Health*, Kirby Institute, University of New South Wales, Sydney, 2012, vi, accessed at <http://kirby.unsw.edu.au/projects/sex-industry-new-south-wales-report-nsw-ministry-health> on 30 October 2014.

⁴⁷ The Lancet. HIV and Sex Work, <http://www.thelancet.com/series/HIV-and-sex-workers>, July 2014, accessed on 30 October 2014.

⁴⁸ Ally Daniel, ‘Shaking Up the Views of Sex Work: The Lived Experience of One Sex Worker’, *Red Magazine*, 16.