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25th February 2011

To the Attorney Generals Department,
criminal.law@ag.gov.au

RE: Submissions into forced and servile marriage in Australia

Scarlet Alliance formed in 1989 and is the national peak body representing the interests of sex workers and sex worker organisations, projects, groups and networks in Australia. Our objectives, policies and programs aim to achieve social, legal, political, cultural, health and economic justice and equality for past and present sex workers. Our organisational membership, leadership, staff and volunteers is made up of sex workers.

For 21 years Scarlet Alliance has led both the HIV sector and the Human Trafficking sectors in cross-cultural work and self determination of culturally and linguistically diverse members of our community. It is within this context that we would like to offer input into the “Forced and Servile Marriage” discussion papers.

Scarlet Alliance strongly recommends a substantial time and financial investment be made into community organisations who represent those perceived to be affected by forced and servile marriage *prior* to the discussion of legislative and/or non-legislative means to prevent, prosecute and deliver human rights to those allegedly affected by these crimes.

Sincerely,

A handwritten signature in black ink that reads "Elena Jeffreys".

Elena Jeffreys
President
Scarlet Alliance, Australian Sex Workers Association

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Forced and Servile Marriage

Scarlet Alliance strongly opposes the introduction of a criminal justice response, and/or special funding for policing of individuals engaged in alleged forced and servile marriages.

Criminalisation harms sex workers and other groups; and has the potential to harm people perceived to be affected by forced and servile marriage

As observed by Scarlet Alliance and our membership, anti-trafficking efforts by police, DIAC and prosecutors have had a negative impact on sex workers in the form of increased barriers to accessing visas to travel, increased policing of workplaces, and (prior to 2009) increased channeling of sex workers non-consensually into witness protection programs once they were picked up in raids of their workplaces.

Outlined by Elaine Pearson in the GAATW report of 2007, the 2003 case of a sex workers' death in Villawood Detention Centre sparked "media outrage" after which "sex worker outreach groups...reported an increased targeting of the sex industry by law enforcement officials, which has unfortunately had the effect of reducing the benefits that decriminalization offered in terms of safer working conditions and health standards for migrant workers." (Pearson 2007)

Scarlet Alliance, as well as our member organizations, have repeatedly reported the anticipated and actual negative outcome of anti-trafficking criminal justice responses on the human right, health and wellbeing of sex workers in numerous submissions to Government.

Research in other countries has found similar problems with the policing of migration, both at an entry level and once migrants are in their destination country. For example child migrants in Mali and sex workers in Cambodia were found to have been harmed by the anti-trafficking efforts of those countries "Anti-trafficking interventions often ignore the cultural context of migration and can increase migrants' risk of harm and exploitation." (Busza, Castle et al. 2004)

Internationally unintentional negative outcomes for the target population is now recognised as the major flaw in anti-trafficking responses, resulting in the development of a transnational assessment tool to determine the negative impacts of anti-trafficking policies on human rights. (Wijers and Chew 2010)

The introduction of new criminal penalties for forced and servile marriages will potentially harm the population the laws are intended to assist.

Criminal Justice responses resource police and prosecutors, not communities

In the history of anti-trafficking responses in Australia, the main groups to receive funds to work on addressing these issues in the community have been Police, Immigration, Prosecutors and (by default) the Judiciary. This is an unfair distribution of resources that could otherwise be devoted to the affected communities. In the Australian experience this shortfall has been partially addressed by funds to four community based organisations (including Scarlet Alliance) but these prevention resources are miniscule compared to the resources used to prosecute such crimes *after* they have occurred. This is a systemic lack of justice for the communities involved when attention is paid only to those who are the victims of a crime, and not to those who are in vulnerable situations.

Scarlet Alliance strongly recommends focusing on community based prevention rather than policing, prosecuting or increased immigration compliance measures in relation to those perceived to be affected by forced and servile marriage. Scarlet Alliance agrees with points 85-88 on page 23 of the discussion paper "Arguments against implementing criminal measures:"

"85. It is important to consider the possible adverse effects on victims and their

families if specific criminal measures were to be introduced. In instances where a victim's family have facilitated and supported the marriage, there is a significant risk that the imposition of a criminal sanction on a perpetrator (which could include a parent for example), would result in increased isolation of a victim from their family and community.

86. Further, it may be difficult to bring a successful prosecution because of the potential difficulties in collecting evidence, (particularly where conduct takes place outside Australia), and the reluctance of victims to testify against family members.

87. To avoid prosecution, there may be an increase in the number of victims being taken overseas by their family members. However, an offence with an extended geographical jurisdiction would cover conduct occurring outside of Australia.

88. The enforcement of criminal measures could be resource intensive. Some would argue that new criminal measures are not needed as the sanctions already in place provide adequate protection, and it would be more beneficial to apply resources to other types of measures."[viewed at

[http://www.aq.gov.au/www/aqd/rwpattach.nsf/VAP/%289A5D88DBA63D32A661E6369859739356%29~Discussion+Paper+for+Public+Release+-+forced+and+servile+marriage.pdf/\\$file/Discussion+Paper+for+Public+Release+-+forced+and+servile+marriage.pdf](http://www.aq.gov.au/www/aqd/rwpattach.nsf/VAP/%289A5D88DBA63D32A661E6369859739356%29~Discussion+Paper+for+Public+Release+-+forced+and+servile+marriage.pdf/$file/Discussion+Paper+for+Public+Release+-+forced+and+servile+marriage.pdf)]

Problems with definitions

In the case of trafficking in Australia, sex workers who are perceived to be vulnerable to trafficking do not identify with terminology such as "trafficking," "sex slavery," "debt bondage," or "sexual servitude." Scarlet Alliance strongly recommends against the adoption of terminology in relation to marriage in Australia without effective investment into community development through appropriate community organisations in order to develop fair definitions that reflect the issues of that community.

Scarlet Alliance strongly recommends that without a substantial investment into community development the affected community is not yet able to have input into the discussion paper, laws, non-legislative measures and/or policing or immigration approaches in relation to marriage in Australia. Scarlet Alliance recommends that current non-legislative measures (items 99-102, page 23) would be impossible to successfully implement without substantial time and money investment into the affected community.

It is not viable to expect the affected community to be able to self-organise and have input into legislative and non-legislative measures. Such expectations will result in only currently funded groups having a voice – which may not result in fair input for the specific affected community this discussion paper seeks to reach.

Forced Marriage Unit

Scarlet Alliance is strongly opposed to the development of specialised Forced Marriage Unit in Australia. We are in favour of establishing substantial resources and opportunities for community organisations representing those perceived to be at risk of forced or servile marriage and a time investment by Government to allow those communities to self-organise and make representations to Government.

Changes to the Marriage Act: Unintended Consequences

Scarlet Alliance concurs with the concerns in the Discussion Paper, changes to the Marriage Act will potentially result in unintended negative consequences for communities perceived to be affected by forced and servile marriage.

Limiting peoples movement limits their human rights

Scarlet Alliance strongly recommends the Government not implement increased barriers or compliance checking for people perceived to be at risk of forced or servile marriage by our embassies in developing countries.

Scarlet Alliance does not support the barriers that other countries have placed on travel for marriage (such as Mongolia) and highlights the findings of The Right Guide in relation to these issues:

“To prevent trafficking, some states prohibit all young women to travel abroad for certain types of work. This infringes on women’s rights to freedom of movement and is not proportionate to the aim it serves.” (Wijers and Chew 2010)

Scarlet Alliance strongly recommends against linking access to migration to criminal law relating to prosecutions of alleged forced or servile marriage.

The Right Guide – Evaluation of Anti-Trafficking responses

Scarlet Alliance strongly recommends the Attorney Generals Department invest in a review of current anti-trafficking approaches using the trans-national model developed for the European Commission. Such a review *prior* to any changes or expansion of our anti-trafficking approaches in Australia will avoid repeating the mistakes that are currently part of daily life for migrant sex workers in Australia; namely the curtailing of our human rights, welfare, health and safety.

Bibliography

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- Pearson, E. (2007). Australia. COLLATERAL DAMAGE, The Impact of Anti-Trafficking Measures on Human Rights around the World. GAATW. Bangkok, Global Alliance Against Trafficking In Women and Children (GAATW): 28-60.
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