National Forum for Sex Worker Organisations & Projects
P. O. Box 2072, Canberra ACT 2601
Mobile: 0411 985 135
president@scarletalliance.org.au
www.scarletalliance.org.au

25th October, 2004

Assistant Secretary
Criminal Law Branch
Attorney-General's Department
Robert Garran Offices
National Circuit
BARTON ACT 2600
By email : trafficking.offences@ag.gov.au

Exposure Draft Criminal Code Amendment (Trafficking in Persons Offences) Bill 2004

Dear Sir/Madam,
I write to you on behalf of Scarlet Alliance, the Australian National peak body of Sex Worker Projects/Organisations. Formed in 1989 it represents Australian State based sex worker community based organisations at a national level. Through its objectives, policies and programs Scarlet Alliance aims to achieve equality, social, legal, political, cultural, health and economic justice for past and present workers in the sex industry.

The Australian sex industry has the lowest rate of HIV/AIDS of any sex industry in the world, due to best practice health strategies, and behaviour change led by sex workers themselves. We now risk a reversal of these excellent public health outcomes, particularly for Asian sex workers, their clients, and their client's families. Such a reversal may be brought about where the impact of legislation combined with active enforcement practices impacts on the sex industry, such that it is forced underground away from health and other support services.

Australia's success with containing an epidemic within the sex industry has been brought about by strategies that have included active consultation with the members of "at risk" communities including sex workers, in the development of policy and legislative reform. Surely, with migratory female Asian sex workers at the centre of the proposed amendments, it would appear essential to weigh the possible gains in the area of addressing transnational crime against the losses in public health outcomes. These women have been identified as one of the most at risk groups amongst the world's population groups for HIV and we cannot stress enough how important it is to maintain access to these women for the provision of health education, support and information on their rights.

The impact of law enforcement activities on health service provision to this highly marginalised, at risk group of sex workers has already been significant:

- our outreach staff are struggling to locate businesses that are constantly on the move and suspicious of all but genuine clients
- migratory contract sex workers are discouraged from accessing services
- migratory sex workers experience deportation, pushing them back home, and placing them at risk of increased exposure to HIV/AIDS in their home country

These complex impacts need to be considered before new offences are enshrined by the proposed Bill. We hope that this submission will inform the debate.
Should a face to face meeting be afforded to Scarlet Alliance it would enable us to discuss these issues in more detail and with the inclusion of anecdotal evidence and case studies of those we have worked with over our considerably experience of this issue.

Yours sincerely,

Janelle Fawkes
President

Maria McMahon
Vice President

Submission to:

Commonwealth Attorney General's Department

providing comment on:

Exposure Draft Criminal Code Amendment (Trafficking in Persons Offences) Bill 2004

(Justice and Customs)

A Bill for an Act to amend the Criminal Code Act 1995 to provide for offences relating to trafficking in persons, and for related purposes

CONTENTS

EXECUTIVE SUMMARY

1. The Criminal Code Amendments (Sexual Servitude) 2000, a punitive approach, has not changed the number of people entering Australia to work as migrant labour here, but has created negative impacts on women working under contract, those deceptively recruited, migrant sex workers, Australian sex workers and the general sex industry, resulting in what can only be described as a total failure of the policy to date. Including:
    - Excessive levels of Immigration (DIMIA) and Police raids.
    - Singling out and targeting of NESB and CALD sex workers.
    - Death in custody.
    - Incorrect detention.
    - Targeting of sex industry businesses that legitimately employ migrant sex workers.
    - Increased criminalisation of the sex industry.

    There has been no noticeable decrease in the amount of sex workers who wish to engage in contracts in Australia (Scarlet Alliance estimates the number to have stayed around 400), and we conclude that the punitive regime is not working.

2. Scarlet Alliance believes that Amendments outlined in Exposure Draft Criminal Code Amendment (Trafficking in Persons Offences) Bill 2004 will negatively impact on women who are trafficked into Australia on contract and those NESB workers who work legitimately in the Australian sex industry.
    These amendments will not prevent the practice occurring, but rather will further complicate the conditions of the contracts, placing women at greater risk. Scarlet Alliance does not support these amendments.

3. The 'Debt Bondage' amendments will affectively make working under contract illegal. This alone will severely affect a person working under contract from accessing assistance or services or disclosing their debt or contract relationship to anyone for fear of detection.
    - <u>This is much worse than current practice</u> – Scarlet Alliance member organisations have been approached by women who have disclosed there contract work status and it has enabled our members to provide information, support where necessary and access to legal and immigration advice and the opportunity for women to make informed choices often with the assistance of translators so the information is in their own language.
    - If this legislation is introduced women on contract will be MORE ISOLATED, more likely to accept poor conditions without seeking support and more likely to have heightened health and safety risks.

    Effectively introduction of these amendments will WORSEN the situation for women involved.

4. The definition of *exploitation* is unclear within this bill, and the dictionary doesn't address this either. The Bill and definition assume consent is irrelevant, and also that sex work as an occupation *per se* constitutes exploitation. The issue of excessive profiteering goes unmentioned as a basis for the Bill, as does the issue of non-negotiable terms of contract. Scarlet Alliance does not agree with these definitions, and the implied meaning of the word exploitation.
    The use of the term exploitation must NOT be made synonymous with the occupation of sex work ("prostitution") in law.

5. Health outcomes are highly compromised by the impact of the implementation of this type of legislation. Extensive and repetitive raids push the workplaces underground, cutting off access for health service providers. Sex Workers are made more vulnerable to HIV/AIDS and other sexually transmissible infections as health educators lose access to the workplaces, reducing the possibility of them receiving information, safe sex equipment and support.
    When health service delivery is curtailed by workplaces closing or going underground, ALL of the women in those workplaces lose contact with information about options and their rights.

6. Rather than adopting a rights based approach to this global issue these amendments constitute a toughening up of the UNSUCESSFUL criminal approach introduced into Australian legislation by the Criminal Code Amendments (Sexual Servitude) 2000.

7. As suggested in our submission addressing both the Criminal Code proposals in 1999 and the Joint Committee on the Australian Crime Commission 2003, we support visa's for migrant workers to enter Australia.
    If there were legal means to enter the Australian workforce then the requirement for a contract would be greatly reduced.

8. Scarlet Alliance, in accordance with our aim of eradicating injustice and inequality experienced by sex workers, sees this practise of denying sex worker visas as discriminatory and ultimately very dangerous. This policy is directly responsible for the illegal status of hundreds of sex workers in Australia each year, and as a result those workers are denied protection within the decriminalised and legal sex industry. By denying sex workers visas to enter Australia, the Federal Government has created de-facto sex industry law. Even though sex industry law is currently determined by the states and territories, the status of migrant sex workers is in the hands of the Federal Government, and will be further criminalised under the proposed amendments.

9. The Australian Government's discussion paper 'Offences Against Humanity, Slavery, Model Criminal Code Officers Committee' 1998, recommendations of which were subsequently made law, indicate clearly that the Government perceived the need for laws covering sexual slavery, 'were related to the problem of illegal migrants in the prostitution industry'[1]. This statement clearly articulates an interest in clearing out illegal migrants NOT in stopping trafficking or reducing the capacity for harm to migrant sex workers, deceptively recruited women or Australian sex workers. Essentially the Australian Government and its agencies have utilized the issue of trafficking to enable excessive targeting of sex industry premises by DIMIA in a unprecedented level of immigration raids. Scarlet Alliance believes this legislation to be a toughening up of laws which focus on enforcement and criminalization without addressing intrinsic issues.

10. The Australian Government rather than seeking to lead the way in a human rights approach to such a complex issue has instead pieced together legislation which simply replicates the failure of other countries who have introduced similar styles of legislation.

11. The current federal laws aimed at curbing the movement of migrant sex workers into the Australian sex industry are being applied unfairly. There is excessive criminalisation and targeting of individuals from non-English speaking backgrounds within the sex industry. This is discriminatory against sex industry workers and is racist against people from non-English speaking backgrounds.

12. Scarlet Alliance supports the rights of migrant sex workers to employment in Australia.

13. Scarlet Alliance wishes to acknowledge that although we raise many concerns about the lack of a comprehensive vision for migrant workers rights, we understand that the overall intent of the proposed amendment document is to prevent all trafficking into forced labour, slavery and servitude. However, we are adamant that this clear purpose is obscured by the inclusion of 'sexual servitude' in the definitions of trafficking.

14. Scarlet Allliance has major concerns regarding the definitions and impacts of these amendments including:
    - This convoluted set of definitions effectively equates all contract arrangements for sex work as exploitation, no matter whether reasonable or not.
    - the mechanism of debt bondage (the only means available for some women to travel to Australia and work) becomes a serious crime.
    - New offences relating to trafficking *within* Australia will only serve to create additional dangers for the women involved.
    - There is no encouragement for the sex industry, and particularly those engaging migratory sex workers, to develop 'normal' practices in recruitment, employment and workplace practices.

KEY RECOMMENDATION: The following criminal law definition, proposed by human rights advocates, clearly states the nature of the crime but avoids using descriptive and potentially confusing elements:

"Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by any means, for forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs." (Source: Ann Jordan, 2002).

[1] Discussion Paper, Chapter 9: Offences Against Humanity, Slavery, Model Criminal Code Officers Committee, pg. 13, April 1998

HOW THIS LEGISALATION WILL AFFECT SEX WORKERS IN PRACTICE; SCENARIOS

"*Silence of the Lambs*"

Scarlet Alliance believes that this Bill will exacerbate the risks of violence to both genuine sex workers who knowingly migrate into Australia on "contracts" as well as those few who are deceptively or forcefully recruited to work in the sex industry .

The 300-400 women consenting to "contract" debt arrangements and entering Australia annually will be put at greater risk and will be further isolated and silenced under the proposed new laws which criminalise the contract itself. The potential will be created for the practice of migrating under a "contract" debt to continue, but with the conditions further worsened, in that the women themselves will not be free to disclose the debt or contract relationship to anyone for fear of disclosing their involvement in a serious criminal offence.
We foresee the proposed laws creating the following:

- Further marginalisation and the creation of underground "Asian " workplaces
- A reversal of gains made in health education and service provision to contract and "Asian" sex workers, their private and commercial sexual partners and their families
- "Churning" of migratory sex workers who are deported, with increased HIV/AIDS risk for these women due to the scale and nature of the epidemic in countries of origin
- A reversal of legislative reforms in the sex industry for the "Asian" sector, with additional scrutiny and intervention by authorities essentially re-criminalising this sector. Predicted outcomes;
    - Contract sex workers will experience no contact with anyone other than genuine clients
    - Curtailed and concealed movement, where contract (sex) workers are treated like goods (transported by truck, contained, held indoors)
    - High risk of violence or death if a disclosure occurs, or is thought to have occurred.
    - Creates the potential for genuine consenting "contract" workers to be risking a "one way ticket" such that they complete all of the contract obligations in silence, or risk deportation by the "boss", or worse.

Increased potential for violence and forced recruitment

The 300-400 sex workers arranging contracts in order to migrate for work in Australia become "victims of crime" due to the *fact* that they are to exchange sexual services to repay a debt incurred by the person/s involved. By extrapolation, if the very activity of brokering or facilitating a contract for sex work becomes the basis of offence, then we discourage the current practice of negotiating with sex workers to agree any consensual arrangements, as this will constitute the evidence of an offence. In fact, it may encourage even more offences to occur, as the perpetrators risks are as great whether they recruit a consenting sex worker or not. It must be considered that perpetrators may move toward outright kidnapping and movement of persons against their will, or may simply hold a person in servitude for as long as possible as consent is deemed irrelevant. Under these amendments, consent and the debt itself, no matter whether reasonable or not becomes the key fact in the case.

Does Australia want to increase risks for all, including the women themselves?

The majority of women entering Australia *under contract* are experienced sex workers, willing to work, keen and financially motivated, with both parties to the contract comfortable in discussing the nature, terms and conditions of the work. Indeed, it is not unusual to find women who have been to Australia, or elsewhere, on sex work contracts before. If these amendments are brought in, there is no advantage to a process of recruitment of sex workers into negotiated contracts. Those taking the risks may as well escalate their "earning to risk" ratio by using violence (which at present they don't need to do), and choosing more vulnerable, younger, non-sex workers to be forced into work indefinitely.

Migratory Sex Workers will be isolated further.

Scarlet Alliance believes that sex workers will be pushed further underground, cutting the women off from the outside world, service providers and any information sources on their

options. Although we understand that some 18 cases of 'trafficking for the purposes of sexual servitude" are under investigation, there is little evidence that the high cost, high impact mechanism of joint operations and raids are of benefit to the women involved. Those most in need of information and support- that is genuine contract sex workers, and the few deceptively recruited, forced or coerced individuals are losing contact with services which is a large price to pay for little benefit overall. Our experience has been that women wishing to get out of contract workplaces are, in the main, coming forward of their own accord, and are NOT located by the joint operations.

Potential for corruption is increased

Under the proposed amendments, we foresee situations where AFP and DIMIA officers may be exposed to the potential for corruption, as the only way to embark upon investigations will be to pose as clients. It is our understanding that this is already occurring in Sydney. It is our belief that the Australian Government should not place their agents in such compromising situations.

SCARLET ALLIANCE OBJECTIVES

Scarlet Alliance objectives seek for sex workers to be self-determining agents, building their own alliances and choosing where and how they work within a legal framework which maximises their occupational health and safety.

These objectives include:

- To promote the civil rights of past and present sex workers and to work towards ending all forms of discrimination against them.
- To lobby for legal and administrative frameworks which do not discriminate against sex workers.
- To ensure that sex industry legislation seeks to maximise rather than minimise sex workers occupational health and safety;
- To challenge and lobby government when and where it implements legislation, regulations, rules, policies or law enforcement practices which are discriminatory and/or repressive to the rights and autonomy of sex workers.
- To actively promote the right of all sex workers to work in their chosen occupation and sector, including street, brothel, escort, private or opportunistic work.
- To actively work towards guaranteeing the right of all sex workers to optimum occupational health and safety provisions. This will promote conditions where safe sex and general health knowledge can be converted to safe work practices.
- To challenge any legislation, policy or process which does not promote the rights of the worker.
- To strive to eradicate sex worker stereotypes and stigmatisation in the popular consciousness and to communicate the diversity of ideas, opinions and aspirations of past and present sex workers.
- To liaise with international sex worker rights groups in the development of regional and international networks, programs and objectives.
- To support sex workers and sex worker organisations to become more politically active.
- To gather and disseminate sex industry related information to its members.

SCARLET ALLIANCE BACKGROUND INFORMATION

Scarlet Alliance was formed in 1989 following the first HIV & Sex Work Conference, and was formally incorporated in 1996. Scarlet Alliance is Australia's national peak body of community based sex worker organisations and projects, with membership made up from sex worker organisations and projects in the States and Territories. Each year a National Forum and AGM is held at which time key policies are developed, an executive and spokespersons are elected, and workshops on issues for sex workers are conducted.

Australia has the lowest rate of HIV/AIDS amongst sex workers in the world, due to the work of community based sex worker organisations in partnership with State and Federal Governments and other agencies. Scarlet Alliance has played a critical role in informing Government at all levels, and informing the health sector, both in Australia and internationally on issues affecting sex workers in the Australian sex industry. In addition, Scarlet Alliance has been active in promoting to other countries the models of service delivery, which have been most effective in minimising the transmission of HIV and STIs amongst sex workers and their clients.

Scarlet Alliance currently plays an active role in Australia's response to HIV/AIDS and is a member of the peak body the Australian Federation of AIDS Organisations (AFAO). Scarlet Alliance has produced a range of resources in collaboration with AFAO, including: *A Guide to Best Practice, Occupational Health and Safety in the Australian Sex Industry (2000),* and *Principles for Model Sex Industry Legislation (2000)* (available at www.afao.org.au). Scarlet Alliance is a leader when it comes to advocating for the health, safety and welfare of workers in Australia's sex industry and as such, our approach to promoting the health and welfare of sex workers is recognised throughout the world as best practice.

Scarlet Alliance values direct experience of the sex industry, and constitutionally our member organisations are required to employ a majority of current or former sex workers. Peer Education, where people with knowledge of, or experiences in, the sex industry are employed, is the basis from which our service delivery is conducted. Each sex worker organisation/project provides an outreach service to sex industry workplaces, thus offering a high level of personal contact to sex workers and other sex industry staff, including women who have come to Australia to work under a contract system. A close relationship has been established with many of these women, enabling staff of the sex worker organisations and projects to gain an insight into their complex lives and working environments. Contract workers seek and receive services, advocacy and support from Scarlet Alliance member organisations/projects.

Scarlet Alliance member organisations/projects have the highest level of contact with sex workers, including contract workers, in Australia of any agency, government or non-government. Our projects have close to 100% access to sex industry workplaces in the major cities. Many of our sex worker organisations/projects within Australia have CALD (Culturally and Linguistically Diverse) or NESB (Non English Speaking Background) Projects employing bi-lingual project workers. These staff provide information, education and support to women who may be working under contract in Australia, or who are being detained by DIMIA. It is these experiences and the high level of contact and support provided by our membership to CALD communities within the sex industry, including women who have entered Australia under contract, which informs our input into this Inquiry. Scarlet Alliance is the most experienced body in Australia to comment accurately on the current situation for contract workers.

OUR WORK- OVER 10 YEARS OF SERVICE PROVISION

"Labour migration for the purposes of working in the sex industry is nothing more than an element in the international movement of labour, which has been a pronounced aspect of the globalisation process. This process is marked by commoditisation of the Asia-Pacific region and rising aspirations with consumer capitalism. It encompasses ease of transport, communication, trade, expanding multi-national business and economic differentials between countries and regions."

(Scarlet Alliance, Discussion Paper: Chapter 9 'Offences Against Humanity' Slavery, 1999, pg 3)
http://www.scarletalliance.org.au/library/slavery-briefingpaper

Experience and understanding that Scarlet Alliance brings to this issue:

- Scarlet Alliance has the highest contact rate with migrant sex workers in Australia
- Scarlet Alliance has over 12 years experience in working with migratory sex workers, and the owners and operators of their workplaces.
- Local State and Territory sex worker organisations/projects have almost 100% access to all types of sex industry workplaces due to the confidential, non-judgemental peer education model that is utilised
- Scarlet Alliance members are often the first port of call when sex workers have issues with their contract.
- Scarlet Alliance engages in community education on this issue; to politicians, women's groups, students, sex workers, police and legal forums.
- Scarlet Alliance urges the recognition of migrant sex workers in Australia as legal workers with rights and protections

Australian sex worker organisations have worked on this issue in partnership with State, national and international organisations, government and non-government, for over a decade.

Scarlet Alliance activities supporting migratory women in the sex industry

The important role sex worker organisations play

It is Scarlet Alliances' experience that DIMIA and AFP have worked in isolation on this issue and there has been little recognition of the important role sex worker organisations/projects currently play in the lives of contract workers. The succession of raids on brothels throughout the country, largely by DIMIA but also AFP, has not deterred the organisers. It has not impacted on the level of persons trafficked for 'sexual servitude', nor has it reduced the number of persons 'deceptively recruited' or those working illegally according to the parameters of their tourist or student visa's.
In fact, these raids have largely only resulted in the deportation of individual sex workers.

Whilst on one level this may seem a worthy result it is an extremely expensive, discriminatory and unsuccessful strategy if the desired result is truly to prevent the trafficking of persons for the purpose of 'sexual servitude' and to detect and prosecute organised crime rings said to be responsible. An intelligence-led approach has yet to be fully implemented, whilst in the meantime, the blunt instrument of repetitive joint operation raids is decimating an entire, often legal, sector of the sex industry.

Our work with NESB/CALD sex workers
Australian sex worker organisations/projects have been working directly and exclusively over a substantial period of time with CALD (culturally and linguistically diverse) sex workers, the majority of who are from South East Asian countries[2]. Most sex worker organisations have specific CALD Projects that work solely and in detail with CALD sex workers. Through in-depth

[2] SWOP, for example saw around 1,000 CALD people in sex industry settings in 2002/3, and outreached to 230 sex services premises employing CALD sex workers.

contact with thousands of CALD women in the industry over a substantial period of time, sex worker organisations have key insights into the issues facing CALD sex workers. Aside from DIMIA and Federal and State police, sex worker organisations remain the only organisations working directly and comprehensively with CALD sex workers and owners of these workplaces, yet we remain largely unconsulted about the issues.

The extensive success sex worker organisations have had in establishing relationships with CALD sex workers is inherently attributable to the frameworks we have employed. These frameworks are guided by National and State HIV Strategies that outline international best practice for HIV prevention, and are strongly endorsed as best practice by both Scarlet Alliance (National Alliance of sex worker organisations) and Australian Federation of AIDS Organisations (AFAO). They include:

Peer Education Models.
The Ottowa Charter Health Promotion principles.
Harm Minimisation strategies.
Community Development frameworks.

These frameworks enable trusting relationships to develop between sex worker organisations and sex workers, and become even more important with CALD sex workers, who are an elusive community of sex workers. Criminalisation and stigmatisation of sex workers means that workers are more likely to engage with peers rather than other health professionals.

Extensive service provision by sex worker organisations to CALD sex workers has revealed little evidence of sexual servitude and slavery. The reality is that in a global economy, with increasingly feminised poverty, many South East Asian women are flocking internationally through unregulated sectors of the global market in order to pursue improved socio-economic opportunities. In a gendered labour market, where women often do not have access to formal education and employment, work opportunities are restricted largely to the sphere of domestic labour, which is lowly paid and low in status. CALD sex workers have identified time and time again that sex work employment is substantially more appealing than other limited work avenues most likely for migrants, such as outwork, factory, or domestic cleaning etc.

SWOP (Sex Worker Outreach Project) in Sydney and RHed (formerly the Prostitutes Collective of Victoria, PCV) in Melbourne have the longest running projects responding to the emergence of CALD sex workers NSW and Victoria.

SWOP (Sex Worker Outreach Project) in NSW has had extensive contact particularly with contract workers. For over 10 years, SWOP in Sydney has employed Thai speaking workers, and the team currently includes Thai, Chinese and Korean speakers. Over 230 workplaces are visited, and 1,007 occasions of service for CALD sex industry workers occurred in the year 02/03.
RHed (formerly the Prostitutes Collective of Victoria (PCV) has significant contact with CALD sex workers across Melbourne, including those from the Vietnamese, Chinese and Thai community. The National SIREN project was based there.
Phoenix in Western Australia employed a p/t CALD project worker for the first time in 1998, and during financial year (02/03) met with CALD workers 221 times.
SIN (South Australian Sex Industry Network) secured funding and employed a CALD worker from May 2002, and met with CALD sex workers 892 times (200 new contacts) within the first 9 months, an increase in access to the project for CALD sex workers by almost 300%.
SQWISI in Queensland has employed a CALD project worker since 1994, and averages 600 contacts with CALD workers per annum.

Examples of multicultural resources produced by Scarlet Alliance or members include;
Production of resources in a variety of forms, -visual, verbal and printed, in key languages

The SIREN Project (PCV, 1994) – booklets in Thai, Tagalog, Chinese and English, tapes in Thai and Tagalog, and research report.

Hot Sex (Scarlet Alliance) –multilingual safe sex education resource for clients of sex workers, and sex workers themselves.

Sex, Tax, Law - the facts (SWOP) Thai, Chinese and English booklet

CD rom on sexual health (SQWISI, 2003), in six languages

"No Regrets" video in Mandarin, Thai and Korean (SWOP)

WorkCover Guidelines, video and booklet for sex workers in English, Thai, Chinese and Korean (SWOP 2000)

Referral leaflets and magazine articles in Thai, Chinese, Vietnamese, Korean, Indonesian and other languages (all organisations)

"Streetwise" comics in Chinese and Thai on sex work

Self defence "10 Hot Tips" Chinese photo story leaflet (SWOP 2004)

Multicultural services provided by Scarlet Alliance member organisations:

- Workshops on health issues for NESB sex workers, including:
  - Negotiating skills (to increase ability to negotiate safer sex with clients)
  - Safer sex practices
  - Contraception
  - Identification of symptoms of STI's
  - Information on HIV prevention
- New worker training
- Workplace safety, the laws and rights
- English classes
- Immigration information
- Taxation information and referrals

This high level of experience, contact and information held by Scarlet Alliance, its members and their Asian Pacific 'sister' organisations has not been effectively sought by the Australian Government.

Scarlet Alliance believes responses based on increased enforcement powers, further criminalisation and surveillance of the sex industry, and increased resources to police and immigration departments will not work effectively on this issue. One such response was announced on 8 September, 2003[3] in which enforcement agencies in Australia would receive increased resources in order to work with enforcement agencies in SE Asia, increase intelligence skills and collecting methods in the country of origin. Whilst we do not deny that AFP and DIMIA are key stakeholders in addressing the detection of agents who traffic people, we believe they are not the organisations most skilled or prepared to work with individuals who have been 'deceptively recruited', or who agreed to a contract in order to gain entry to Australia or who are working in the sex industry in Australian whilst on tourist or student visa's.

[3] ABC report 8 September, 2003.

The evidence of this is indicated in three ways. Firstly, the immediate deportation of the sex workers involved displays a low level of awareness of the complexities of the issues and a lack of understanding of meaningful ways to empower contract workers and stop specific exploitations from occurring again. Secondly, the women who have been taken into custody endure unacceptable treatment including being dealt with as criminals. Thirdly, in Australia we have had a death in custody resulting from the questionable level of aftercare and support provided to these women. We believe this evidence shows a generally poor record in Australia's methods of dealing with the issue. Furthermore, Scarlet Alliance believes many of the current problems result from the current Government and Law Enforcement Agencies' response. This response relies on increasing criminal enforcement potential without supporting effective networks and partnership responses, and without providing necessary care and support to individuals who are 'deceptively recruited' or exploited.

Scarlet Alliances' strong history of working within well-positioned networks furthers the insight and knowledge sex worker organisations have in relation to the issues, making us key consultants in the area.

We strongly believe that until a partnership approach is developed and each party is involved in a shared level of understanding of this complex issue, and until focus is placed on a shared approach incorporating peer sex worker organisations, not reliant on criminal enforcement agencies alone, Australia's response will remain inconsistent and ineffective.
If Australia is to establish successful methods of preventing the exploitation of those persons who are 'deceptively recruited', it is essential that a partnership approach, similar to that which has proven so successful for working with marginalised communities and particularly the sex industry in response to HIV/AIDS, must be adopted.

International liaison and partnership work

Scarlet Alliance has attempted to work, without dedicated resources, toward developing strong partnerships to address the exploitation and human rights inequities that currently surround the issue. We have developed strong links with individual grassroots sex worker organisations, and partners including:

- Empower in Thailand,
- Zi Teng in Hong Kong
- Asia Pacific Network of Sex Workers (APNSW) the peak body Asia Pacific region.
- Global alliance Against Trafficking in Women (GAATW) Thailand
- The Network of Sex Worker Projects (NSWP) the international peak body

Scarlet Alliance international partnership activities include:

- Working with visiting members from Empower and the Global Alliance Against Trafficking in Women, Thailand in a research conducted in NSW (SWOP) exploring the level of trafficking and issues affecting contract sex workers.
- Attending the International Conference on AIDS in Asia and the Pacific (ICAAP) conference, Kuala Lumpur, 1999. Scarlet Alliance held their AGM and National Forum as a satellite meeting here. This provided the opportunity to network with local Malaysian sex workers and sex worker organisations from SE Asian countries. This also enabled our delegates from each state and territory of Australia to attend the ICAAP conference to promote skill development.
- Attending and presenting at ICAAP, 2001, Melbourne. Providing support to visiting sex workers, organising the APNSW workshop to develop a resource titled "making Sex Work Safe" and endorsing Australian sex workers attendance at the conference.
- Melbourne, 2001 Scarlet Alliance National Forum included members from Empower and GAATW and a spokesperson from European Network to inform Scarlet Alliance members about the migration issues for sex workers in other countries.
- Initiating and funding a CALD skillshare conference (2002) to foster links between CALD sex worker project workers from around Australian attended the forum. Speakers included DIMIA, and key service providers such as Sydney Sexual Health Centre Multicultural Project, and Livingston Road Clinic. A strong theme emerged for the need for state, national, and international approaches to be developed on the

issue of 'trafficking'. The conference fostered stronger networks between state sex worker organisations, enabling us to examine some of the commonalities and differences between the issues at local levels. Resources and strategies were shared, ultimately enhancing service provision and informing support networks.

- Development of policy documents, resources and information in several languages aimed at sex workers, organisations, media and policy makers from as earlier as 1994.
- Scarlet Alliance membership to AFAO informs this national HIV/AIDS body on this issue for their extensive work in international forums.
- Attending International AIDS Conference, Bangkok 2004 Facilitating skillshare workshops, delivering papers on sex worker issues, including migratory sex work, APNSW and NSWP international meetings, launch of "Making sex work safe" website.
-

Training and information exchange with key agencies

We have at many points attempted to provide insight and information to both state and federal Police, and DIMIA and have invited them to speak to our organisation staff on several occasions.

Current activities include:

- Training AFP on issues for migratory sex workers, and meetings with key officers
- Discussion meetings with DIMIA officers, including the Sex Industry Taskforce, and advocacy on matters in relation to both individuals and systemic issues
- Hosting exchange visits including:
  1. Thai/Australian government delegation on responses to "Trafficking for sexual servitude"
  2. Thai Senate delegation on human rights and sex worker community participation
  3. Chinese and Indonesian government delegations on sex work, health and program development
  4. Chinese government Public Health Department training to develop effective sex worker projects to address HIV/AIDS (China,1999)
  5. Indonesian government Health department, training to develop sex worker projects in Indonesia (Indonesia, 2000)

Partnership approach needs to be developed further

DIMIA and the AFP are working in isolation on this issue, whilst Australian sex worker organisations and projects have contact with thousands of CALD sex workers each year, and well developed mechanisms to consult both here and abroad. This work is guided by existing Australian and International policies on health, and related frameworks and treaties. Scarlet Alliance members have built up a strong relationship of trust and understanding with CALD sex workers, as service providers and peers.

CALD workers come to Australia to enter the labour market. Sex work is a financially appealing and accessible industry for CALD workers. In response to the specific needs of CALD workers, there are currently five CALD projects run by Scarlet Alliance members, encompassing thousands of individual contacts with CALD sex workers each year.

Recommendation: Partnership approach to support sex workers

Scarlet Alliance believes the lack of a coordinated approach, and lack of knowledge of the issue has led to a disjointed, misinformed and problematic response by the Australian Government. A partnership approach is vital to improving understanding. Scarlet Alliance has had much experience in facilitating a partnership approach, along with existing vital partnerships, and should be key consultants in this area.

COMMENTS RELATING TO THE PROPOSED AMENDMENTS TO THE CRIMINIAL CODE

Comments relating to Evidence admissible before a Jury (Criminal Code S 270.7(1A)) Section 7 of the Draft Proposal

Sex work in Australia is a recognised form of employment, providing at least 20,000 jobs and many more casual positions. For these workers, discrimination takes a variety of forms. In 1999 Scarlet Alliance undertook a research project to examine the forms of discrimination that people working in the sex industry experience. Discrimination by banks, health regulations, police and in the form of lack of industrial protections, restrictions to movement and laws against advertising were all reported by the sex workers involved. Fighting against discrimination in legislation is also an important campaign for Scarlet Alliance, and we oppose legislation enshrining discrimination against people who work in the sex industry.

The current federal laws aimed at curbing the movement of migrant sex workers into the Australian sex industry are being applied unfairly. There is excessive criminalisation and targeting of individuals from non-English speaking backgrounds within the sex industry. This is discriminatory against sex industry workers and is racist against people from non-English speaking backgrounds. Since the introduction of the Sexual Servitude amendments to the Criminal Code in 2000, there have been many cases of discrimination within the legal justice system in Australia.

- Permanent resident sex workers of Asian background have been disbelieved when answering questions about their migration status, and have been taken into detention, rather than allowed to collect and provide evidence of their status as a non-alien, and lawful worker.
- Students working in the sex industry have been targeted for intense scrutiny in relation to the 20 hour limit, have been put in isolation in detention, and have then missed months of valuable time away from study whilst running their appeal and proving no breach occurred.
- Other Asian women, once found to be lawfully employed have been released, however experienced being told that they were allowed to go “provided I never see you in a brothel again”.
- Upon release, one woman experienced detention staff announcing in the reception area that “she was the one picked up in the brothel” before showing her out onto the road in Villawood , at night. The woman was left to walk to the train station through the bushland and industrial area, alone.

After a police raid on a premises and the ‘accused’ are taken to an immigration detention centre, many choose to simply leave the country rather than stay and either give testimony about their boss or challenge the charges against themselves. This is due to shame, stigma and disclosure issues. Individuals who have been found working either in sex industry or massage premises may not want family and friends from their home country to know where they have been working. The Australian laws require them to defend themselves if they wish to stay in Australia. Even though many individuals have been targeted unfairly, they are not empowered to defend themselves in court, for to do so they would have to admit publicly that they are working in the sex industry.

In the case of students or people on visas’ that allow them to work in Australia, they have been investigated without good reason. These workers have been targeted because they work in the sex industry and they are from non-English speaking backgrounds. The supposed breaches are not defended in court because the individual is not able to publicly admit their place of employment, and thus the laws are not properly clarified. The unfair targeting of migrant sex workers from non-English speaking backgrounds by the laws and law enforcement are a barrier to equal treatment for sex workers from all background in Australia.

The proposed changes to the Criminal Code (S270.7(1)) (S7 of the proposal) create another barrier to fair hearings for migrant sex workers within the Australian justice system. The changes, listed below, will affect what kinds of evidence is allowed to be heard before a jury when charges are laid regarding the intention of use of deceptive recruitment with the intention

of inducing another person to work in the sex industry: (to see the correlating offences, see "Deceptive Recruiting").

S270.7 (1A) In determining, for the purposes of any proceedings for an offence against subsection (1), whether a person has been deceived about any matter referred to in paragraph (1)(a), (b), (c), (d) or (e), a court, or if the trial is before a jury, the jury, may treat any of the following matters as admissible evidence:

(a) the economic relationship between the person and the alleged offender;
(b) the terms of any written or oral contract or agreement between the person and the alleged offender;
(c) the personal circumstances of the person, including but not limited to:
(i) whether the person is entitled to be in Australia under the *Migration Act 1958*; and
(ii) the person's ability to speak, write and understand English; and
(iii) the extent of the person's social and physical dependence on the alleged offender.

(1B) Subsection (1A) does not:
(a) prevent the leading of any other evidence in proceedings for an offence against subsection (1); or
(b) limit the manner in which evidence may be adduced, or the admissibility of evidence, under the *Evidence Act 1995*.

Scarlet Alliance views this proposed specification of a persons financial, migration, English-speaking or social status as evidence in a trial against persons involved in the Australian sex industry as discriminatory, unfair, a barrier to the participation of sex industry workers in our justice system and potentially having dire consequences for the legal rights of migrant sex industry workers in Australia.

FINANCIAL STATUS

The economic relationship between the person and the alleged offender

A person's economic status is not grounds upon which to determine their ability to consent to or understand a contract. To hold a person's financial capacity and their relationship to another as basis of the possibility of deception taking place is to propose that a person who is in an economically compromised position is not able to fully comprehend the nature of contracts or work they may engage in. Sex workers enter the Australian sex industry for one reason – to earn money. For sex workers in brothels, the relationship between a worker and the brothel management and owners is an economic relationship. The same economic relationship exists in all workplaces. While this relationship may be relevant in some trials against owners who have deceptively recruited workers or been untruthful about the nature of the contract, it is unfair to specify within the Criminal Code that this evidence will automatically be admissible in all cases of this nature. ALL workers have an economic relationship with the management and owners of businesses where they work, and it is discriminatory to propose in these changes to the Criminal Code that, in a case of deception in relation to the sex industry, economic relations affect the ability of a sex worker to understand the nature of their contract.

MIGRATION STATUS

I) Whether the person is entitled to be in Australia under the Migration Act 1958

Migrant sex workers, in particular from destination countries that are currently targeted under the Sexual Servitude amendments of the Criminal Code, are unable to apply legally for a sponsored employment visa to enter Australia. However, student visas and some other short term visas do allow persons to work while they are in Australia. For juries that are considering possible deception in regards to work in the Australian sex industry, individuals working in the sex industry in Australia should not have their migration status specified in the Criminal Code as evidence. If it is relevant to the case, the magistrate or judge at the time will rule it as admissible. The consideration of a person's migration status as evidence when juries are deliberating about the degree of deception that may have occurred, is discriminatory toward migrant workers and individuals on visas, and it will serve to colour juror's attitudes towards people whose migration status is not congruent with the Migration laws.

If, indeed, the witness is both a victim of a crime, AND an illegal non citizen, and a sex worker, in our opinion, many jurors will not be able to hear their evidence without prejudice. Therefore, the "truth" of their testimony may be the subject of both open and inherent scrutiny. This will not assist victims in giving an account of the crimes against their person, and indeed, may used by defence lawyers as , somehow, mitigating circumstances.

ENGLISH SPEAKING STATUS

II) The person's ability to speak, write and understand English

It is discriminatory to assume that a person ability to speak, write or understand English affects their ability to agree to a contract or terms of a contract in Australia. English speaking and non-English speaking people alike should be protected from deceptive recruiting under the law. Ability to understand a contractual agreement or earning potential is not conditional on a persons' ability to speak English. Scarlet Alliance members provide and facilitate English language classes for migrant sex workers in Australia, but we do not believe that a persons ability to speak English will affect their capacity to have agency in their decisions to work in the sex industry. In many cases, the workers will know enough English to negotiate a service with a client, other staff assist or the workplace may predominantly operate in their first language. Scarlet Alliance members provide multi-lingual information, education and outreach to sex workers. It is important that workers from all backgrounds are able to access sex worker advocacy and health services in Australia, but we do not support the specification of a persons' English speaking capacity in the consideration of indictable offences against the sex industry.

SOCIAL STATUS

III) The extent of the person's social and physical dependence on the alleged offender

The people most impacted by the Sexual Servitude amendments to the Criminal Code and current proposed changes are individuals who work in the sex industry in Australia from other countries, sometimes on contract, but generally for relatively short periods of time (a few months). As discussed above, their intentions in Australia may not include learning English, and thus they may be dependent upon the managers, bosses and work colleagues within their place of work to translate for them. Scarlet Alliance recognises the differential power relationship that this creates for migrant sex workers, however we do not believe that it affects the ability of worker to understand the nature and financial reward of their work. A worker who is socially reliant on others still has agency and ability to negotiate with clients and bosses. Scarlet Alliance recognises that there is a degree of responsibility involved for the management of *any* business when employing other people, however, the inclusion of 'social dependence' as admissible evidence in the consideration of criminal charges of deceptive recruiting to the sex industry alone is discriminatory, heavy handed, and will lead to unjust criminal trials for those involved. If 'social dependence' is relevant to a given court case, the magistrate or judge will rule it so. It is over regulation and prejudicial to include it in the Criminal Code.

Recommendation: Fair trials for the sex industry

Scarlet Alliance recommend that admissible evidence be decided by those presiding in court hearing the charge of Deceptive Recruitment or any other charge relating to trafficking. We oppose any specification about the admission of evidence in relation to changes of Deceptive Recruitment. Court Cases should be unbiased in relation to a person's migratory, English speaking or financial status in Australia, and the jury should only hear such information if it is directly relevant to the case.

Comments relating to Deceptive Recruiting

BACKGROUND

Scarlet Alliance has asserted for many years that the nature of contractual agreements that many migrant sex workers engage is potentially exploitative given their illegal status. In a Western industrial relations framework, financial contracts based on a debt create a power imbalance between the worker and the employer. It is not unusual, however, in countries such as Thailand, to pay a person to guarantee carriage and employment to a region with which the worker may not be familiar. Workers from these countries are prepared to agree to a debt in

order to receive access to the Australian market and potential earnings. Given the complexities of an Australian industry which employs 20,000 workers including migrant workers on contract (300 to 400 people per year), it is necessary to find an industrial solution that will ensure the human rights of all workers in Australia are upheld.

In 2000, Scarlet Alliance and the Australian Federation of AIDS organizations jointly published "Principles for Model Sex Industry Law Reform" (Metzenrath and Banach 2000), in an effort to educate policy makers and the public on the issue. The following is an excerpt from that publication:

> "It is difficult to estimate precisely the prevalence of 'sexual slavery' due to its covert nature and illegal status. However, former Minister for Justice, Amanda Vanstone's Information Paper on the 'sexual slavery' issue reports that the Department of Immigration and Multicultural Affairs (DIMA) deported 54 people in 1996-97 for working illegally in the sex industry and for the seven months to end- January 1998, DIMA deported 67 persons for illegally working in brothels (Justice Department, 1998: 4). Not all of these women were necessarily being employed in slave-like conditions. Additionally, many more foreigners are caught illegally working in non-sex industry related employment in Australia. For example, in 1998, 400 foreigners were found to be working illegally in Australia, of these only 14 were found to be working in brothels. Yet the sex industry is singled out for special legislation that does not acknowledge that sex work is work rather than general legislation concerned with 'labour exploitation' applicable to any industry. It appears that if a person's work includes sex, it is not defined as work but rather as a sexual practice related to non-consensual 'sexual slavery'. Arguably, the danger comes from being an 'illegal migrant worker' rather than the nature of the work to be performed. All illegal migrant workers are potentially subject to exploitation in a variety of contexts that are non-sexual. **The important distinction to make in relation to 'sexual slavery' is whether sex workers coming to Australia do so willingly or through trickery or force.** Anecdotal evidence from sex worker organisations indicates that most overseas sex workers who come to work in the Australian sex industry are sex workers in their country of origin and know that this is the type of work they will do. There are cases of trickery, deceit and force but they are minimal and both situations require different approaches."
> (http://www.scarletalliance.org.au/pub/model_principles00/document_view#ref9)

Scarlet Alliance congratulates the Attorney Generals Office for further addressing the issue of deception in relation to recruitment for the sex industry in Australia. We welcome more discussion on these issues as the proposed laws are developed into legislation that supports workers rights and the rights of those who have experienced dishonesty and corruption.

Current laws:
CRIMINAL CODE ACT 1995- SECT 270.7 Deceptive recruiting for sexual services
(1) A person who, with the intention of inducing another person to enter into an engagement to provide sexual services, deceives that other person about the fact that the engagement will involve the provision of sexual services is guilty of an offence.
Penalty:
(a) in the case of an aggravated offence (see section 270.8)—imprisonment for 9 years; or
(b) in any other case—imprisonment for 7 years.
(2) In this section: *sexual service* means the commercial use or display of the body of the person providing the service for the sexual gratification of others.

The current legislation make it an offence for a person to engage another in employment or financial contract for work in the sex industry unless it is explicitly understood by the worker. If the worker is under the age of 18, the aggravated penalty applies. While Scarlet Alliance supports measures that support those deceptively recruited into the sex industry, we believe this is a small number of people. A legal framework is needed to assist the individuals who are deceived, in addition to focusing on simply jailing the perpetrators.

Proposed laws:

7 Subsection 270.7(1) of the *Criminal Code*
Repeal the subsection, substitute:

(1) A person who, with the intention of inducing another person to enter into an engagement to provide sexual services, deceives that other person about:

(a) the fact that the engagement will involve the provision of sexual services; or

(b) the extent to which the person will be free to leave the place or area where the person provides sexual services; or

(c) the extent to which the person will be free to cease providing sexual services; or

(d) the extent to which the person will be free to leave his or her place of residence; or

(e) the fact that the engagement will involve exploitation, debt bondage or the confiscation of the person's travel or identity documents;

is guilty of an offence.

Penalty:

(a) in the case of an aggravated offence (see section 270.8)—imprisonment for 9 years; or

(b) in any other case—imprisonment for 7 years.

The above changes to the criminal code seeks to clarify and give further detail to the current laws of 'deceptive recruiting.' If a person is aware that they are going to be working in the sex industry, but is deceived about the nature of the contract/debt they have agreed to, this amendment will criminalise the activity of their boss and others involved. As Scarlet Alliance has argued in both our submission to the Inter-Parliamentary Inquiry and the Joint Committee on the Australian Crime Commission, the issue of deceptive recruiting is one that goes beyond being aware of the industry one agrees to work within. As the number of migrant workers deceived about the nature of their work is very low, it is appropriate for other specifics about 'deception recruiting' to be recognised in Australian Law.

Scarlet Alliance welcomes the current attempt to include within Australian law provisions for migrant sex workers who have been deceived about the length or financial scale of their contract. However we are concerned that the provisions have been made within the Criminal Code. Recognising that the majority of sex industry premises and workers in Australia are legal and/or decriminalised, it should follow that these workers, migrant or otherwise, should have legal cover written into the Industrial Relations and Fair Trading Acts of Australia, both on a Federal and State basis. The only recourse this Criminal Code amendment gives to a migrant worker who has experienced deception while on contract in Australia is to testify in criminal proceedings against their boss and others associated with their workplace. Given the heavy penalties for such an offence, this creates obvious tensions for sex workers wishing to disclose, or acting as a witness.

It is the belief of Scarlet Alliance that in the campaign for equal treatment and justice for sex workers, these migrant workers should have rights that extend beyond testifying and deportation. Sex workers who are working in the Australian sex industry on contracts from other countries need access to civil measures such as the Industrial Commissions and Fair Trading Tribunals of the State and Federal Governments. The desired outcome for Scarlet Alliance would be that individuals can take their employers and others associated with their workplace to a civil tribunal and for their case to be mediated to produce a better workplace and ongoing employment.

OUTCOMES FOR AUSTRALIAN WORKERS

As touched on above, there are a number of issues at play when discussing 'deceptive recruitment'. For example, Australian workers who are employed by telephone marketing firms may be advised of an 'estimated' earning capacity before they begin employment. When this 'estimated' earning is higher than actual earning, what kinds of legal recourse does the contracted labour have? Another example is when workers are hired on the basis of a job description, but find that there is incongruence with their actual tasks once they begin their job. Or workers who sign up with an employment agency, only to find that the work they are being offered is not within their communicated desired skills category? Shift workers too are sometimes employed but then not able to gain the shifts they had been offered at the time of

employment. Where are the legal provisions and recourse to justice within Australian law for these workers? It would be more suitable for all workers in Australia (migrant or otherwise) effected by deceptive recruitment practises to be covered by the same set of laws, preferably industrial relation law.

OUTCOMES FOR MIGRANT SEX WORKERS

The contemporary media and political conflation of migrant sex workers with 'sex slavery' has served to further marginalise and silence them within Australian society. An uncritical understanding of the sex industry and migrant workers removes agency from their actions and renders their employment within the sex industry to only be understood as 'forced' or 'deceptively recruited.' It harms the sex industry in general because it perpetuates the myth that no woman would desire work within the sex industry, and is only working there through coercion or deception. The current laws unfortunately stand alone as the legal framework within which to understand migrant sex workers in Australia, and as such have contributed to the stigma and discrimination mentioned above.

The proposed amendments do attempt to broaden and problematise simplistic understandings of deception when applied to an industrial setting, but due to their placement within the Criminal Code only, serve to increase criminal penalties rather than create meaningful avenues of justice. Scarlet Alliance asks: if a migrant sex worker seeks recourse against an employer or other who has lied about the cost or duration of a contract to work in Australia, what outcome will the amendments to the Criminal Code provide for this worker? If a worker contacts the Australian Federal Police regarding deceptive recruitment, will they be deported once the trial is over? Will the current practise of deportation if an individuals' evidence is not strong enough continue? Scarlet Alliance is deeply disappointed that this issue is not being resolved in amendments to Immigration, Industrial Relations and Fair Trading law, to ensure that justice, in the form of ongoing, fair employment, is protected for migrant sex workers.

OUTCOMES FOR INDIVIDUALS WHO ENTER CONTRACTS FOR PURPOSES OTHER THAN SEX WORK ONLY TO BE TOLD ON ARRIVAL THAT THEIR CONTRACT IS FOR WORK IN THE SEX INDUSTRY

Scarlet Alliance recognises that there are people who enter into a financial contract for employment in Australia and come here from other countries to be told, upon arrival, that in order to work off the contract they must work in the sex industry, a fact they did not know when they left their home country. The few individuals who experience this form of deception are left with harrowing decisions – work in the sex industry to pay off the debt or leave the contract and burden themselves and their family with a debt that is going to encumber them for the rest of their lives.

For many, the option of reporting their employer and others to the Australian Federal Police is not a viable option. It is likely that the person would like to continue to stay in Australia and work, but due to their illegal status (ie their visa does not allow them to work) will be concerned about deportation if they go to the authorities. As already mentioned the major issue will be the contract debt they have, and the shame associated with returning home without money and burdening their family. The cultural shame associated with working in the sex industry may result in some workers never telling their family what it is that they did under contract in Australia, especially if the person was deceptively recruited and did not intend to work in the industry.

Scarlet Alliance are concerned that the criminalisation of 'deceptive recruiting' has done little to support the migrant workers who come to Australia for reasons other than working in the sex industry and are then financially burdened so much due to their contract that they do work in the sex industry to pay it off. As suggested in the Scarlet Alliance submission regarding the Criminal Code proposals in 1999 and testimony to the Joint Committee on the Australian Crime Commission, we support visa's for migrant workers to enter Australia for a range of industries. If there were legal means to enter the Australian workforce then the requirement for a contract would be greatly reduced.

Recommendation: Industrial Relations and Trade Practises legislation to be extended to include migrant workers, including sex workers

Recognising that the majority of sex industry premises and workers in Australia are legal and/or decriminalised, it should follow that sex workers, migrant or otherwise, be protected by the Industrial Relations and Fair Trading Acts of Australia, both on a Federal and State basis.

Recommendation: Sex workers in Australia to have access to the Industrial Relations Commission and Fair Trading Tribunals of State, Territory and Federal Governments.
Sex workers to have access to civil measures such as the Industrial Commissions and Fair Trading Tribunals of the State and Federal Governments. The desired outcome for Scarlet Alliance would be that individuals can take their bosses and others associated with their workplace to a civil tribunal and for their case to be mediated to produce a better workplace and ongoing employment.

Recommendation: Workers in Australia to be covered by the same laws.
All workers in Australia, regardless of their migration status, should be covered by the same laws.

Comments relating to Trafficking in persons

"Sex workers who want to work in more lucrative markets often travel to do so, often illegally and with the assistance of others. Sometimes they are assisted by individuals but often highly organised brokers make large profits by providing transport, the necessary paperwork for the journey (passports, visas, letters of support) accommodation and employment in the destination country. Typically brokers recoup their fees from the workers' earnings in the destination country. Often her freedom is limited until the debt is paid and even beyond that. This form of labour contract, often called 'debt bondage', is illegal but not uncommon. Significantly this arrangement is often known to the migrant worker." Asia Pacific Network of Sex Workers, Mobility and Migration, taken from the 'Making Sex Work Safe in Asia Pacific' website, www.apnsw.org 2004

> *" We have certainly met young Australian women who have come to Thailand with no guarantor, no collateral, and little money, just a desperation to get out of Australia. Many of them end up working illegally for below award wages e.g. teaching English. How is it that these young women are treated and perceived so differently from me? It certainly seems to be about sex and racism. Young Australian women are treated as autonomous adults, given visas and left to create their own lives. If I try to get a visa to go to Australia being a Thai woman without a guarantor, without collateral or money it will not be approved in case I am being "trafficked". It's ridiculous because if I got a visa and permission to work then no one can exploit me. When my visa is refused I could simply find an agent, agree to a contract and get myself 'trafficked". New laws won't prevent this any more than the old laws managed to, because we are not chess pieces being moved around the board we are thinking adults, whoever we are wherever we come from, we have our own dreams, plans and resources. As long as professional outsiders continue to make reports and recommendations and create legislation without consulting sex workers the legislation will fail. How many hundreds of years and how many different countries have legislated against prostitution? Name one country where prostitution has been abolished?"*
>
> *Ms Ping Pong: Sex worker, Empower Chiang Mai, Thailand*

BACKGROUND

Sex workers are a highly mobile and transient workforce, both internationally and across domestic borders. In Australia over 20,000 people have regular work in the sex industry and Scarlet Alliance members estimate that some of these jobs are held by people who are from other countries, either on student visa's or over staying tourist visas. A small number of migrant sex workers (less than 400 per year) engage in a financial contract for the purpose of gaining entry into the Australian sex industry. For these workers in particular they have been unable to gain legal entry into Australia Visas for sex work are not available, and neither is the occupation able to be indicated on the visa application, for fear of denial. Scarlet Alliance, in our aims of eradicating injustice and inequality experienced by sex workers, sees this practise of denying sex worker visas as discriminatory and ultimately very dangerous. This policy is directly responsible for the illegal status of hundreds of sex workers in Australia each year, and as a result those workers are denied protection within the decriminalised and legal sex industry. By denying sex workers visas to enter Australia, the Federal Government has created de-facto sex industry law. Even though sex industry law is currently determined by the States and Territories, the status of migrant sex workers is in the hands of the Federal Government, and will be further criminalised under the proposed amendments.

<u>Treat the cause, not only the symptoms: Immigration Policy creates the conditions for migration under contract</u>

It is important to note that the practice of contract debt migration only occurs from countries of origin where the Australian government conducts risk profiling of young, single women in assessment for tourist visas, and no "working holiday" or "backpacker" visa allowances. The women wishing to migrate from SE Asia do so under contract as they can't meet the tourist visa requirements (and in fact are risk profiled for overstay, breach of visa conditions).

We are not seeing British or European sex workers coming here under these circumstances, as they have options for legal migration for work. Also, such sex workers are usually Caucasian, speak English, and can "blend in " with the locals, so are rarely detected by Immigration or the subject of scrutiny from authorities. In addition, Australian travellers, including Australian sex workers, have extensive freedom of movement internationally, and generally work undetected, and do not report exploitation or contract problems.

Genuine sex workers from SE Asia will still seek to enter Australia and work, and will enter into arrangements that facilitate this, despite the cost and any risks. Scarlet Alliance argues that the current Migration Act and the existing trafficking offences are sufficient, as such laws differentiate between consenting sex workers and those other persons who may be forced, coerced or deceptively recruited.

The Australian Government should consider options for removing the environment enabling exorbitant profiteering and exploitation of the labour of these women.
Options to be considered alongside legislative amendments include:

- New visa categories for Thailand, China, the Philippines and Indonesia in particular
- Sponsored Business Migration for experienced sex workers
- Review of risk profiling outcomes and impacts, especially with regard to discrimination against women and sex workers

Such options pull the rug out from under the people profiteering from sex workers migration.

OUTCOMES OF CURRENT LAW

In the years since the Criminal Code Amendments (Sexual Slavery) were introduced the sex industry has in Australia has been put through criminal and immigration monitoring like never before. In the times of illegality, there was still an atmosphere of letting workers go about their business, albeit with police corruption as an issue. Contemporary policing however includes raids that surround the brothel, and police with guns grab workers from their workrooms, put them into police vans, take them for questioning, detain them in immigration detention centres and then deport them. For many of the workers deported there is minimal access to interpreters and no opportunity to return to their place of residence in Australia to gather their possessions or savings. For Scarlet Alliance members one of the first questions workers about to be deported ask us is "When can I return?" The workers are concerned that they will have black marks against their names that prevent them from re-entering the Australian sex industry. These migrant sex workers are caught up in the de facto Australia- wide criminalisation of their travel for work in the sex industry via Commonwealth controls, even though the industry is decriminalised/legal in the majority of Australian cities. The common trait among these raids is that the premises raided employ workers from a South East Asian background.

Asian brothels are the ones most likely to be targeted by the Australian Federal Police and this has led to another disturbing trend. In response to the police activity, brothels that are run by people from Asian backgrounds are becoming more and more clandestine in their operations, so as to avoid police detection. For example, brothels that were well known by the Sex Worker Outreach Project of New South Wales are now becoming increasingly difficult to find. Once a brothel has moved, or the reception staff have changed, generally it would take one contact to re-establish a relationship with SWOP NSW. Their outreach workers are finding it is harder in the current environment of what is effectively re-criminalisation to deliver essential health and advocacy services to premises. Migrant sex workers do access external health services, but the ongoing contact of the SWOP staff with the place of work is harder to maintain when employers and those associated with the brothel are avoiding the attention of authorities. The outcome for individual workers and state wide health services is one of detrimental relations, poorer communication and less understanding.

Scarlet Alliance is also concerned about the rising costs of contracts, and the way that the anti-trafficking laws are being used by brothel owners and others to 'churn' over the workers when their contract is finished:

"It is Scarlet Alliances' experience that our current legislative frameworks, by the creation of a criminal and underground industry, are providing more power to those Agents, who make such Migration arrangements, to exploit these women. Also as the risks of an "interrupted" (meaning the worker is detected and deported) contract increase with more intensive enforcement operations, so too does the contract price ($35,000 -$45,000). Paradoxically, DIMIA operations conveniently 'clear out' workers who have finished their contracts; meaning the workers who have finished their contract or nearing finish are detected and deported. Therefore they have worked for all of their time in Australia with up to 100% of their earnings going to the owners to pay off their debt. In effect they work for free under the assumption that they will be able to continue to work and these earnings will be all theirs however if they are detected before, or soon after this time, they have essentially worked for free.)"
This is aiding the organisers to retain a 100% profit over the basic costs of the initial travel arrangements (passports, documentation, bribes, tickets). Those who have finished a contract are, in effect, simply competition for sex workers still on contract, as the only profit is to the brothel operator. Workers who have completed their contract move onto the usual terms of the "split" arrangement (60/40 favouring the worker is common), like other sex workers in Australia: the promised "profit" for the risk they've taken with entering the contract."

(Scarlet Alliance, Parliamentary Joint Committee on the ACC – Inquiry into the trafficking in women for sexual servitude, 2003 Pg 10) http://www.scarletalliance.org.au/library/traffick_sub03

"Scarlet Alliance believes responses based on increased enforcement powers, further criminalisation and surveillance of the sex industry, and increased resources to police and immigration departments will not work effectively on this issue. One such response was announced on 8 September, 2003 (ABC report 8 September, 2003) in which enforcement agencies in Australia would receive increased resources in order to work with enforcement agencies in South East Asia, increase intelligence skills and collecting methods in the country of origin. Whilst we do not deny that AFP and DIMIA are key stakeholders in addressing the detection of agents who traffic people, we believe they are not the organisations most skilled or prepared to work with individuals who have been 'deceptively recruited', or who agreed to a contract in order to gain entry to Australia or who are working in the sex industry in Australian whilst on tourist or student visa's."

"The evidence of this is indicated in three ways. Firstly, the immediate deportation of the sex workers involved displays a low level of awareness of the complexities of the issues and a lack of understanding of meaningful ways to empower contract workers and stop specific exploitations from occurring again. Secondly, the women who have been taken into custody endure unacceptable treatment including being dealt with as criminals. Thirdly, in Australia we have had a death in custody resulting from the questionable level of aftercare and support provided to these women. We believe this evidence shows a generally poor record in Australia's methods of dealing with the issue. Furthermore, Scarlet Alliance believes many of the current problems result from the current Government and Law Enforcement Agencies' response which relies on increasing criminal enforcement potential without supporting effective networks, partnership responses and without providing necessary care and support to individuals who are 'deceptively recruited' or exploited." (ibid, pg 16 – 17)

The Criminal Code Amendments (Sexual Servitude) 2000 have not achieved their desired aim of stemming the movement of people deceptively recruited into the sex industry into Australia. The laws have, however, had a negative impact on migrant workers within the sex industry. Any increase in the criminalisation of the sex industry including the movement of sex workers into will create more problems for the workers and push up the profit for others involved in the industry.

Recommendation: Qualification for visa's be extended to more workers, including sex workers
Scarlet Alliance calls upon the Minister for Immigration, Amanda Vanstone, to change extend the current number of groups and occupations that qualify for visa's or migration.

ANALYSIS OF PROPOSED LAWS

Subdivision B—Offences relating to trafficking in persons

271.2 Offence of trafficking in persons

(1) A person (the ***first person***) commits an offence of trafficking in persons if:

(a) the first person organises or facilitates the entry or proposed entry, or the receipt, of another person into Australia; and

(b) the first person uses force or threats; and

(c) that use of force or threats results in the first person obtaining the other person's consent to that entry or proposed entry or to that receipt.

Penalty: Imprisonment for 12 years.

The proposed law S271.2 (1) states that to be convicted of trafficking it is not enough to have organised the movement of a person into Australia (either physically or by taking the money), but the accused must also have used force or threats, and that the force or threats must result in gaining a persons' consent to have their movement organised. When coupled with the proposed 'Debt Bondage' laws however, the criminality of the payment itself will be illegal, even though the individuals involved are consenting and desired to engage in a contract which allowed them movement into Australia. Importantly the movement of the person does not need to have taken place, only to have been 'proposed.' The accused does not have to physically organise another persons movement to have broken the law. If the intention of the law is to stop the forced movement of people, surely rather than 'trafficking' this is really an issue of Kidnap and Accessory to Kidnap? The main between the proposed trafficking laws and existing Criminal Code laws is that the person who is the 'victim' must be not Australian. An outcome of these changes may be that if an Australian is forcibly taken against their will a charge of kidnapping will apply, but for non-Australians the charge will be trafficking.

S271.2(2)A person (the ***first person***) commits an offence of trafficking in persons if:

(a) the first person organises or facilitates the entry or proposed entry, or the receipt, of another person into Australia; and

(b) the first person deceives the other person about the fact that the other person's entry or proposed entry, the other person's receipt or any arrangements for the other person's stay in Australia, will involve the provision of sexual services, exploitation, debt bondage or the confiscation of the other person's travel or identity documents.

Penalty: Imprisonment for 12 years.

As with section one (S271.2 (1)) of the above law, section two (S271.2 (2)) requires that to be charged with trafficking, it is not enough for the accused simply to have organised or taken money for the movement of a person into Australia. They also must have deceived the person about the length of time, nature of work, a financial contract or taken the persons passport or other I.D, or through their actions led to the person non-consensually losing an organ or being subject to slavery or forced labour or sexual servitude. The proposed amendments include contractual labour within an understanding of 'Trafficking'. If the proposed 'Admissible Evidence' (S 270.7(1A)) was utilised in a hearing regarding 'Debt Bondage' charges, a 'Trafficking charge' from this section (271.2(2)) would inevitably follow once it was already established that the person was unable to consent to their financial contract. Thus this charge would be applied against any person who is found to be organising contracts for sex workers from a non-English speaking background.

271.3 Aggravated offence of trafficking in persons

(1) A person (the ***first person***) commits an aggravated offence of trafficking in persons if the first person commits the offence of trafficking in persons in relation to another person (the ***victim***) and any of the following applies:

(a) the first person commits the offence intending that the victim will be exploited, either by the first person or another, after entry into Australia;

(b) the first person, in committing the offence, subjects the victim to cruel, inhuman or degrading treatment;

(c) the first person, in committing the offence:

(i) engages in conduct that gives rise to a danger of death or serious harm to the victim; and

(ii) is reckless as to that danger.

Penalty: Imprisonment for 20 years.

Aggravated offence of trafficking can be applied if there is slavery, forced labour or sexual servitude or the non-consensual removal of an organ after the person travels to Australia, if there is 'cruel, inhuman or degrading treatment,' or if there is reckless behaviour in relation to 'danger of death or serious harm.'

(2) If, on a trial for an offence against this section, the court, or if the trial is before a jury, the jury, is not satisfied that the defendant is guilty of the aggravated offence, but is satisfied that he or she is guilty of an offence against section 271.2, it may find the defendant not guilty of the aggravated offence but guilty of an offence against that section.

If a person has been charged for an aggravated trafficking offence but is found not guilty by the jury, the same jury may find the person guilty of a trafficking offence (not aggravated.)

271.4 Offence of trafficking in children

A person (the ***first person***) commits an offence of trafficking in children if:

(a) the first person organises or facilitates the entry or proposed entry into Australia, or the receipt in Australia, of another person; and

(b) the other person is under the age of 18; and

(c) in organising or facilitating that entry or proposed entry, or that receipt, the first person:

(i) intends that the other person will be used to provide sexual services or will be otherwise exploited, either by the first person or another, after that entry or receipt; or

(ii) is reckless as to whether the other person will be used to provide sexual services or will be otherwise exploited, either by the first person or another, after that entry or receipt.

Penalty: Imprisonment for 20 years.

Organising or receiving money for any movement of (non-Australian) people under the age of 18 into Australia for purposes that include slavery, the non-consensual removal of an organ, sexual services or in a way that is reckless and may be exploited (even if sexual services are not involved).

271.5 Offence of domestic trafficking in persons

(1) A person (the ***first person***) commits an offence of domestic trafficking in persons if:

(a) the first person organises or facilitates the transportation of another person from one place in Australia to another place in Australia; and

(b) the first person uses force or threats; and

(c) that use of force or threats results in the first person obtaining the other person's consent to that transportation.

Penalty: Imprisonment for 12 years.

(1) Domestic Trafficking in persons is a new charge. As with other proposed changes to the trafficking laws, it is not enough to simply organise or assist in the movement of a (non-Australian) person around Australia to be charged; it must also involve force or threats and that the force or threats result in another person giving consent to being moved.

S271.5 (2) A person (the ***first person***) commits an offence of domestic trafficking in persons if:

(a) the first person organises or facilitates the transportation of another person from one place in Australia to another place in Australia; and

(b) the first person deceives the other person about the fact that the transportation, or any arrangements the first person has made for the other person following the transportation, will involve the provision of sexual services, exploitation, debt bondage or the confiscation of the other person's travel or identity documents.

Penalty:Imprisonment for 12 years.

(2) Section two of the Domestic Trafficking laws states that if a person organises or assists the movement of a person around Australia and is deceptive about what happens when they arrive (that they will be working in the sex industry, the nature of any financial contract or if there is confiscation of their passport or other ID) then they can be charged with Domestic Trafficking (up to 12 years in prison). Proposed laws including 'Deceptive Recruiting' and in particular 'Admissible Evidence' (S 270.7(1A)) could see the charge of 'Domestic Trafficking' applied to any person involved in a financial contract. The broad and discriminatory understanding of who can and cannot be deceived in relation to a financial contract will have an impact on the application of the 'Trafficking' laws.

B 271.6 Aggravated offence of domestic trafficking in persons

(1) A person (the ***first person***) commits an aggravated offence of domestic trafficking in persons if the first person commits the offence of domestic trafficking in persons in relation to another person (the ***victim***) and any of the following applies:

(a) the first person commits the offence intending that the victim will be exploited, either by the first person or by another, after arrival at the place to which the person has been transported;

(b) the first person, in committing the offence, subjects the victim to cruel, inhuman or degrading treatment;

(c) the first person, in committing the offence:

(i) engages in conduct that gives rise to a danger of death or serious harm to the victim; and

(ii) is reckless as to that danger.

Penalty: Imprisonment for 20 years.

S271.6 The crime of 'Aggravated offence of domestic trafficking' will be applied to incidents of 'Domestic Trafficking' when a person intends that slavery, forced labour, sexual servitude or the non-consensual removal of a organ be committed to another person; that they are treated in a cruel, inhuman or degrading way, or have faced danger of death or serious harm as a result of the domestic trafficking.

S271.6(2) If, on a trial for an offence against this section, the court, or if the trial is before a jury, the jury, is not satisfied that the defendant is guilty of the aggravated offence, but is satisfied that he or she is guilty of an offence against section 271.5, it may find the defendant not guilty of the aggravated offence, but guilty of an offence against that section.

S271.6 (2) If a person is charged with but found not guilty of 'Aggravated' domestic trafficking, they can still be found guilty of Domestic Trafficking.

271.7 Offence of domestic trafficking in children

A person commits an offence of domestic trafficking in children if:

(a) the first-mentioned person organises or facilitates the transportation of another person from one place in Australia to another place in Australia; and

(b) the other person is under the age of 18; and

(c) in organising or facilitating that transportation, the first-mentioned person:

(i) intends that the other person will be used to provide sexual services or will be otherwise exploited, either by the first-mentioned person or another, during or following the transportation to that other place; or

(ii) is reckless as to whether the other person will be used to provide sexual services or will be otherwise exploited, either by the first-mentioned person or another, during or following the transportation to that other place.

Penalty: Imprisonment for 20 years

The offence of domestic trafficking in children will have been committed if there is the transportation of an under-18 year old non-Australian citizen into Australia for the intention of the commercial sexual gratification of others, forced labour, slavery or the non-consensual removal of an organ, or if there is recklessness about an under-18year old non-Australian citizens' resulting in commercial sexual service provision, forced labour, slavery or the non-consensual removal of an organ.

COMMENTS ON THE PROPOSED LAWS

> *"We see the issue of trafficking is being used by anti-prostitution groups. It is like they taken the word and applied it to all sex workers who move from their home especially those of us from developing countries.*
> *Just because I am a Thai woman and a sex worker does that mean I cannot travel? Does that mean I need special laws to keep me in my hometown? Does that mean I am not human and the Universal Declaration of Human Rights including my right to choose my work (article 23), my right to leave and return to my country (article 12) don't apply to me? "*
>
> *Ms Pornpit: Sex worker Empower Chiang Mai, Thailand.*

Scarlet Alliance welcomes efforts by the Attorney General's Office to recognise the complexity of issues behind the term 'trafficking.' Migrant sex workers gain entry into Australia through assisted means without necessarily being forced or in a compromised position. Migrant workers who are in this position are not necessarily being 'trafficked', and we applaud the Attorney General's Office for also more closely recognising this in the amendment of these laws. Unfortunately the changes do not go far enough. As the amendments are explained above, to commit the offence of trafficking either one's behaviour involves force or threats to obtain consent or there is deception (about the fact that upon arrival to the destination the worker will be expected to work in the sex industry, pay off a debt, the movement results in forced labour or sexual servitude, or non-consensually having an organ removed, or have their passport taken) or there is recklessness that might lead to exploitation or work in the sex industry. Applied in isolation, the act of assisting or advising the travel of a consenting non-Australian citizen into Australia is not illegal. We welcome this philosophical move and hope that our reading of the laws is congruent with those within the Attorney Generals' Department who wrote them, and we urge the Attorney General's Department to take the changes further still in this direction. Applied in conjunction with the 'Deceptive Recruitment' proposed laws and 'Admissible Evidence' charges however, the 'Trafficking' charges appear to be simply an add-on to the broad interpretations that can be applied to the sex industry in the other sections. The proposed changes to 'Trafficking' may be used to simply further criminalise the financial contracts sex workers engage in, and do not recognise the consent expressed by the workers involved.

Scarlet Alliance is very concerned with the method by which these amendments seek to address the trafficking. We believe it is totally inappropriate to specifically target the sex industry as a site of the forced movement of individuals. Sex work is labour, it is the provision of services and it is work. To single out sex work out as forced labour is to deny that sex work is a form of

labour. This is very problematic in our eyes, and we hope this mistake is changed before the amendments are put before Parliament.

The proposed changes to the existing federal regime of offences targeting the practice of trafficking in persons have been written with the express purpose of "comprehensively criminalis[ing] every aspect of trafficking in persons" so that Australia may "fulfil… [its] obligations under the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime." While Scarlet Alliance has so far in this submission expressed many concerns about the lack of a comprehensive vision for migrant workers rights, it is clear that the overall intent of the document is to prevent all trafficking into forced labour, slavery and servitude. However, this clear purpose is obscured by the inclusion of 'sexual servitude' in the definitions of trafficking. Leading human rights advocates in the field of anti-trafficking work have observed that, "this international definition is not appropriate for use in domestic criminal codes. It has too many elements that would have to be proven by prosecutors, thus making prosecutions more difficult. Also, some of the language is ambiguous, which could also lead legal challenges by defendants." (Source: Ann Jordan, 2002, The Annotated Guide to the Complete UN Trafficking Protocol, International Human Rights Law Group, Washington, DC: 8).

Scarlet Alliance urges the Office of the Attorney General to stay true to the intent of the drafters of the protocol by incorporating the essential elements of the crime into Australian law by using simple and clear language.

RECOMMENDATION: The following criminal law definition, proposed by human rights advocates, clearly states the nature of the crime but avoids using descriptive and potentially confusing elements:

"Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by any means, for forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs." (Source: Ann Jordan, 2002).

The current proposal falls far short of being an adequate response to contemporary problems faced by migrant workers because it narrows its scope to situations involving 'the provision of sexual services." This leaves workers in other industries unprotected by the criminal code and incorrectly depicts the sex industry as the only place where labour abuses occur.

In particular, Scarlet Alliance asks: Why aren't Australian workers covered by these laws? The issue of domestic trafficking surely is an issue for Australian citizens and non-citizens alike. Why is it necessary to distinguish between Australian and non-Australian workers in regards to domestic trafficking? Surely exploitation of Australian workers in the form of domestic trafficking should also be considered a crime within the criminal code? Why is exploitation only described as forced labour, slavery, the provision of commercial sexual services or the non-consensual removal of an organ? Where else in Australian law does this kind of definition apply?

> *"Last month 40 male seafarers from Burma were rescued as victims of trafficking. Before this it has only been women sex workers who were rescued. When we are rescued we are kept in Public Welfare, we have mandatory health check and we are forced to learn sewing, and our parents are inspected and alerted.*
> *We are watching closely to see what happens with these men. As yet they have had no sewing classes. If "trafficking" is really only about "trafficking", not about sex or gender , then why the differences. Why will I be treated like a child and a man, younger than me treated as adult? The Bangkok Post has just run a series of articles on trafficking and migration. In extensive coverage of the Thai entertainment industry, talking with many migrant sex workers, they were unable to find one woman who was trafficked. For us the story of "trafficking" is a bit like the "Emperor's New Clothes", no substance. We are sure there are people in trouble but the label and the methods are not valid."*
>
> ***Empower Chiang Mai***

Comments Relating to 'Debt Bondage'

BACKGROUND

The practise of engaging in a financial contract in order to gain employment within the Australian sex industry is not uncommon for workers from south east Asian nations. Not all workers in the sex industry in Australia engage in contracts, and many enter and leave Australia without any involvement in the contract system, choosing to work privately rather than in a brothel environment. While the choice to enter a financial contract that indebts you to your boss is anathema to most in western society, in Thailand and some other Asian counties it is culturally accepted. These countries do not have the same welfare structure or safety nets that we are used to in Australia, and to engage in some form of debt bondage is a way to ensure a guaranteed job. It is commonplace in Thailand that when people want to move to work in another region or city, they will pay another person to find them a job. It is the clever and expedient modus operandi for any forward thinking worker in Thailand, and migrant sex workers are engaging in the same practise when a debt is arranged to ensure their carriage and employment in Australia.

CONTEMPORARY ISSUES

The recent conflation of migrant sex worker on contract with "sex slave" has caused much discrimination, unfair criminalisation and ongoing stigma for migrant sex workers in Australia. The estimation of journalist Natalie O'Brien from 'The Australian' that there is up to 1,000 "sex slaves" in Australia can only be assumed to be a misinterpretation of the status of women in Australia who have willingly engaged in a contract for the purpose of gaining employment in the Australian sex industry. Scarlet Alliance have asserted that migrant sex workers find it difficult to gain access to Australia through the formal visa process due to a unwillingness to disclose their intended work when they arrive, both because of disclosure issues and also because to disclose their intended work would lead to a visa refusal by Australia. To gain a skilled migration or Temporary Business visa, ones occupation must be within the categories accepted by the Department for Immigration and Multicultural Affairs. Sex Work is in 'Group 8' of the occupation categories, and only Groups 1 – 4 currently qualify. Scarlet Alliance members have reported that the average cost of a financial contract to enter the sex industry in Australia has risen from around $15,000 in the early 1990's, to $30,000 and up to $50,000 in the last 4 years. It is our assertion that the contract price has risen due to the increased risk associated with the practice, in particular in relation to the federal police and immigration responses. The 2000 amendments to the criminal code have therefore had a negative effect on the financial burden of such contracts on the workers involved, and have not stemmed the numbers of workers willingly agree to them.

ANALYSIS

Any changes to current laws to further increase the risk and criminal repercussions for individuals involved in contracts in Australia will only create more of a burden upon migrant sex workers. When judged from a western framework of industrial rights, a financial contract for entry into the Australian market does put a worker into a more compromised position with their employee once they are in Australia. That recognised however it is currently impossible for a migrant sex worker to honestly gain entry into Australia by way of visa if they include their intended occupation on the visa form. Thus the laws create an increased motive for migrant sex workers to use financial contracts to their advantage to gain access to work in Australia.

S271.8 First version of debt bondage offence

A person commits an offence of debt bondage if:

(a) the person engages in conduct that causes another person to enter into debt bondage; and

(b) the person intends to cause the other person to enter into debt bondage.

Penalty: Imprisonment for 12 months.

(For definition of debt bondage that is appropriate to this item see item 10)

10 Dictionary in the *Criminal Code*

Insert:

debt bondage means the status or condition that arises from a pledge by a person:

(a) of his or her personal services; or

(b) of the personal services of another person under his or her control;

as security for a debt owed, or claimed to be owed, by that person if:

(c) the reasonable value of those services is not applied toward the liquidation of the debt or purported debt; or

(d) the length and nature of those services are not respectively limited and defined.

Note that this definition is to be included in the Bill if the first version of the debt bondage offence in section 271.8 is preferred.

COMMENTS RELATING TO VERSION ONE OF PROPOSED "DEBT BONDAGE" LAWS

The first proposal applies "Debt Bondage" to all industries. It outlines that if a person does anything or intends to do anything that causes a worker to take up a financial contract without proper value on the work they will be providing, or if the length and type of work is not properly defined, they may be imprisoned for up to 12 months.

S271.8 Second version of debt bondage offence

A person commits an offence of debt bondage if:

(a) the person engages in conduct that causes another person to enter into debt bondage for sexual services; and

(b) the person intends to cause the other person to enter into debt bondage for sexual services.

Penalty: Imprisonment for 12 months.

(For definition of debt bondage for sexual services that is appropriate to this item see item 11.)

11 Dictionary in the *Criminal Code*

Insert:

debt bondage for sexual services means the status or condition that arises from a pledge by a person:

(a) of his or her sexual services; or

(b) of the sexual services of another person under his or her control;

as security for a debt owed, or claimed to be owed, by that person if:

(c) the reasonable value of those services is not applied toward the liquidation of the debt or purported debt; or

(d) the length and nature of those services are not respectively limited and defined.

Note that this definition is to be included in the Bill if the second version of the debt bondage offence in section 271.8 is preferred.

COMMENTS RELATING TO VERSION TWO OF PROPOSED "DEBT BONDAGE" LAWS

The second version applies "Debt Bondage" penalties only to the sex industry. If a person does anything or intends to do anything that causes a worker into a financial contract for the purpose of sex work, they may be imprisoned for up to 12 months.

Third version of debt bondage offence

A person commits an offence of debt bondage if:

(a) the person engages in conduct that causes another person to enter into debt bondage for sexual services; and

(b) the person intends to cause the other person to enter into debt bondage for sexual services.

Penalty: Imprisonment for 12 months.

(Same as second version but with a different definition. For definition of debt bondage for sexual services that is appropriate to this item see item 12.)

12 Dictionary in the *Criminal Code*

Insert:

debt bondage for sexual services means the status or condition that arises from a pledge by a person:

(a) of his or her sexual services; or

(b) of the sexual services of another person under his or her control;

as security for a debt owed, or claimed to be owed, by that person.

Note that this definition is to be included in the Bill if the third version of the debt bondage offence in section 271.8 is preferred.

COMMENTS RELATING TO VERSION THREE OF PROPOSED "DEBT BONDAGE" LAWS
The third version of "Debt Bondage" applies to the sex industry only. If a person does anything or intends to do anything that causes another person to have a financial contract to work in the sex industry, that person may be imprisoned for up to 12 years. It is the same as version one, but without clauses that include the amount and time of the pay back period. However, the previous version does not depend upon those clauses, and as such the changes between the two are immaterial .

271.9 Offence of aggravated debt bondage

(1) A person commits an offence of aggravated debt bondage if the person commits an offence of debt bondage in relation to another person (the ***victim***) and the victim is under 18.

Penalty: Imprisonment for 2 years.

(2) In order to prove an offence of aggravated debt bondage, the prosecution must prove that the defendant intended to commit, or was reckless as to committing, the offence against a person under that age.

(3) If, on a trial for an offence against this section, the court, or if the trial is before a jury, the jury, is not satisfied that the defendant is guilty of the aggravated offence, but is satisfied that he or she is guilty of an offence against section 271.8, it may find the defendant not guilty of the aggravated offence but guilty of an offence against that section.

COMMENTS RELATING TO AGGRAVATED "DEBT BONDAGE" LAWS
If the worker is under the age of 18 years, the person who caused or intented to cause the contract may be imprisoned for up to 2 years. If in court the accused is not found guilty of an "Aggravated" offence, they may still be charged with the other "Debt Bondage" laws.

Scarlet Alliance comments on proposed Debt Bondage law
Scarlet Alliance believe it is heavy handed and short sighted to further criminalise a practise which is common place and currently entrenched for migrant labour from South East Asia. Criminalisation of the contract is not an effective deterrent to the movement of migrant workers into Australia, as the contract itself is already outside of the law as such.

Option 1 is preferred by Scarlet Alliance as it encompasses this activity as an offence in clearly defined circumstances. We support clear and defined 'Debt Bondage' regulation but do not agree that it should be housed in the criminal code. That said, definition one matches plain English and common sense interpretations of consent and labour, such that the reasonable value of labour in exchange for gain in an employer to employee or business to contractor setting when applied to repay a debt is described. In addition, option 1 applies across all industries. The options 2 and 3 are unacceptable, as they restrict the offence to a sex industry setting. We urge the Attorney General's Office to work with other Departments to create an Industrial Rights and Fair Trading framework to regulate 'Debt Bondage'.

Recommendation: 'Debt Bondage' be treated as a civil, not criminal matter
The proposed definition of 'Debt Bondage' is simplistic and will result in extreme criminalisation of the contract system of labour that currently exists in the sex industry. Scarlet Alliance recommends that contract labour issues are industrial, not criminal matters.

Deceptive recruitment, forced or coerced recruitment are already dealt with by the existing Criminal Code. However, the conditions of work and scale of debt incurred by consenting sex workers travelling to work in the Australian sex industry are not going to be resolved by this Bill, unless a framework of industrial rights is established for migrant workers, necessitating their decriminalisation and the extension of visa's to currently excluded workers.
The reality of the contract debt is that sex workers feel they are involved in a genuine contractual situation, to which they have consented. They are not free to renegotiate, cease work or leave, as these options were not included in the original agreement, except that there is

an understanding that the debt remains even when workers 'run away'. The current legislation covers the circumstances where threats or force occur, and the sexual servitude definition includes that the women are not free to cease work or leave the place of employment due to threats.
Scarlet Alliance assert that until migrant workers have access to legal means to enter the Australian workforce, illegal financial contracts will be utilised and viewed as valid and binding agreements by the workers involved.

Unless the Australian law is amended to address the issue of excessive profiteering from any form of labour and the real value of a financial contract is allowed to be considered, then this Bill is simply making the situation for migratory sex workers worse, and more dangerous.

These sex workers have migrated under the following conditions:

- Consent has been given
- It is understood that they will work as providers of sexual services and
- most of the women have worked in the sex industry previously
- The number and type of services has usually been negotiated = to a dollar amount
- The women are migrating for work, intending to profit, and send money home.
- Travel and work arrangements have been negotiated

The women and those organising this migration are breaking laws under the Immigration Act, however, the intention is that both parties profit. Scarlet Alliance wishes to place particular emphasis on the fact that this Bill will not necessarily prevent the practice occurring, but rather will further complicate the conditions of the contracts, placing the women at greater risk.

Issue of consent
The current Criminal Code contains offences relating to:

- deception
- use of force
- use of coercion

where individuals are "tricked" into contracts involving the provision of sexual services, in order to profit through the repay a "debt".

The proposed amendments make the consent of sex workers to contracts irrelevant. The amendments would turn their arrangements for migration to work into a crime, and their wish to migrate for work an offence entirely due to the sexual nature of their employment and the financial contract which ensues, which assumes "exploitation" is inherent due to the sexual nature of the occupation.

Comments relating to Jurisdiction issues

Scarlet Alliance believes that Australian businesses and Australian business people in other countries should be held accountable under Australian law in some circumstances. For example, large multinational or transnational corporations often create shelf companies to invest money into, to avoid the reach of Australian taxation law. Similarly, Australian companies may close manufacturing or I.T. businesses in Australia and move them to countries where different industrial law applies, wages are lower, and conditions are not so easily inspected by 'WorkSafe' and other such bodies. These moves by Australian companies around the world are explained as profit maximising activities, all legitimate within a globalised business market. While globalisation may have opened the market for the free movement of capital, unfortunately workers are not afforded the same privileges. Visas to work in other countries are difficult to get, particularly for unskilled labour, and this is even more so for workers from majority (poorer) nations who are trying to gain access to the work market in developed (western) counties.

Scarlet Alliance has long advocated for the rights of migrant workers in Australia, and the rights of sex workers from other countries to enter Australia and work here. It is most concerning that the 2004 proposed changes to the Criminal Code still consider that it is only sex workers from overseas who are vulnerable and able to be vulnerable. Workers are drawn from overseas in a variety of industries in Australia, the sex industry being only one of those. The proposed changes to the Jurisdictional reaches of the Criminal Code are only being applied to workers who may be recruited from overseas to work in the Australian sex industry. While we support the protections afforded in these laws to be applied to a broad range of workers in option one of the definition of debt bondage (See "Comments on Debt Bondage"), we are concerned that the application of 'Trafficking" and "Slavery" are still confined to the sex industry in particular, and only to migrant workers within the sex industry.

The current response in Australia is to focus on illegal migration labour within the sex industry. The response is made up of police raids and the detention and deportation of sex industry workers and people suspected of being sex industry workers. Some of the people charged under the Sexual Servitude amendments to the Criminal Code have chosen to leave the country rather than give evidence about their involvement in the sex industry. Others have given evidence against brothel management and associated business people, at risk to their own safety, only to be deported when the evidence is not considered worthwhile by the AFP or DIMIA. The punitive approach has not changed the amount of people entering Australia to work as migration labour here, however it has had major impacts on the shape of the sex industry.

While the sex industry is able to operate within the law in New South Wales, A.C.T., Victoria, Queensland and the Northern Territory, sex workers from non English speaking background are subject to police raids, DIMIA questioning, being held in detention centres, having guns waved in their faces and are threatened with deportation. They may lose all of their belongings and savings when they are deported, if unable to return to their place of residence in Australia. Increased criminalisation of brothel owners and management has also had an impact on the types of contracts that are offered to migrant sex workers in Australia. Where as a contract to work in an Australian brothel cost about $30,000 before 2000, they are now costing up to $50,000. Increased risks for the brothel owners and management have resulted in an increased cost to the workers. There has been no noticeable decrease in the amount of sex workers who wish to engage in contracts in Australia (Scarlet Alliance estimates the number to have stayed around 400), and we conclude that the punitive regime is not working.

Scarlet Alliance are greatly concerned that the sex industry is being targeted unfairly by jurisdictional extension of the reaches of this law. What other industries in Australia are subject to Australian law when they are negotiating business contracts outside Australia? Does Australian contract law apply to migrant workers when they are recruited from overseas? If so, why does the criminal code need to have an extended jurisdiction when relating to the sex industry?

The application of the Extended Geographical Jurisdiction (Criminal Code Act 1995- Section 15.2, Category B) to the sex industry will give Australia the power to investigate and prosecute in other countries.

Previously the Criminal Code relating to sexual servitude specified that to be prosecuted under the laws in relation to S270.6 and S270.7 the accused must be an Australian citizen or body corporate based in Australia, engaged in conduct outside Australia and the sexual services being investigated must be provided within Australia:

SECT 270.5 **Jurisdictional requirement**

A person commits an offence against section 270.6 or 270.7 only if:

(a) all of the following subparagraphs apply:

(i) the person is an Australian citizen, a resident of Australia, a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory or any other body corporate that carries on its activities principally in Australia; and

(ii) the conduct constituting the offence is engaged in outside Australia; and

(iii) the sexual services to which the alleged offence relates are provided, or to be provided, outside Australia; or

(b) both:

(i) the conduct constituting the alleged offence is to any extent engaged in outside Australia; and

(ii) the sexual services to which the alleged offence relates are to any extent provided, or to be provided, within Australia; or

(c) both:

(i) the conduct constituting the alleged offence is to any extent engaged in within Australia; and

(ii) the sexual services to which the alleged offence relates are to any extent provided, or to be provided, outside Australia.

It is proposed that the above jurisdictional requirement be repealed, and apply the aforementioned S15 of the criminal code to S270.6 and S270.7.

Further proposed changes to the Criminal Code will see the geographical jurisdiction extended when applied to particular sections; relating to domestic and aggravated domestic trafficking in persons (proposed S271.5 and S271.6) and domestic trafficking in children (proposed S271.7). This will affect the reach of the Australian Federal Polices' investigation and possible prosecution. Citizens and residents of Australia will be under scrutiny for these offences. If the offence is 'ancillary', persons outside Australia may be prosecuted for their actions where they relate to activity in Australia, and the changes affect who can be considered victims when trafficking occurs.

271.11 Jurisdictional requirement for offences related to domestic trafficking in persons

A person commits an offence against section 271.5, 271.6 or 271.7 only if one or more of the following paragraphs applies:

(a) the conduct constituting the offence occurs to any extent outside Australia;

(b) the conduct constituting the offence involves transportation across State borders, either for reward or in connection with a commercial arrangement;

(c) the conduct constituting the offence occurs within a Territory or involves transportation to or from a Territory;

(d) the conduct constituting the offence is engaged in by, or on behalf of, a constitutional corporation, or in circumstances where the victims of the trafficking conduct were intended to be employed by a constitutional corporation;

(e) some of the conduct constituting the offence is engaged in by communication using a postal, telegraphic or telephonic service within the meaning of paragraph 51(v) of the Constitution;

(f) the victim of the conduct constituting the offence is an alien for the purposes of paragraph 51(xix) of the Constitution.

MIGRANT SEX WORKERS AND CHILDREN PROTECTED BUT OTHERS ARE NOT

F) the victim of the conduct constituting the offence is an alien for the purposes of paragraph 51xix of the Constitution.

Scarlet Alliance are concerned that there is unfair targeting of non-Australian workers, while Australian workers subject to 'Deceptive Recruiting' are not covered by these laws at all. Migrant workers and domestic workers in Australia should be afforded the same protections from deceptive recruitment and unfair contracts by Australian business and bosses. These laws unfairly target the sex industry and also discriminate against domestic sex workers by only covering sex workers working in Australia who are from other countries.

Scarlet Alliance assert that any increased Jurisdictional reach of the law in relation to Australian businesses should also include Australian workers within Australia. There is no argument for excluding Australian workers from the 'Deceptive Recruiting' laws.

RECOMMENDATIONS; All workers in Australia should be protected from Deceptive Recruiting

Jurisdictional extension of Australian law is only fair if it is applied equally to those who commit crimes against Australian and non-Australian citizens.

Comments relating to Definitions in the Criminal Code

CRIMINAL CODE ACT 1995
- SECT 270.1 Definition of *slavery*

For the purposes of this Division, *slavery* is the condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including where such a condition results from a debt or contract made by the person.

This opens a Pandora's box in terms of employment and contract law, and the Australian Governments responsibilities to all employed, or recruited to or from Australia. Australians engaged overseas have reported the following:

- Inability to leave place of employment mid contract without forfeiting all salary owed to date, and incurring debts for cost of travel, freedom of movement curtailed, accompanied movement allowed (Saudi Arabian IT contractors, recruited in Australia)
- Inability to cease employment without incurring debt (Teachers and social workers on contracts in Britain, recruited in Australia)

In relation to Australian citizens within Australia there are many ways a debt or contract results in particular conditions over that person:

- HECS debts and those on Department of Education scholarships to University
- Contracts developed in the building and mining industry in isolated locations

What consideration has been given to the scope for interpretation of these proposed laws, and the jurisdictional issues implied? Scarlet Alliance can see the application of the Definition of Slavery to a variety of situations, but we are concerned that in practise it is only being applied to the sex industry.

CRIMINAL CODE ACT 1995
- SECT 270.4 Definition of *sexual servitude*

(1) For the purposes of this Division, *sexual servitude* is the condition of a person who provides sexual services and who, because of the use of force or threats:
(a) is not free to cease providing sexual services; or
(b) is not free to leave the place or area where the person provides sexual services.
(2) In this section: ***sexual service*** means the commercial use or display of the body of the person providing the service for the sexual gratification of others.
threat means:
(a) a threat of force; or
(b) a threat to cause a person's deportation; or
(c) a threat of any other detrimental action unless there are reasonable grounds for the threat of that action in connection with the provision of sexual services by a person.

Scarlet Alliance has concerns in that Sexual service or personal service is defined in relation to the definition of debt bondage
The definition of sexual service is drafted such that:
"the commercial use or display of the body of the person providing the service for the sexual gratification of others"
and this is then embedded in the options and definitions for describing the offences relating to debt bondage and trafficking.

Scarlet Alliance is concerned that there is no changes being made to the above definition of sexual servitude. We propose that the use of threats or force to cause another person to provide sex is a form of ritual abuse that may occur in relationships more easily than in a commercial sex setting. We urge the Attorney Generals office to incorporate ritualised sexual abuse that occurs within institutions such as the nuclear family, the church and marriage within the definition of sexual servitude. Forced sex and ritual sexual abuse, within and outside the commercial sex industry, is wrong. It is also wrong to ignore forced sex and ritualised sexual abuse in its more common occurrences within our society. To single out the sex industry as the only occurrence of sexual servitude is discriminatory against the sex industry and is doing a disservice to the individuals in our society who have experienced forced sex or ritualised sexual abuse and are fighting for justice.

Recommendation: 'Sexual Servitude' to mean non-commercial ritual abuse
Sexual Servitude is inappropriately applied to commercial sex only, but should instead mean ANY ritual abuse in a non-commercial environment. If a person does not consent, it is abuse and not commercial. A commercial contract requires the participation and consent of both parties, and as such, sex workers' consent to their work.

13 Dictionary in the *Criminal Code*

Insert: ***exploitation***, of one person (the ***victim***) by another person (the ***exploiter***), occurs if:
(a)the exploiter's conduct causes the victim to enter into slavery, forced labour or sexual servitude; or
(b)the exploiter's conduct causes an organ of the victim to be removed and:
(i)neither the victim nor the victim's legal guardian consented to the removal of the organ; and
(ii)the organ was not removed to meet a medical or therapeutic need of the victim.

'Exploitation'
The definition of *exploitation* is unclear within this bill, and the dictionary doesn't address this either. The Bill and definition assume consent is irrelevant, and also that sex work as an occupation *per se* constitutes exploitation. The issue of excessive profiteering goes unmentioned as a basis for the Bill, as does the issue of non-negotiable terms of contract. Scarlet Alliance do not agree with these definitions, and the implied meaning of the word exploitation. The use of the term exploitation must NOT be made synonymous with the occupation of sex work ("prostitution") in law.

Recommendation:
Exploitation needs to be defined by some *degree* of the relationship between work performed in exchange for profit, gain or advantage, and the notion of excessive profiteering from another's labour should be defined. In addition, the issue of *consent* must be explored in this Bill, otherwise the intention *to exploit* remains open to interpretation. The use of the term exploitation must NOT be made synonymous with the occupation of sex work ("prostitution") in law.

The definition of exploitation is limited to forcing a person to be enslaved, forced into labour or the commercial sex industry or removing a persons organ without their consent and without medical necessity. Scarlet Alliance is concerned that the definition of exploitation is limited to uncommonly occurring extreme cases of 'exploitation', perhaps better described separately as slavery, theft of organs and forced labour or sexual servitude. Due to the definition of sexual servitude (defined as only occurring in a commercial setting, see below) the incidence of ritual abuse in relationships as a form of exploitation and forced sexual servitude is overlooked. More common examples of exploitation (such large corporations only employing young people in order to pay them less and still expecting them to fulfil duties and responsibilities of an older, better paid employee) are ignored in this definition.

RECOMMENDATIONS

Recommendation 1: Treat the cause, not only the symptoms
It is important to note that the practice of contract debt migration only occurs from countries of origin where the Australian government conducts risk profiling of young, single women in assessment for tourist visas, and no "working holiday" or "backpacker" visa allowances. Thus, Immigration policy creates the conditions for migration under contract.
The Australian Government should consider options for removing the environment enabling exorbitant profiteering and exploitation of the labour of these women.
Options to be considered alongside legislative amendments include:

- New visa categories for Thailand, China, the Philippines and Indonesia in particular
- Sponsored Business Migration for experienced sex workers
- Review of risk profiling outcomes and impacts, especially with regard to discrimination against women and sex workers

Such options pull the rug out from under the people profiteering from sex workers migration.

Recommendation 2: Fair trials for the sex industry
Scarlet Alliance recommend that admissible evidence be decided by those presiding in court hearing the charge of Deceptive Recruitment or any other charge relating to trafficking. We oppose any specification about the admission of evidence in relation to changes of Deceptive Recruitment. Court Cases should be unbiased in relation to a person's migratory, English speaking or financial status in Australia, and the jury should only hear such information if it is directly relevant to the case.

Recommendation 3: The decriminalisation of migratory sex work in Australia
The decriminalisation of ALL sex work, and the facilitation of legal means to migrate to Australia for sex work, is vital for the improved conditions of ALL sex workers in Australia.

Recommendation 4: Industrial Relations and Trade Practises legislation to be extended to include migrant workers, including sex workers
Recognising that the majority of sex industry premises and workers in Australia are legal and/or decriminalised, it should follow that sex workers, migrant or otherwise, be protected by the Industrial Relations and Fair Trading Acts of Australia, both on a Federal and State basis.

Recommendation 5: Sex workers in Australia to have access to the Industrial Relations Commission and Fair Trading Tribunals of State, Territory and Federal Governments.
Sex workers to have access to civil measures such as the Industrial Commissions and Fair Trading Tribunals of the State and Federal Governments. The desired outcome for Scarlet Alliance would be that individuals can take their bosses and others associated with their workplace to a civil tribunal and for their case to be mediated to produce a better workplace and ongoing employment.

Recommendation 6: Workers in Australia to be covered by the same laws.
All workers in Australia, regardless of their migration status, should be covered by the same laws.

Recommendation 7: Qualification for visa's be extended to more workers, including sex workers
Scarlet Alliance calls upon the Minister for Immigration, Amanda Vanstone, to change extend the current number of groups and occupations that qualify for visa's or migration.

Recommendation 8: The definition of 'Trafficking in Persons' not single out the sex industry
Scarlet Alliance endorse the following definition; "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by any means, for forced

labour or services, slavery or practices similar to slavery, servitude or the removal of organs." (Source: Ann Jordan, 2002).

Recommendation 9: 'Debt Bondage' be treated as a civil, not criminal matter
The proposed definition of 'Debt Bondage' is simplistic and will result in extreme criminalisation of the contract system of labour that currently exists in the sex industry. Scarlet Alliance recommends that contract labour issues are industrial, not criminal matters.

Recommendation 10: 'Exploitation' to mean profiteering from labour.
Exploitation needs to be defined by some *degree* of the relationship between work performed in exchange for profit, gain or advantage, and the notion of excessive profiteering from another's labour, otherwise the intention *to exploit* remains open to interpretation. The use of the term exploitation must NOT be made synonymous with the occupation of sex work by including commercial sex as a means of exploitation

Recommendation 11: 'Sexual Servitude' to mean non-commercial ritual abuse
Sexual Servitude is inappropriately applied to commercial sex only, but should instead mean ANY ritual abuse in a non-commercial environment. If a person does not consent, it is abuse and not commercial. A commercial contract requires the participation and consent of both parties, and as such, sex workers' consent to their work.

Recommendation 12: All workers in Australia should be protected from 'Deceptive Recruiting'
Jurisdictional extension of Australian law is only fair if it is applied equally to those who commit crimes against Australian and non-Australian citizens.

Recommendation 13: Partnership approach to support sex workers
Scarlet Alliance believes the lack of a coordinated approach, and lack of knowledge of the issue has led to a disjointed, misinformed and problematic response by the Australian Government. A partnership approach is vital to improving understanding. Scarlet Alliance has had much experience in facilitating a partnership approach, along with existing vital partnerships, and should be key consultants in this area.

Recommendation 14: Further criminalisation of the sex industry and the mechanisms of sex industry employment NOT be enacted through these amendments. The impact of current legislation and enforcement practices on public health should be comprehensively evaluated. The sex industry should not be singled out in legislative responses until these impacts, especially, are better understood. This is particularly urgent as the women involved have been identified as amongst those groups most at risk in the Asia Pacific HIV/AIDS epidemic. Clear links exist between criminalisation, stigma and poor health outcomes and these laws will effectively reverse the gains made by decriminalisation and legalisation, in that the very basis of employment is to become a matter of fact in a crime.

Recommendation 15: That definitions of exploitation, sexual servitude and debt bondage must not enshrine the notion that sex work, in and of itself, creates an exploitative environment. The proposed amendments convolute these three terms in such a manner as to imply that sex work and the engagement of a person as a sex worker is per se exploitative, and is, additionally, of a greater degree if a debt incurred. Unless options for legal migration to work in the sex industry are offered, such laws function only to further criminalise this one industry, and particularly one sector of the industry, that which is employing women from South East Asia.

Recommendation 16: That new legislative approaches are required.
Adult sex work must not be further criminalised. A new legislative approach encompassing a review of Migration policies, and options for lawful engagement of foreign workers in the Australian sex industry have yet to be explored. Given that some 300-400 women are entering Australia on consensual employment contracts annually, the scale of the issue is not overwhelming at present, and a pragmatic approach, such as new visa categories may be implemented to great effect.

Recommendation 17: That the proposed legislation NOT be implemented as it places women at increased risk in relation to health outcomes and violence. The proposed legislation makes an offence of the movement of persons within Australia where those persons are employed in the sex industry. This effectively treats them as similar to "contraband", as though the women are inanimate, without agency, and will encourage such an approach. Some of the impacts foreseen include:

1. Women working in the sex industry will be forced to be moved like contraband: in trucks, under the cover of night, concealed with no freedom to move outdoors.
2. Risk detection and the related penalties places additional pressure on the organisers of their work and travel, creating potential for violence, and increasing the potential to "hide the evidence", that is the women themselves.
3. Greater isolation of women in the sex industry from the outside world will result in a loss of access to health services, and only genuine clients will be in contact with the women. This is disastrous for public health outcomes.

Appendix 1

Changes in Migration Status and Work Patterns in Asian Sex Workers attending a Sexual Health Centre

Jeffrey Dabbhadatta[1], Catherine C. O'Connor[2], Kate Tribe[1], Cathy Pell[1]

1. Sydney Sexual Health Centre, Sydney Hospital, Sydney NSW, Australia
2. Central Sydney Sexual Health Service, RPAH, Camperdown NSW, Australia

Background

▪Changes in NSW law (Disorderly Houses Amendment Act 1995) have decriminalised sex work in the state.
▪Whether changes in demographics, migration status and work patterns amongst Asian sex workers have occurred since 1995 is not known. The results of a survey conducted in 1995 are compared with results from a similar survey in 2003, to understand whether changes have occurred.

Aim

▪This project was undertaken to determine the characteristics of female Asian sex workers in Sydney in order to reevaluate health promotion strategies.

Method

▪In May 1993 - August 1995, a survey was conducted of 91 Asian sex workers attending Sydney Sexual Health Centre (SSHC) by clinicians using an interpreter or a Thai speaking clinician.
▪The follow up survey was performed in September 2002 – November 2003 and included 144 clinic attendees and 21 sex workers met on outreach. This survey was administered to Thai and Chinese speaking participants by staff that spoke these languages.
▪The surveys were slightly different. The issues covered included demographics, migration status, work patterns, knowledge of HIV and STD risk and access to sexual health services. This poster will focus on the first three of these issues.
▪The statistical package used was SPSS 11.5.
▪Statistical tests used were chi square for 2x2 categorical variables and Cramer's V for greater than 2x2 categorical variables.
▪Differences between 1993 and 2003 surveys were examined as well as differences between language groups. In 2003 study the differences between clinic and outreach groups were also examined. These are reported if statistically significant ($p<0.05$).

Results

▪The public perception of the working conditions of Asian sex workers, as contracted, under age, sex slaves, is not supported by these data.

Demographics

All participants were women. One woman participated in both surveys.
Comparing 2003 with 1993:
▪Fewer women participating in the research were Thai speaking (49% vs. 72%).
▪Median age increased to 33 yrs (Range 20-53) from 27 yrs (Range 18-43) ($p=0.00$).
▪Those reporting speaking English with average fluency increased to 67% from 41% ($p=0.00$).
▪Overall education levels increased. Primary school 12% vs. 33%; tertiary 37% vs. 18% ($p=0.00$).

Sex Work history, migration for sex work and contract arrangements

Migration status in 2003 study

61% were able to work legally, in any job, upon arrival.
Upon arrival in Australia, 39 (23.6%) were Australian citizens or permanent residents. 17 (12%) held work visas and 37 (26%) were students allowed to work 20 hours per week. All of these visa categories allow the women to work legally.
87% were able to work legally at the time of the study
At the time of the study, more of the women had visas permitting them to work legally (144, or 87%), with 43 holding student visas and 101 holding other types of visas, or having become permanent residents or citizens

Sex Work experience before coming to Australia

18% had done sex work before entering Australia (18% vs. 48%) comparing 1995 with 2003)
7 of the Chinese women (7%) and 20 (29%) of the Thai women had done sex work previously. ($p=0.00$).
29 had worked in the sex industry in a country other than Australia, with 44% of this group having worked in Thailand, 16% worked in Singapore, 12% in Malaysia or Japan. 4 women had done sex work in 2 countries previously.

Of these women who had done sex work before, they had worked for just over 2 years on average, with the most common answer being 21 months. At the time of the study the majority of the women had worked in the Australian sex work setting for less than one year, however 35 of the women (38%) had worked for more than 1 year. (In Australian studies of brothel based sex workers, on average women had worked in the industry for 2.5 years)

Planning to work in the sex industry or stay in Australia

25 (15%) of the women said they had visited Australia for sex work 3 times or more previously
In both 1995 and 2003, about 20% had previously been in Australia for sex work▪20% of women in the current study said they planned to work in the sex industry when they came to Australia (20% vs. 57%).
▪More Thai women than Chinese planned to work in the industry when they came to Australia (33.3% vs. 6.4%) ($p=0.00$).
25% of the women had intended to study in Australia.

Migration status in the current study

- **All women entered the country legally (three data missing).**
- **92.7% retained their passports.**
- Thirty nine (23.6%) were Australian citizens or permanent residents.

Greater numbers of women hoped to stay in Australia with in 2003 (63%) compared with 35% in 1995 (p= 0.38).

Work and contract arrangement patterns

Comparing 2003 with 1993

- **Fewer overall worked under contract (10% vs. 36%, p = 0.00).**
- No Chinese worked under contract in 2003, but similar number of Thai and Chinese under contract in 1993.
- No women did street work. The majority of women worked in parlours, with slightly more in 2003 doing escort work (6.7% vs. 1.7%).
- Fewer clients were seen per week, with an average of 20 in 2003 and 32 in 1993.

In the current study87% reported that they looked for work on their own, with no commissions or debt involved.

Eleven (16%) Thai, but no Chinese, had used an agent overseas to find work in Australia.

- One Chinese woman and seven Thai women paid fees locally to find work. All others found employment without paying fees.

15 (9.6%) of the women were or had been working in a contract situation. The number of clients (services) for contracts ranged from 150 to 750.

Relationships and family In the current study

- 44% were married or de facto, 31% were single, 25% were divorced, separated or widowed. Thai participants were more likely to be divorced, separated or widowed and Chinese to be married or de facto.
- Chinese women were more likely to have an Asian partner (52.1%) whereas Thai more likely to have an Australian partner (43.5%).
- 56% had children.

Conclusion

These data suggest that:

- **The public perception of the working conditions of Asian sex workers, as contracted, under age, sex slaves, is not supported by these data.**
- Asian sex workers in 2003 compared with 1993 are older, better educated and more fluent in English.
- They are less likely to work on contract now, less likely to have planned to work in the sex industry before arriving in Australia and less likely to have done sex work previously.
- They are highly likely to have found work on their own.
- There are small differences between Thai and Chinese speaking women, mostly relating to contract work and marital status.
- They have entered the country legally, with only a small minority having overstayed their visas.
- Most retain their passports and are free to travel if they wish.
- Asian women working in the sex industry in Sydney are continuing to access the services offered at SSHC.

Acknowledgments

Thank you to the survey participants for their time and courage.

The study was partially funded by NSW Health through the HIV/AIDS Health Promotion Demonstration Projects Program.

Appendix 2

Trafficking and Health: Attempts to prevent trafficking are increasing the problems of those who migrate voluntarily

by: Joanna Busza, Sarah Castle, Aisse Diarra

From the British Medical Journal (BMJ), Vol. 328, page 1369-71

Extract:

"Trafficking in women and children is now recognised as a global public health issue as well as a violation of human rights.... Intermediaries often smuggle victims across international borders into illegal or unsafe occupations, including agriculture, construction, domestic labour, and sex work. A recent study identified trafficking to be associated with health risks such as psychological trauma, injuries from violence, sexually transmitted infections, HIV and AIDS, other adverse reproductive health outcomes, and substance misuse. These risks are shaped by lack of access to services in a foreign country, language barriers, isolation, and exploitative working conditions.... However, as this article shows, efforts to reduce trafficking may be making conditions worse for voluntary migrants...."

In summary, the article highlights the following points:

- Anti-trafficking interventions often ignore the cultural context of migration and can increase migrants' risk of harm and exploitation;
- Attempts to eradicate migration of young people for work will increase their reliance on corrupt officials and use of clandestine routes;
- In Mali and Cambodia, intermediaries often assist safe migration and should not necessarily be seen as exploitative "traffickers";
- Programmes should provide migrants with appropriate services and help advocate for better work conditions in destination countries;

Regarding anti-trafficking interventions, the authors recommend that:

- Policy makers need to recognise that migration has sociocultural as well as economic motivations and that seeking to stop it will simply cause migrants to leave in a clandestine and potentially more dangerous manner;
- Facilitating safe, assisted migration may be more effective than relying on corrupt officials to enforce restrictive border controls;
- Instead of seeking to repatriate migrants, often against their will, interventions should consider ways to provide appropriate services at destination points, taking into consideration specific occupational hazards, language barriers, and ability to access health and social care facilities;
- Programmes aimed at improving migrants' health and welfare should not assume that all intermediaries are "traffickers" intending to exploit migrants;
- Efforts to reach migrants in destination areas could use intermediaries;
- Organisations that have established good rapport with migrant communities should document cases of abuse and advocate for improved labour conditions;
- In the case of sex work, however, this can be politically difficult. For example, the United States Agency for International Development (USAID) recently announced its intention to stop funding organisations that do not explicitly support the eradication of all sex work