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Committee Secretary
Joint Standing Committee on Foreign Affairs, Defence and Trade
Human Rights Sub Committee
jscfadt@aph.gov.au

28 September 2012

Dear Committee Secretary,

Inquiry into Slavery, Slavery like conditions and People Trafficking

Thank you for the opportunity to comment regarding your Inquiry into Slavery, Slavery like conditions and People Trafficking.

Scarlet Alliance, the Australian Sex Workers Association, is the peak national sex worker organisation in Australia. Formed in 1989, the organisation represents a membership of individual sex workers and sex worker organisations. Through our project work and the work of our membership we have very high access to sex industry workplaces in the major cities and many regional areas of Australia.

The Scarlet Alliance Migration Project, staffed and managed entirely by migrant sex workers, was formally first funded in 2009. The project aims to fill the evidence gap ensuring that policy responses to trafficking issues represent the actual experiences of migrant sex workers in Australia. The project works to support evidence based policy development, capacity development of sex worker peer educators in delivering services to migrant sex workers, and produce translated information for distribution to sex workers of Thai, Chinese and Korean language backgrounds.

Scarlet Alliance has played a critical role in informing governments and the health sector, both in Australia and internationally, on issues affecting workers in the Australian sex industry.

Please find attached our submission. This submission is endorsed in full by our associate members, Touching Base Inc. We look forward to appearing at the public hearing on this issue later in the year.

If you would like further information on these recommendations please do not hesitate to contact Migration Project Manager, Jules Kim on +612 9690 0551.

Regards,

Ari Reid
Acting President

Inquiry into Slavery, Slavery like conditions and People Trafficking
Joint Standing Committee on Foreign Affairs, Defence and Trade
Human Rights Sub Committee

Scarlet Alliance Submission
Executive Summary

Existing research with migrant sex workers demonstrates that their rights and wellbeing are best protected by multilingual peer education and policies focusing on prevention of exploitative conditions rather than increased surveillance. Despite this, inquiries have opened doors for law reform that has hurt and hindered migrant sex workers.

The work of Scarlet Alliance is evidence-based. We are the *only* group speaking by and on behalf of migrant sex workers, and the *only* group that *employs and maintains steering committees* of people who *are* migrant sex workers some of whom have experienced travel for work under contract and trafficking like conditions. Anti-trafficking interventions in Australia have been disproportionate to the extent and nature of trafficking. In the known trafficking cases in Australia relating to the sex industry, all sex workers knew and consented to sex work. They are migrant sex workers who found themselves in unfair working conditions. Migrant sex workers are at the core of this issue and have been the most affected by anti-trafficking interventions.

Conditions for trafficking are created by Australia's discriminatory immigration policies, which favour specific 'skilled' migration from industrialised countries, disadvantage workers from low-income countries, and create a lack of opportunities for sex workers to migrate legally; by Australia's refusal to afford migrant sex workers equitable access to industrial rights mechanisms, refusal to provide victim support that is not conditional on police assistance, and a lack of avenues to access statutory compensation. Australia is behind international standards in providing human rights for migrant workers. Government should immediately ratify the Migrant Workers Convention and adopt the provisions into domestic law.

Increasing bodies of literature from international human rights organisations have reported on the significant human rights impacts of anti-trafficking campaigns worldwide. Criminal justice approaches to trafficking have driven migrant sex workers underground and created barriers to accessing justice, outreach, peer education, industrial rights and occupational health and safety. The majority of trafficking-related crimes can be covered within existing criminal laws and/or redressed within the labour framework in Australia.

Scarlet Alliance has observed some dangerous international trends in anti-trafficking responses. The United States Trafficking In Persons Report creates political pressure for countries to introduce criminalisation of sex work as an anti-trafficking intervention, using threats of sanctions if they do not comply. Emerging calls for a 'demand reduction' approach shifts the attention away from proactive steps that could be taken to improving the rights and working conditions of migrant sex workers. Calls for the introduction of the Swedish Model are calls to reduce sex workers agency and control over their working environments.

Decriminalisation remains the United Nations-recognised, best-practice approach to sex work regulation, supported by the UN Secretary General Ban Ki Moon, UNAIDS, and UNFPA.

Trafficking responses must not infringe upon the rights of sex workers. The ongoing conflation of sex work and trafficking remains a barrier to the identification of and assistance to people who need support, and hinders real efforts of sex workers to negotiate good working conditions and advocate for their rights.

A rights-based and sex-worker driven approach to sex work and migration and the promotion of evidence-based prevention strategies is the most effective way to combat trafficking and slavery.

Inquiry into Slavery, Slavery like conditions and People Trafficking
Joint Standing Committee on Foreign Affairs, Defence and Trade
Human Rights Sub Committee

Scarlet Alliance Submission

Context of this inquiry

This is the third Inquiry into trafficking that Scarlet Alliance has provided submissions to within a two month period. We have provided submissions to the recent Inquiry into *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012* and the NSW Community Relations Commission Inquiry into the Exploitation of Women through Trafficking.

Existing research with migrant sex workers demonstrates that their rights and wellbeing are best protected by multilingual peer education and policies focusing on prevention of exploitative conditions rather than increased surveillance. Despite this, inquiries have opened doors for law reform that has hurt and hindered migrant sex workers. We are concerned about the time and resources spent on such inquiries that could be dedicated to implementing evidence-based prevention approaches, including peer education and outreach. We urge the Committee to listen to the evidence presented in our submission and make recommendations that support migrant sex workers agency, occupational health and safety, and human rights.

Our submission informed by experiences of migrant sex workers in Australia

During this Inquiry, what you will hear from us may seem different from what others are calling for. We ask you to consider that while we may at times be a lone voice, we are the *only* group speaking by and on behalf of migrant sex workers, and the *only* group that *employs and maintains steering committees* of people who *are* migrant sex workers, some of whom have experienced travel for work under contract and trafficking like conditions. Our work is evidence based.

The Scarlet Alliance migration project coordinated the only national research project of migrant sex workers in Australia, and thus we are well placed to represent the issues nationally for migrant sex workers. This research project was conducted over two years in partnership with the Australian Institute of Criminology examining vulnerabilities to trafficking within the context of sex work and migration. The research looked at sex workers' work conditions, access to services, knowledge of rights, OH&S as well as the migration experiences of migrant sex workers.

Scarlet Alliance member organisations and 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 very high levels of access to sex industry workplaces in the major cities. Many of our sex worker organisations and projects within Australia have CALD (culturally and linguistically diverse) projects employing bi-lingual project workers. These staff provide information, education and support to people who may be working under contract in Australia or who may be experiencing exploitation or trafficking-like conditions.

It is these experiences and the high level of contact and support provided by our membership to CALD communities within the sex industry, including people who have entered Australia under contract, which informs our submission.

Submissions using victim narratives to introduce harmful laws

The Committee may hear suggestions from Australian organisations that, while seeking to help, are promoting approaches that will result in serious negative impacts for the people at the core of this issue. In the known trafficking cases in Australia relating to the sex industry, all sex workers knew and consented to sex work. They are migrant sex workers who found themselves in unfair working conditions. Migrant sex workers are at the core of this issue and have been the most affected by anti-trafficking interventions.

Direct encounters that anti-trafficking organisations and police have with migrant sex workers occur in an environment where there is a direct disincentive to identify as a willing sex worker. As a peer-based organisation, Scarlet Alliance is in a unique position to hear experiences of sex workers outside this framework. Some organisations, for whom victim narratives are central to their funding, have used anti-trafficking as a platform to call for increased criminalisation, including a renewed push for the Swedish Model, despite extensive evidence by United Nations bodies and epidemiology that such approaches actively harm sex workers and do not affect trafficking.

Terms of Reference 1:

Australia's efforts to address people trafficking, including through prosecuting offenders and protecting and supporting victims.

Australia is unique – migrant sex workers experiences in Australia

During this Inquiry, the Committee will hear global statistics on trafficking that are alarming. However, the evidence base in Australia is vastly different to other nations. This is in part due to sex industry laws that enable sex work to happen above board and in transparent ways.

A number of projects with migrant sex workers have generated valuable demographic data on the lives, backgrounds, experiences and needs of migrant sex workers in Australia.¹ For Thai sex workers, studies show that they are 'coming to Australia at an older age, with more life experience, more likely to be married, divorced, or having had a relationship with an Australian man, and are more educated in recent years.'² The Sydney Sexual Health Survey in 2003 showed the average age of Thai sex workers in 2003 to be 33, with 37% having a tertiary education.³ Research by the Global Alliance Against Traffic in Women (GAATW), Empower Foundation and the Sex Worker Outreach Project (SWOP) NSW in 2000 showed that Thai workers 'felt more confident to work as a sex worker here'.⁴ Empirical research demonstrates that 'Thai sex workers are experienced and knowledgeable', and, as Elena Jeffreys writes, 'When given the opportunity, Thai sex workers will pay for their own ticket and obtain their own visa almost all the time.'⁵

Similarly, research on Chinese migrant sex workers in Australia reveals that 'Chinese sex workers are on average 30 or older, educated, have held professional jobs at home, had their own visa, and come from major capital cities in China.'⁶ Throughout 2006-7, organisations Zi Teng, Scarlet Alliance, and member organisations SWOP NSW, Sex Industry Network (SIN) SA, Resourcing Health and Education in the Sex Industry (RhED) and SWOP ACT conducted the Australian research component of a trans-national study of Chinese migrant sex workers in seven countries.⁷ The study found that Chinese sex workers had a range of professions in China,

¹ Elena Jeffreys and Roberta Perkins, 'Sex Work, Migration, HIV and Trafficking: Chinese and Other Migrant Sex Workers in Australia' *Intersections: Gender and Sexuality in Asia and the Pacific*, Issue 26, August 2011, accessed at <http://intersections.anu.edu.au/issue26/jeffreys.htm> on 31 August 2011; Di Surgey, *SIREN's Story*, The Sexual health, Information, Resources and Education for Non-English speaking sex workers (SIREN) Project, Prostitutes Collective of Victoria and Department of Human Services and Health, 1994; Global Alliance Against Traffic in Women, Empower Foundation and Sex Workers Outreach Project, *Research Report: Thai Background Sex Workers in Sydney*, Bangkok, 2000; Pell et al., 'Demographic, Migration Status, and Work-Related Changes in Asian Female Sex Workers Surveyed in Sydney, 1993 and 2003' (2006) in *Australian and New Zealand Journal of Public Health*, 30:2 157-162; Roberta Perkins and Elena Jeffreys, 'Trafficking: Chinese and Other Migrant Sex Workers in Australia', *The Asia Pacific Journal of Anthropology* 2011, publication pending, also accessible at <http://www.scarletalliance.org.au/library/chinesesexworkerposter0607>; Elena Jeffreys (Scarlet Alliance), 'Migrant Sex Workers Research in Australia' Presentation to the 4th Australian National Symposium on Sex Work: Nothing About Us Without Us, 2008.

² Pell et al., 'Demographic, Migration Status, and Work-Related Changes in Asian Female Sex Workers Surveyed in Sydney, 1993 and 2003' (2006) in *Australian and New Zealand Journal of Public Health*, 30:2 157-162; Elena Jeffreys, 'Migrant Sex Workers Research in Australia', above n1 at 6.

³ Pell et al., 'Demographic, Migration Status, and Work-Related Changes', above n2; Elena Jeffreys, 'Migrant Sex Workers Research in Australia' above n2 at 6-7.

⁴ Global Alliance Against Traffic in Women, Empower Foundation and Sex Workers Outreach Project, *Research Report: Thai Background Sex Workers in Sydney*, Bangkok, 2000; Elena Jeffreys, 'Migrant Sex Workers Research in Australia', above n2 at 7.

⁵ Elena Jeffreys, 'Migrant Sex Workers Research in Australia', above n2 at 7.

⁶ *Ibid* at 9.

⁷ Zi Teng, Scarlet Alliance, SWOP NSW, SIN SA, RhED and SWOP NT, *Chinese Sex Workers Needs Analysis*, 2006-7; Roberta Perkins and Elena Jeffreys, 'Trafficking: Chinese and Other Migrant Sex Workers in Australia', *The Asia Pacific Journal of Anthropology* 2011, publication pending, also accessible at <http://www.scarletalliance.org.au/library/chinesesexworkerposter0607>.

including housewife, police officer, small business owner, student and farmer.⁸ No-one was aged 20 or below, and one respondent answered that they were fifty-one. Ninety-seven percent of Chinese sex workers reported that they used condoms with all clients⁹ and 75% answered they would come back to Australia to work.¹⁰ As Elena Jeffreys writes:

Chinese and Thai migrant sex workers are enjoying their time in Australia, and seeing it as a profitable destination within our region... [their] age, life experience, language skills, and education level skills show that migrant sex workers are upwardly mobile and have an international outlook. They have previously travelled and worked throughout the region, and anticipate returning to Australia.¹¹

Incidence of trafficking is low: Anti-trafficking interventions are disproportionate

Anti-trafficking interventions in Australia have been disproportionate to the extent and nature of trafficking. Despite the significant financial resources invested into the criminalisation of trafficking in Australia, consistently low government statistics show that the media estimated incidence of trafficking in Australia is inflated. In 2003, Chris Ellison, then Minister of Justice, said, 'no significant' sex slavery problem existed in Australia.¹² Despite enormous surveillance, heavy police investigation and substantial investment in a criminal justice approach, there have been only 14 people successfully convicted under Australia's anti-trafficking legislation. These relate to charges obtained in 9 cases, 7 relating to the sex industry.

In the Australian finalised trafficking cases relating to sex work, *all* people had *consented* to sex work and *knew* they would be a sex worker. Some had sex worked previously. None of the cases involved deception or trickery of the fact they would be sex working.

It is not our belief that this is due to difficulties in prosecution or laws being inadequate. What we know from anecdotal evidence and from our extensive contact with sex workers is that trafficking is not a widespread phenomenon in Australia.

It is often stated that one victim is one victim too many, and that the potential of assisting one victim justifies the entire anti-trafficking response. This reasoning is flawed. The millions of dollars spent resourcing police and criminal justice system does not assist migrant sex workers. Instead these approaches have infringed on the rights of all migrant sex workers and have had the effect of hindering sex workers' access to support.

Australia's migration policies exacerbate trafficking vulnerabilities

Conditions for trafficking are exacerbated by Australia's discriminatory immigration policies, which favour specific 'skilled' migration from industrialised countries, disadvantage workers from low-income countries, and create a lack of opportunities for sex workers to migrate legally. GAATW directly links the existence of trafficking to Australia's limited migration opportunities and hostile immigration policies.¹³ Despite the repeal of the White Australia Policy in 1973, Elaine Pearson writes that 'an attitude of hostility towards migrants, particularly from non-white countries, still pervades.'¹⁴

Over half the countries with which Australia has a reciprocal working holiday arrangement are European countries. There is no working holiday visa available for African, Pacific or Chinese migrants. Working holidays for most migrants are only available if applicants are under 30 years old. There is no visa available to migrate for the purposes of sex work, and sex workers are not eligible for a business sponsorship visa. Anecdotal evidence collected by sex worker organisations in Thailand and Australia demonstrates that sex worker visa

⁸ Ibid; Elena Jeffreys, 'Migrant Sex Workers Research in Australia', above n2 at 9.

⁹ Zi Teng, Scarlet Alliance, SWOP NSW, SIN SA, RhED and SWOP NT, *Chinese Sex Workers Needs Analysis* above n8; Elena Jeffreys, 'Migrant Sex Workers Research in Australia', above n2 at 10.

¹⁰ Zi Teng, Scarlet Alliance, SWOP NSW, SIN SA, RhED and SWOP NT, *Chinese Sex Workers Needs Analysis* above n8, Elena Jeffreys, 'Migrant Sex Workers Research in Australia', above n2 at 11.

¹¹ Elena Jeffreys, 'Migrant Sex Workers Research in Australia', above n2 at 11.

¹² See 'Stepping up the Fight Against Slavery', *The Age*, 27 October 2003, cited in Mary Crock, *Seeking Asylum Alone: A Study of Australian Law, Policy and Practice Regarding Unaccompanied and Separated Children*, Themis Press, Sydney, at 44.

¹³ Elaine Pearson, *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights Around the World*, Global Alliance Against Traffic in Women, October 2007, at 28.

¹⁴ Ibid at 29.

applicants are routinely discriminated against with sex workers reporting being refused visas at the Australian embassy when they disclose their occupation.

Information on visas, forms and the actual visas themselves are often not available in other languages. In order to gain a visa, some migrant sex workers enter into 'contracts' with people who will facilitate their entry into Australia. These contracts act as an alternate entry means to those trying to travel for work. By creating a need to engage third-party agents in order to travel, and failing to provide adequate language resources, Australia's migration policies have produced an environment which increases susceptibility to deception and trafficking.¹⁵

Australia has taken a criminal justice response to trafficking at the expense of human rights

The Australian Government has primarily sought to combat trafficking as a transnational criminal issue, adopting punishment as a primary means of deterrence.¹⁶ Yet the necessity of police involvement in cases 'has resulted in a set of insurmountable barriers'¹⁷ for migrant sex workers. Increasing bodies of literature from international human rights organisations have reported on the significant human rights impacts of anti-trafficking campaigns worldwide. The greatest threat to the health, safety and human rights of migrant sex workers in Australia is Australian Government anti-trafficking policy.

Research citing migrants in Mali and Cambodia supports conclusions that trafficking interventions, both at entry level and once in the destination country, 'often ignore the cultural context of migration and can increase migrants' risk of harm and exploitation.'¹⁸ Anti-trafficking responses in Australia are racialised. Anecdotal evidence suggests that a number of migrant sex workers in Australia travel from high-income western countries, such as the United Kingdom and the United States of America, for whom tourist and working visas are readily accessible. However, the migrant sex workers most readily identified and targeted by government policy are those from Asian countries, due to racial stereotypes and discriminatory and prohibitive immigration policies for people travelling from what are perceived as 'developing' countries.

The criminal justice outcomes of existing laws do not justify the negative impact that past and current policing efforts have had on sex workers' work conditions and human rights. Criminal justice approaches to trafficking, raid and rescue operations, and harassment and detention of Asian sex workers have driven migrant sex workers underground and created barriers to accessing justice, outreach, peer education, industrial rights and occupational health and safety. Criminalisation has increased migrant sex workers' risk of harm and exploitation. Elaine Pearson writes in GAATW's report *Collateral Damage* that in Australia:

Government attention to trafficking, as far as sex workers are concerned, has meant increased immigration raids on brothels, harassment of Asian sex workers in particular and disruption of their work. Three sex worker organizations providing outreach to migrant sex workers stated that non-trafficked migrant sex workers working legally in Australia have been wrongly detained in raids at workplaces under the suspicion that they are trafficked. Sex workers who are Australian citizens of Asian descent have also been subjected to increased harassment.¹⁹

Anti-trafficking raid and 'rescue' operations, and harassment and detention of Asian sex workers in visible brothels and massage parlours, have forced sex workers to adapt and change the way we work and have acted to force the industry 'underground'. Studies with migrant sex workers between 2004-2008 found anti-trafficking responses in Australia were causing an increase in private, escort and lower-profile work to avoid raid activity in brothels.²⁰ Research shows that criminal justice approaches to trafficking rarely affect anyone

¹⁵ Eleanor Taylor-Nicholson, Global Alliance Against Traffic in Women Program Coordinator and Legal Advisor, *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights Around the World*, Public Launch of Australian Chapter, Sydney, 4 October 2007.

¹⁶ Sarah Steele, 'Trafficking in People: The Australian Government's Response' (2007) *Alternative Law Journal* 32 (1), 18.

¹⁷ Scarlet Alliance, *Submission to the Attorney General on the Criminal Justice Response to Slavery and People Trafficking; Reparation; and Vulnerable Witness Protections*, February 2011, accessed at http://www.scarletalliance.org.au/library/subagd_2011a/ on 6 September 2011, 2.

¹⁸ Busza, Castle et al., (2004) 'Trafficking and health', *British Medical Journal* 328: 1269-1371, cited in Scarlet Alliance, *Submission*, above n22 at 3.

¹⁹ Elaine Pearson, 'Australia', *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights Around the World*, Global Alliance Against Traffic in Women, October 2007, 52.

²⁰ Elena Jeffreys, 'Migrant Sex Workers Research in Australia', above n2 at 8; Jeffrey Dabhadatta et al., 'Changes in Migration Status and Work Patterns in Asian Sex Workers attending a Sexual Health Centre', 2008, 43; Scarlet Alliance, *Submission to Commonwealth Attorney General's Department*, 2004, 4.

other than individual sex workers. Instead, they act to curtail sex workers' freedom of movement, restrict our choice of occupation, create barriers to migrant sex workers accessing essential services, undermine opportunities to negotiate suitable workplace conditions and impede access to outreach and community service providers, who have far more difficulty gaining our trust.²¹ Scarlet Alliance wrote in our Shadow CEDAW report in 2004, 'Re-trafficking via forced repatriation by destination countries like Australia must stop.'²²

Maria McMahon points out that anti-trafficking policing is problematic for health promotion, because although STI and HIV rates among sex workers are low, they 'depend on sex workers' access to information and peer education to remain low.'²³ Rates of HIV and STIs amongst sex workers in Australia (including amongst migrant sex workers) are the lowest in the world. It is clearly identified in the National HIV and STI Strategies and epidemiology that laws can create significant vulnerabilities to transmission and acquisition of HIV and STIs. It is our great concern that trafficking measures demonstrate a backslide in relation to laws that create an enabling environment for health promotion delivery and the prevention of HIV and STIs.

Evidence shows police are inappropriate regulators for the sex industry

Consistent and systemic evidence of corruption clearly demonstrates that police are inappropriate regulators for the sex industry. Increased policing and further criminalisation will severely affect sex workers' willingness to engage with police in the event of a crime. One of the major drivers for decriminalisation in NSW was the findings of the Wood Royal Commission showing 'a clear nexus between police corruption [in the NSW Police Force] and the operation of brothels.'²⁴ In criminalised jurisdictions in Australia Christine Harcourt et al. have found that individual sex workers' ability to seek information, support and health care is 'severely limited by the risk of prosecution.'²⁵ In their study, Charlotte Woodward and Jane Fischer found that sex workers' experiences of harassment included verbal abuse, racial insults, stalking, phone calls and requests for sexual favours.²⁶ Police cannot continue to act as both protectors and prosecutors. Furthermore, police have been positioned as the key agency in Australia's anti-trafficking response in addition to their role in many of the states and territories as the sex industry enforcement agency. This is antithetical to principles of victim support. Sex workers main contact with police happens in a sex industry compliance or enforcement capacity. Within this context, sex workers do not see police as the people to go to for support. Moreover, migrant sex workers come from countries where sex work is criminalised and actively policed and consequently do not trust them.

Victim support remains conditional upon police assistance and contribution to investigation

Support for victims of trafficking is currently conditional upon a sex workers' 'contribution to a criminal investigation'. This means that migrant sex workers can only access support if they agree to cooperate with police, are referred by police to the support program, and make a 'contribution' to a prosecution case. Making support conditional upon police assistance is problematic – support is not conditional for other victims. Further, migrant sex workers involved in trafficking investigations then face increased immigration scrutiny if they want to return to Australia. They are returned by the Australian government to their home country, their debt remains, and they have reduced means of repaying the debt, leading to increased vulnerability and an increased reliance on third party agents for future travel.

Scarlet Alliance submits that access to justice and support should not be conditional upon police assistance. The Australian government should increase avenues for statutory compensation and redress for exploitative work conditions that do not necessitate contribution to a criminal investigation, and provide access to services for sex workers affected by trafficking-related crimes who do not wish to go to the police. This is supported by

²¹ Elaine Pearson, *Collateral Damage*, above n24 at 52.

²² Scarlet Alliance, CEDAW Shadow Report, August 2004.

²³ Maria McMahon, 'Migrant Sex Workers, The Australian Response to Trafficking and Why this is Relevant to Scarlet Alliance and our HIV/AIDS Work', above n25.

²⁴ New South Wales Government (1997), Royal Commission into the NSW Police Service: Final Report – Corruption, 13.

²⁵ Christine Harcourt et al., 'Sex Work and the Law' at 123.

²⁶ Charlotte Woodward and Jane Fischer, Woodward, C. & Fischer, J. (2005). Regulating the world's oldest profession: Queensland's experience with a regulated sex industry. *Research for Sex Work*, June, 16-18.

the UN Special Rapporteur on Trafficking who recommends as an action for Australia to remove the necessity for contribution to an investigation in order to access support.

Funding misdirected towards surveillance, with no Commonwealth compensation scheme

There is still no Commonwealth accountability for reparations for trafficking offences. The large amounts of funding now being delivered towards surveillance could be spent far more effectively as part of a Commonwealth compensation scheme. Funding speaks as to the intention of Australia's anti-trafficking response and how seriously migrant workers and human rights are actually treated. If the Government is seriously concerned about human rights and ending labour exploitation, it is fundamental they invest in a Commonwealth compensation scheme that would have significant positive impacts on people's lives.

The focus of anti-trafficking legislation continues to be on sex industry and migration compliance, instead of preventing exploitation

The focus of anti-trafficking legislation continues to be on sex industry and migration compliance. The recent *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012* proposes to increase police powers, introduce heightened surveillance, lower the thresholds of offences, remove consent as a relevant factor, lower burdens of proof, criminalise more activities and people, fund law enforcement instead of victim compensation, and increase abilities to bump up prosecution statistics without improving the rights of migrant workers. The Bill infringes a number of human rights and makes no attempt to provide key rights found in the *Migrant Workers Convention* or engage in law reform to address underlying structural, systemic, or state-sanctioned causes of labour exploitation.

In addition, the *Migration Amendment (Reform of Employer Sanctions) Bill 2012* proposes sanctions for people who *allow* and *refer* a non-citizen to work in breach of a visa condition. This Bill – currently under review – is also problematic. Sex workers do not experience labour exploitation by virtue of working on an incorrect visa in Australia. There is no evidence that increased employer sanctions will prevent, criminalise or identify labour exploitation in Australia. We fear the opposite: increased policing, monitoring, on-site inspections and compliance visits will increase migrant sex workers' vulnerabilities. In practice, people who are intending to assist migrant workers, or unknowingly employ people working on an incorrect visa, can be criminalised.

These Bills indicate the skewed focus of law reform on criminalisation at the expense of human rights. It demonstrates that Government has been more interested in securing prosecutions than on actually improving lives and working conditions of migrant workers and preventing exploitation. This Inquiry is an opportunity for Government to make positive change in the lives of migrant sex workers, strengthening rights and access.

Terms of Reference 2:

Ways to encourage effective international action to address all forms of slavery, slavery-like conditions and people trafficking.

Internationally, there are a number of trends that affect countries anti-trafficking responses. Some of the most dangerous international actions and policies are discussed below – the US TIP Report, the call for demand reduction, and calls for the Swedish Model.

The United States TIP Report – political bullying creating vulnerabilities to trafficking

One of the biggest influences on anti-trafficking policy internationally is the annually released United States Trafficking in Persons (TIP) Report. In October 2001, the US President George W Bush, created a bureau in the State Department – the Office to Monitor and Combat Trafficking in Persons – as a result of the passing of the *Trafficking Victims Protection Act (TVPA)* of 2000. The Office produces an annual report card for countries called the *Trafficking in Persons Report* or the TIP report. The TIP report divides nations into tiers based on their compliance with standards outlined in the TVPA. This rating creates political pressure for countries to 'combat trafficking'. Governments of Tier 3 countries '... may be subject to certain sanctions, whereby the US government may withhold or withdraw non-humanitarian, non-trade-related foreign assistance. In addition,

countries on Tier 3 may not receive funding for government employees' participation in educational and cultural exchange programs.

Consistent with the TVPA, governments subject to sanctions would also face US opposition to assistance (except for humanitarian, trade-related, and certain development-related assistance) from international financial institutions such as the International Monetary Fund (IMF) and the World Bank.

The TVPA recommends the criminalisation of the sex industry as an effective means to combat trafficking. In 2003, a Prostitution Pledge was introduced as a National Security Presidential Directive by George W Bush, stating that any organisation receiving anti-trafficking funding must subscribe to anti-sex work philosophy. Later, conditions were added that organisations could not refer people for abortions or provide information on contraception. In effect, this has eliminated organisations from funding who do important health promotion work, including sex worker organisations. This direct political bullying is not related to trafficking at all, but continues to influence policy globally.

Many countries in the region have criminalised sex work in response to direct pressure via the US TIP report. This has created the push for sex workers to migrate out of their home countries in order to work in their chosen profession. The US anti-trafficking solution in the form of criminalisation of sex work has been a major factor in causing a situation where vulnerabilities to trafficking can occur.

For example, the Korean Government enacted anti-sex work laws in 2004 as a result of direct pressure from the US TIP Report. Increased law and order crackdowns targeting sex workers, including police forcible and violently shutting down workplaces, has meant that more Korean nationals are migrating to work in countries such as Australia.

The Korean Government recently sent its special ambassador for overseas Koreans, Moon Hayong to Canberra with view to obtaining support from the Australian Government in tracking down and locating Korean sex workers in order to prosecute them. Sex work is illegal for Korean nationals, both within Korea and internationally, and Jin Soo Kim, the Sydney Consul General for South Korea, requested the Australian Government to advise them immediately of any information on Korean nationals involved in sex work, as a worker or client. This has led to campaigns to 'kick Korean prostitutes out of Australia' among Korean residents in NSW. There have been allegations printed in Korean local press in Australia stating that the Australian government is cooperating and providing names of Korean sex workers so they could be arrested upon return to Korea and that police arrested a brothel owner in Sydney in June 2012 because of suspicions they were hiring Korean sex workers since 2009.²⁷ Korean sex workers have reported to sex worker organisations being too afraid of going to work for fear of identification and prosecution.

Demand reduction represents a new and dangerous policy direction

Emerging calls for a 'demand reduction' approach to anti-trafficking represents a disturbing policy shift in relation to sex industry law reform. The call for a 'demand reduction' approach to anti-trafficking blames clients for wider systemic injustices in law, policy and immigration. A 'supply' and 'demand' model shifts focus away from rights-based approaches, sex worker access to industrial rights mechanisms and migration law reform.

A supply and demand model is an inappropriate lens with which to understand migration and labour exploitation. Sex workers, like other professionals, actively seek to travel for work. Sex workers, like other workers, migrate internationally to seek improved working conditions and income. Labour migration within the Asia Pacific is common across a variety of professions and industries. Research demonstrates that migrant sex workers find Australia to be a profitable location with comprehensive support networks and outreach services and a largely tolerant environment, where sex workers enjoy some of the lowest rates of sexually transmissible infections (STIs) and HIV in the world. Sex worker experiences of migrating for work do not fit with a supply and demand model that paints clients as perpetrators and sex workers as victims: as GAATW write, 'Demand-based discourses appear to recognise migrant workers only as 'product' to fit simplistic economic analogies, rather than as persons with rights and aspirations.'²⁸

²⁷ http://www.koreatimes.co.kr/www/news/nation/2012/08/117_118664.html

²⁸ Global Alliance Against Traffic in Women, *Moving Beyond Supply and Demand Catchphrases: Assessing the Uses and Limitations of Demand-Based Approaches in Anti-Trafficking*, Bangkok, 2011 at 10.

GAATW's 2011 report *Moving Beyond Supply and Demand Catchphrases: Assessing the Uses and Limitations of Demand-Based Approaches in Anti-Trafficking* states that the term 'demand', as it is used in the anti-trafficking sector, is ambiguous and uncritical. Instead GAATW identify two separate kinds of demand that appear to be conflated anti-trafficking platforms – a demand for sex work, and a demand for exploitative labour practices.²⁹ They write that the focus upon clients and consumers within a 'demand reduction' model can 'mask significant structural factors that need to be addressed, including poverty and restrictive immigration measures.' They suggest that 'problems about "demand" would be best met with "supply"-side solutions (i.e. strengthening workers' rights).'

There is no evidence of demand for trafficked sex workers. A 'demand reduction' focus shifts the attention away from proactive steps that could be taken to improving the rights and working conditions of migrant sex workers. There are a range of strategies that could be implemented to reduce exploitative labour practices, including: creating legal migration channels for working-class migrant workers; decriminalising migration and protecting migrants' rights; enforcing labour standards and improving working conditions; and reducing discrimination against migrants.

There is no evidence of widespread demand by clients for trafficked sex workers. In all the finalised trafficking matters in Australia, the sex workers involved knew they would be sex working and had previously sex worked before. There are instances where sex workers who were not trafficked or enslaved worked in the same premises as the witnesses in the trafficking cases. In most of the cases these witnesses were subject to a lack of industrial rights or inflated debts. The stereotype of clients seeking out unwilling and restrained sex workers does not fit with any of the known cases.

Because clients are not seeking out trafficked women in the Australian context, is impossible for a demand-reduction approach to represent anything other than a thinly veiled attempt to introduce criminalisation of clients. This is contrary to Australian Government's best-practice position in regards to sex industry legislation, HIV and STI prevention. The *Sixth National HIV Strategy* states as a priority action to identify and address the legal barriers to evidence-based prevention strategies across jurisdictions. The strategy recognises that criminalisation creates barriers to justice, support, health and human rights for sex workers. This is especially so for migrant sex workers who already face marginalisation and stigma. The employment of a 'demand reduction' approach to the sex industry is a definite legal barrier that will serve to alienate and distance sex workers, including those affected by trafficking. Supporting a demand reduction approach will undoubtedly result in sex workers, on large scale, being unwilling to engage with police and Government, and have an irreparable impact on these pivotal partnerships.

The Swedish model decreases sex worker's choice and control over working conditions

Some states have used the rhetoric of anti-trafficking and demand reduction to introduce criminal or licensing laws. In some jurisdictions around the world, Governments have called for the criminalisation of the purchase of sexual services but not the selling of sexual services. This model reflects the inaccurate assumption that clients are perpetrators and sex workers are victims of violence. Research from Sweden illustrates that the 'Swedish model', as it is sometimes referred, has no effect in reducing the size of the sex industry.³⁰ Petra Ostergren and Susanne Dodillet report that in Sweden they have found 'serious adverse effects of the *Sex Purchase Act* – especially concerning the health and well-being of sex workers – in spite of the fact that the lawmakers stressed that the ban was not to have a detrimental effect on people in prostitution.'³¹

²⁹ Global Alliance Against Traffic in Women, *Moving Beyond Supply and Demand Catchphrases: Assessing the Uses and Limitations of Demand-Based Approaches in Anti-Trafficking*, Bangkok, 2011.

³⁰ Susanne Dodillet and Petra Östergren, 'The Swedish Sex Purchase Act: Claimed Success and Documented Effects', Conference paper presented at the International Workshop: *Decriminalizing Prostitution and Beyond: Practical Experiences and Challenges*. The Hague, March 3 and 4, 2011, accessed at <http://xa.yimg.com/qa/groups/2834953/1982978694/name/Claimed%20Success%20and%20Documented%20Effects%2E%20Dodillet%20%26amp%3B%2> on 13 August 2011.

³¹ Susanne Dodillet and Petra Ostergren, 'The Swedish Sex Purchase Act: Claimed Success and Documented Effects' Conference paper presented at the International Workshop *Decriminalizing Prostitution and Beyond: Practical Experiences and Challenges* The Hague, March 3 and 4, 2011, page 3, accessed at <http://www.petraostergren.com/upl/files/54259.pdf> on 17 May 2011.

The Prostitution Licensing Authority (PLA) Queensland reports that the prohibition on the purchase of sexual services in Sweden has 'driven the sex industry underground'.³² The PLA reports, 'sex workers feel less secure and consider themselves at greater risk of violence.'³³ With predominantly clients of street-based workers being targeted, sex workers are then denied the choice and autonomy that comes with selecting one's own work and clients.³⁴ Fearful of losing their client base, street-based sex workers have been spatially displaced, forced into more isolated, poorly-lit industrial and outdoor areas where they are more vulnerable.³⁵ Further, the Penal Code prevents the use of private apartments for sex work, requiring a landlord or tenant to terminate the tenancy or move out if premises are being used for sex work.³⁶ The overall effect of these laws has been to reduce sex workers' control over their workplace. As Susanne Dodillet and Petra Ostergren reflect:

The overall implications of these laws is that no one can operate a brothel, rent an apartment, room or hotel room, assist with finding clients, act as a security guard or allow advertising for sex workers. This in turn implies that sex workers cannot work together, recommend customers to each other, advertise, work from property they rent or own or even cohabit with a partner (since that partner is likely to share part of any income derived from sex work).³⁷

Swedish sex worker organisation Rose Alliance report that laws which prohibit anyone 'living off the earnings of prostitution' have been used to charge sex workers' children with pimping, where they have been living with their parents and not paying rent. They state the laws have been used maliciously against sex workers and have affected sex workers safety and rights without any reduction of the numbers of sex workers or clients in Sweden prior to the criminalisation of behaviours related to sex work.

There is clear evidence globally of the negative impacts of the Swedish model. It undoubtedly results in the further criminalisation of clients of sex workers and sex workers generally as well as perpetuating stigma and discrimination. There is also no evidence that the Swedish model will reduce the number of cases of trafficking in the sex industry. This was noted on more than one occasion by the UN Special Rapporteur for Trafficking, Professor Joy Ngozi Ezeilo during her visit to Australia.

Decriminalisation remains the United Nations-recognised, best-practice approach to sex work regulation.

Terms of Reference 3:

International best practice to address all forms of slavery, slavery-like conditions and people trafficking

International best practice is a prevention and rights-based approach to trafficking

A rights-based and sex-worker driven approach to sex work and migration and the promotion of evidence-based prevention strategies is the most effective way to combat trafficking. Preventative approaches that address the circumstances that create trafficking should be pursued over criminal justice approaches. The most successful approaches prioritise the needs, agency and self-determination of trafficking victims over criminal prosecutions and increased surveillance. They address labour exploitation through a focus on prevention, industrial rights, occupational health and safety, civil remedies, statutory compensation, and equitable access to visas, migration channels and support.

Australia is behind international standards in providing human rights for migrant workers

The 1990 *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* provides under Article 7 that State Parties must ensure the rights of all migrant workers without

³² Bob Wallace (Principal Policy Officer), *The Ban on Purchasing Sex in Sweden*, Office of the Prostitution Licensing Authority Queensland, 19 accessed at <http://www.pla.qld.gov.au/Resources/PLA/reportsPublications/documents/THE%20BAN%20ON%20PURCHASING%20SEX%20IN%20SWEDEN%20-%20THE%20SWEDISH%20MODEL.pdf> on 11 May 2011.

³³ Bob Wallace, *The Ban on Purchasing Sex in Sweden*, above n34 at 19.

³⁴ Christine Harcourt et al., 'Sex Work and the Law', above n7 at 123.

³⁵ 'Michelle' cited in 'Sex Ban Puts Us at Greater Risk', *The Guardian*, 27 May 2009, cited in B Wallace, *The Ban on Purchasing Sex in Sweden*, above n34 at 15.

³⁶ Susanne Dodillet and Petra Ostergren, 'The Swedish Sex Purchase Act'.

³⁷ Susanne Dodillet and Petra Ostergren, 'The Swedish Sex Purchase Act' above n36 at 4.

distinction of sex or race. Article 14 provides that no migrant worker will be subject to arbitrary interference or attacks upon their privacy, Article 16 provides that the State will effectively protect migrant workers against threats and intimidation (including by public officials), and Article 25 states that migrant workers shall enjoy treatment not less favourable than that applying to state nationals.³⁸ Australia is yet to sign or ratify the Convention.³⁹ The Australian Government should immediately ratify the Migrant Workers Convention and adopt the provisions into domestic law.

A number of other international human rights protections are vital for sex workers. These include: The right to self determination (Art 1 ICCPR; Art 1 ICESCR); the right to liberty and security of person, including not being subjected to arbitrary arrest or detention (Art 9 ICCPR); the right not to be subjected to arbitrary or unlawful interference with their privacy (Art 17 ICCPR); the right of peaceful assembly (Art 21 ICCPR); the right to freedom of association with others (Art 22 ICCPR); the right to work and opportunity to gain a living by work which one freely chooses (Art 6, ICESCR); the right to just and favourable conditions of work, including safe and healthy working conditions (Art 7 ICESCR); the right to freedom of movement and residence within the borders of each state (UDHR 13); the right to partake in government (Art 21 UDHR); the right to free choice of profession (CEDAW Art 11); and the right to social security and paid leave (Art 11 CEDAW). In addition, The World Association for Sexual Health has produced a Millennium Declaration of Sexual Rights which is adapted by ASSERT, the Australian Society of Sex Educators and Therapists. ASSERT lists 'freedom of choice in adult sexual relationships' and 'freedom to experience and express sexual pleasure', free from 'legal or social sanctions' as 'fundamental and universal rights.'⁴⁰

Australia must move forward with haste in ratifying these international human rights treaties and declarations, without reservations, and in adopting all their provisions into domestic law.

Equitable access to industrial rights mechanisms

The Government should increase avenues for statutory compensation to redress exploitative work conditions that do not require contribution to a criminal investigation. Migrant sex workers who experience poor working conditions often do not have access to industrial rights mechanisms for fear of prosecution or deportation. The Fair Work Ombudsman provide remedies regardless of a persons' citizenship status but are obliged to report any illegalities, including irregular migration status. Migrant sex workers need equitable access to Australian justice mechanisms, arbitration processes and industrial rights protections, akin to Australian citizens, without fear of arrest or deportation.

No need for separate trafficking laws

Scarlet Alliance does not support the criminalisation of what is essentially an industrial relations issue. The majority of trafficking-related crimes can be covered within existing criminal laws and/or redressed within the labour framework. Experts attending an international consultation in Prague on the Human Rights Impact of Anti-Trafficking Measures (including advisors to the UN High Commission and representatives from the ILO and IOM) agreed that sex workers do not need a separate set of trafficking laws.⁴¹

Previous cases brought under trafficking legislation in Australia have could have easily been dealt with under existing legislation. Contract law, migration law, employment law, occupational health and safety law, fair work law and criminal law already cover offences such as sexual assault, unpaid wages, breach of contract, false imprisonment, fraud, falsification of documents, usury (lending money at exorbitant rates), minimum wage, underage sex work, underage marriage, sham marriages, domestic violence, and allowing a non-citizen working in breach of a visa. Under these laws existing remedies are available which involve less court time, less cost, and better outcomes, for victims and government.

³⁸ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990, accessed at <http://www2.ohchr.org/english/law/cmw.htm> on 17 May 2011.

³⁹ Status of Ratifications accessed at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&lang=en on 16 May 2011.

⁴⁰ ASSERT NSW, accessed at http://www.assertnsw.org.au/?page_id=256 on 14 February 2012; World Association for Sexual Health, Millennium Declaration, accessed at <http://www.worldsexology.org/sites/default/files/Millennium%20Declaration%20%28English%29.pdf> on 14 February 2012.

⁴¹ Scarlet Alliance, *Submission to the Attorney General on the Criminal Justice Response to Slavery and People Trafficking; Reparation; and Vulnerable Witness Protections*, 2011, 4.

Avenues for safe migration and translated materials

Barriers to labour migration include a lack of access to visas and lack of access to migration information generally. Scarlet Alliance has found that migrant sex workers are almost always on a compliant work visa, but are not always aware of their work rights under that visa. There is a lack of quality translated materials, and materials that exist have not always been included effectively. This lack of access to information, combined with a general suspicion and distrust of the Australian migration system is a direct cause of migrant workers' vulnerability to trafficking, slavery, debt bondage and exploitation. Government should negotiate fair visa systems for those seeking visas to travel to Australia for work, particularly sex workers from 'developing' countries, and provide accessible information on visa access and conditions in multiple languages.

Government must invest in prevention: Current levels of investment are inadequate

There is no need for trafficking to occur in Australia. Trafficking can be prevented by existing infrastructure in Australia. However, a prevention approach needs significantly improved Government investment.

In her presentation for the Asia Pacific Network of Sex Workers in Calcutta in 1998, Lin Chew noted that instead of a 'repressive' model, governments should adopt an 'empowering model', aimed at enhancing and restoring the rights of migrant sex workers, provide support and assistance in an enabling environment and increase autonomy and self-determination. As Chew argues, such an approach would include understanding sex work as a legitimate occupation, recognising the agency of women and girls, strengthening the political and civil rights of sex workers, increasing access to resources, training and jobs, and mobilising for self-representation and participation at all levels.⁴²

Government *must* introduce escalating investment in a human-rights focused prevention approaches to trafficking, with minimal disruption when seeking to improve migrant workers' employment conditions. These approaches need investment, and current levels of investment are inadequate.

Steps the Australian Government should take to prevent trafficking include:

- **Providing safe, legal channels and equitable access for sex workers (particularly from lower-income countries) to migrate to Australia. This would reduce the need for migrant sex workers to rely on third party agents to travel for work;**
- **Providing translated information on visa access and conditions, industrial rights, human rights, justice mechanisms and relevant laws in multiple languages. This is a key step to enhancing the rights of migrant sex workers;**
- **Increasing resources to multilingual peer education through culturally appropriate projects within sex-worker organisations, translated resources and community engagement. This would strengthen the human, civil and political rights of migrant sex workers and increase our autonomy, agency, self-determination and access to avenues for redress in the event of a crime;**
- **Decriminalise sex work to create a supportive legal framework for improved migrant and CALD sex worker rights. Decriminalisation of sex work will assist in the prevention of circumstances that cause trafficking and reduce the legal barriers in accessing support and services.**

⁴²Lin Chew, 'Prostitution and Migration: Issues and Approaches', presented to *Asia Pacific Network of Sex Workers*, Calcutta, 1998.