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To the Attorney Generals Department,

RE: The Criminal Justice Response to Slavery and People Trafficking; Reparation; and Vulnerable Witness Protections.

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

For 21 years Scarlet Alliance has led both the HIV sector and the Human Trafficking sectors in cross-cultural work and self determination of culturally and linguistically diverse members of our community. It is within this context that we would like to offer input into the “The Criminal Justice Response to Slavery and People Trafficking; Reparation; and Vulnerable Witness Protections.” discussion paper.

Sincerely,

Elena Jeffreys
President
Scarlet Alliance, Australian Sex Workers Association

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Current approaches to sex work related trafficking are harsh and unaccompanied by equitable community responses

Scarlet Alliance strongly opposes the introduction of a criminal justice response, and/or special criminalisation for forced labour in Australia as an addition to current criminal justice responses to sex work and trafficking.

Debt contracts are seen as an alternative entry means of travel by those trying to travel for work. Debt contracts are sought by individuals as a direct response to the increased difficulty faced by those travelling from countries that are seen as “source” countries for trafficking. Limiting migration options has had the unforeseen result of pushing sex workers towards debt contracts and increasing their vulnerability to debt contracts. Increased criminalisation of debt contracts is not a logical response to concern about people exploited by Debt contracts. Criminalisation and subsequent deportation has led to an increased dependence and at times worse debt contract situations being entered into as the criminal justice response does not address the debt that remains owing even after the worker is “rescued”.

If the aim of Government is to decrease reliance on debt contracts by those coming to Australia for work, there are methods that will provide these outcomes *without* criminalising the target group who are pushed into unfair work situations.

For example:

- Substantial time and resource investment into the communities of migrant labour who are affected by debt contracts in Australia (including sex workers). The development of community infrastructure to encourage participation and engagement by and for the affected communities.
- Improved fairness for those seeking visas to travel to Australia for work.
- Negotiate improved visa systems, particularly for those seeking to travel from developing countries.
- Investment into publicising what a good workplace looks like in Australia; a positive advertising campaign to reinforce good workplace conditions.

Changes to the support system for people affected by trafficking has not produced the improvements Scarlet Alliance had anticipated

Positive changes anticipated by Scarlet Alliance when the support system for people affected by trafficking changed have not come to fruition. We had expected it would result in more sex workers being able to access the support systems even if they were unwilling or unable to assist the police. However the necessity of police involvement in the cases has resulted in a set of insurmountable barriers for the sex workers Scarlet Alliance assists.

A secondary outcome we had expected was a closer working relationship with other organisations in the field. While this has resulted on a staffing level, Scarlet Alliance has still received no referrals from within the support

system for people affected by trafficking. We disagree with mandatory engagement obligations for people accessing the support program, we feel strongly that an awareness of a range of services and support options should be made available on a voluntary basis. Scarlet Alliance is concerned that the institutionalisation of this support system continues to unavoidably marginalise those within it.

Increased access for those people affected by trafficking who are willing or able to assist police has had an unintended negative outcome. While the actual figures of trafficking numbers in Australia are hard to assess and highly politicised, some organisations have used the increased numbers of those within the support system as evidence that trafficking has increased/is a massive problem in Australia.

Scarlet Alliance embrace the Empower Foundation of Thailand slogan “Not Drowning, Waving.” When sex workers or those affected by trafficking-like conditions come forward to receive support, their presence should be celebrated as an empowered and proactive use of the services being made available to them, rather than interpreted as evidence of “numbers” in a field where estimations and conjecture have only hurt those affected by trafficking.

Criminalisation harms sex workers and other groups; and has the potential to harm people perceived to be affected by debt contracts

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

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

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

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

Internationally unintentional negative outcomes for the target population is now recognised as the major flaw in anti-trafficking responses, resulting in the development of a transnational assessment tool to determine the negative impacts of anti-trafficking policies on human rights. (Wijers and Chew 2010). (For more information read GAATW 2007 book on the The Impact of Anti-Trafficking Measures on Human Rights around the World in “Collateral Damage”).

The introduction of new criminal penalties for debt contracts will potentially harm the population that such laws are intended to assist.

Recognise that sex work is work; sex workers should be covered by labour trafficking laws

Scarlet Alliance strongly recommends that the trafficking laws specific to sex work be repealed and that sex workers be included in a new set of trafficking for labour laws. This would provide equitable outcomes across all labour sectors.

The Commonwealth Government funded Scarlet Alliance Migration Pilot Project was fortunate to attend an international consultation in Prague on the Human Rights Impact of Anti Trafficking Measures attended by experts in the field, including trafficking advisors to the UN high commission, lawyers from the Council of Europe, representatives from the ILO and IOM as well as academics and specialist organisations in the field of trafficking from the US, EU and Asia. It was widely agreed by these experts that sex workers do not need a separate set of trafficking laws but in recognizing sex work as a legitimate profession agreed sex workers should be covered by labour trafficking laws.

Scarlet Alliance opposes the outcomes of the Victorian Parliament Drug and Crime Prevention Recommendations into Sex Work of the Criminalisation of Clients

“The Victorian Parliament Drugs and Crime Prevention Committee is proposing an offence of ‘knowingly or recklessly obtaining sexual services from a trafficked woman’. Similar offences have been enacted elsewhere. This approach imposes a responsibility onto a third party which is additional to the other trafficking offences. It must be recalled the Victorian Parliament was concerned with people trafficking issues in the sex industry. Commonwealth legislation covers all forms of people trafficking. While there is merit in the offence proposed by Victoria, were the Commonwealth to enact an offence of this type—that is, on which liability would be transferred onto third parties—it would need to do so in respect of both sex and other forms of exploitation including forced labour.”

Scarlet Alliance is strongly opposed to the criminalisation of clients in relation to trafficking, debt bondage, servitude, slavery, exploitation or any other labour crime. Police regulation of the activity of sex worker clients in Victoria opens the door for corruption, is virtually impossible to enforce, and shifts the focus of trafficking activity from a cross-border environment (ie lack of access to visa’s creates a market for trafficking) to an end-consumer focus. In the long term [the criminalisation of clients] is a fruitless exercise and will have no material impact on the prevalence of trafficking in sex work in Victoria, in the short term it will create an incubator for police corruption and the infringements of the human rights and civil liberties of Victorians generally. Similar laws in Sweden have harmed sex workers. See: [Petra Ostergren in Ulrika Oredsson “Interview with Petra Ostergren - Prostitution Law,” Lund University, 28 Jan 2010](#), and [Johannes Eriksson, The “Swedish model” – arguments, consequences presented at Green Ladies’ Lunch, “Prostitution in Europa – Nationale Gesetze und europapolitische Perspektiven” 16 March 2005, Berlin](#), and [Gunilla Ekberg in Damien Carrick “Prostitution in WA” The Law Report, ABC Radio National, 25 September 2007](#), and [SCOT-PEP "33 Reasons why the clients of sex workers should not be criminalised"](#).

Scarlet Alliance opposition to the criminalisation of end-consumer clients is endorsed by numerous other community groups and researchers:

- [Respect Inc. Queensland](#)
- [Sex Workers Outreach Project \(SWOP\) NT](#)
- [Sex Industry Network \(SIN\) South Australia](#)
- [Empower Foundation, Thailand](#)
- [Zi Teng, Hong Kong](#)
- [日日春關懷互助協會 COSWAS, Collective of Sex Workers and Supporters, Taiwan](#)
- Licia Brussa, TAMPEP Coordinator, [TAMPEP \(European Network for HIV/STI Prevention and Health Promotion among Migrant Sex Workers\)](#)
- [Asia Pacific Network of Sex Workers \(APNSW\)](#)
- [Desiree Alliance \(USA\)](#)
- [Sex Workers Outreach Project USA](#)
- [Sex Workers Outreach Project Las Vegas](#)
- [Pascale Robitaille, team coordinator, Stella, Montreal](#)
- [Asia Catalyst](#)
- Maria McMahon, Former Manager Sex Workers Outreach Project NSW and Sex Services Planning Advisory Panel, NSW Government *
- Julie Bates, Principal, Urban Realists Planning & Health Consultants, Consultant to Law & Sex Worker Health Project (LASH) for the University of NSW National Centre in HIV Epidemiology and Clinical

Research & Faculty of Law and University of Melbourne Sexual Health Unit School of Population Health

- Christine Harcourt, Researcher, Law & Sex Worker Health Project (LASH) for the University of NSW National Centre in HIV Epidemiology and Clinical Research and Faculty of Law and University of Melbourne Sexual Health Unit School of Population Health *
- Roberta Perkins, Researcher and Author, "Call Girls" UWA Press, Australia, 2007

Criminal Justice responses resource police and prosecutors, not communities

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

Scarlet Alliance strongly recommends focusing on community based prevention rather than policing, prosecuting or immigration measures in relation to those perceived to be affected by trafficking. This means focusing on the migrant communities affected, working with their representatives in their country of origin, enabling a community based response (ie not Government) and listening to their needs.

Any increased criminality of labour exploitation and/or trafficking issues in Australia could potentially result in increased harm for those individuals affected by these issues.

457 Visa may be increasing workers vulnerability due to tying workers to one employer

The current regime of 457 visas may be having the unforeseen outcome of limiting the work options of migrant workers once they are in Australia:

"Measures tying work permits to one specific employer make migrant domestic workers completely dependent on their employer, This can lead to exploitation and abuse." (Wijers and Chew 2010)

Scarlet Alliance strongly recommends against linking access to migration to criminal law relating to prosecutions of alleged trafficking

The Right Guide – Evaluation of Anti-Trafficking responses

In response to the following questions:

- *How do existing criminal law provisions capture conduct such as forced labour and deceptive recruiting for labour services? Is there a need for this to be revisited?*
- *How do existing criminal law provisions capture behaviours which enable people trafficking activities, such as harbouring and receiving? Is there a need for this to be revisited?*
- *How do existing criminal law provisions capture the elements of coercion and exploitation? Is there a need for this to be revisited?*
- *Does section 21B of the Crimes Act 1914 (Cth) adequately provide for reparation orders to be made for victims of people trafficking?*
- *If no, what measures could be introduced to permit greater access to reparation orders by victims of people trafficking?*

- *Should the Commonwealth enact specific provisions to deal with the manner in which evidence can be given by vulnerable adult witnesses in people trafficking matters?*
- *Are current witness protections concerning the manner in which evidence can be given by vulnerable witnesses in people trafficking matters provided by Commonwealth, State and Territory legislation, or those which form part of the courts' inherent jurisdiction, adequate?*
- *If no, what measures could be introduced to ensure adequate protection for vulnerable witnesses in relation to the manner in which evidence is given in people trafficking matters?*
- *Should the Commonwealth enact a provision which defines 'vulnerable witness'?*

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

Prior to such a resourced and comprehensive review it would be irresponsible for the Government to implement changes to the current trafficking framework.

Without resourcing and adequate time for a community response and evaluation of such questions to occur, the Government will be ill equipped to proceed with improvements to the trafficking framework in Australia.

Bibliography

- Busza, J., S. Castle, et al. (2004). "Trafficking and health." British Medical Journal 328: 1369-1371.
- Pearson, E. (2007). Australia. COLLATERAL DAMAGE, The Impact of Anti-Trafficking Measures on Human Rights around the World. GAATW. Bangkok, Global Alliance Against Trafficking In Women and Children (GAATW): 28-60.
- Wijers, M. and L. Chew (2010). The Right Guide; A Tool to Assess the Human Right Impact of Anti-Trafficking Laws and Policies. M. Wijers. Amsterdam, Daphne Program of European Commission.