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Scarlet Alliance, Australian Sex Workers Association Recommendations to the UN General Assembly High-level Dialogue on International Migration and Development

Proposed Recommendations for the 15 July 2013 Informal Interactive Hearings for the High-level Dialogue on International Migration and Development

Executive Summary

The way to end 'slavery' is to 'free' the 'slaves' by providing them rights and legal status through legislation which will increase their power to [travel lawfully and] reject slave-like contracts and conditions.

- Sex Workers Outreach Project ¹

About Scarlet Alliance

SCARLET ALLIANCE, Australian Sex Workers Association, is the peak national body representing sex workers and sex worker organisations. Formed in 1989, our organisation's work includes defending the human rights of migrant sex workers in Australia. Our Migration Project staff, volunteers, membership and leadership encompass sex workers of Thai, Chinese & Korean backgrounds. Throughout projects and the work of our membership we have close to 100% access to sex industry workplaces in the major cities and many regional areas. Scarlet Alliance has played a critical role in informing policy through advocating with governments and the health sector, both in Australia and internationally, on issues affecting workers in the Australian sex industry.

Scarlet Alliance has been working on an advocacy level on rights for migrant sex workers since the mid 90s. The Scarlet Alliance Migration Project, staffed and managed entirely by migrant sex workers, was formally first funded in 2009. The Migration Research project in partnership with the Australian Institute of Criminology in 2009 to 2011 and the Migration Project funded by the Australian Commonwealth Government and working in partnership with Empower Foundation in Thailand has been funded to 2014.

The research project aims to fill the evidence gap in trafficking issues and to represent the actual experiences for and by migrant sex workers in Australia in legal, licensed and illegal working situations across the industry. The research explored any differences, and if they exist, between migrant and non-migrant sex workers in demographic data, workplace conditions and access to services and information. The research looks at risk and protective factors around more general exploitation within the workplace for migrant and non-migrant sex workers and examined the migration experiences of migrant sex workers in Australia, including possible vulnerabilities and protective factors for trafficking. The research, which engaged hundreds of sex workers will increase understandings of the situation for migrant sex workers in Australia. The results are due for release in 2013.

¹ Sex Workers Outreach Project, *Response to the Criminal Code Amendment (Slavery and Sexual Servitude) Bill, 1998*, accessed at <http://www.scarletalliance.org.au/library/swop98> 17 May 2011.

The Migration Project is led and driven by migrant sex workers with the aims of supporting evidence based policy development. The projects works to promote and advocate for evidence based, migrant sex worker driven approach to trafficking prevention and migrant sex worker rights. Principle to this is in advocating for removal of legal barriers to migrant sex workers access to justice, services and the prevention of exploitative workplace conditions through access to industrial rights for all sex workers; access to accurate, translated information and multi-lingual peer support.

Our project, including a collaboration with Thai sex worker organisation, Empower Foundation, aims to ensure sex workers considering travelling for work to Australia are informed of their rights and responsibilities and to increase Thai sex workers understandings of legal and safe migration pathways to Australia. A primary aim of the project is to support capacity development of sex worker peer educators in Australia, to enhance service delivery to migrant sex workers. In addition to this, project work to date has included the production and translation of information about visas, sex worker rights, a guide to rights and responsibilities when dealing with Australian government agencies and sex work laws in Australia, for distribution to sex workers of Thai, Chinese and Korean language backgrounds.

Migrant sex workers in Australia

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. Studies detailing the age, life experience, language skill, and education level of migrant sex workers in Australia show that we are diverse. Many have previously travelled and worked throughout the region.

Trafficking is not synonymous with migrant sex work

Extensive and distorted media coverage of the issue of trafficking, and the use of the term 'sex slave' to describe women working on contracts in the sex industry has made the issue very confusing. The terms 'illegal sex worker' (no work visa), trafficking and prostitution have become conflated by the media. This media has contributed to the construction of emotive and mostly unrealistic stereotypes that are used to fuel the anti-trafficking debate. This has flowed on into the legislation, policy and practice within regulatory bodies. Worse still, it has increased the stigma and marginalisation of migrant sex workers within the sex industry and the wider community.

- Maria McMahon²

Current debates in Australia often conflate terminology such as trafficking, debt bondage, sexual servitude, deceptive recruitment and forced labour, and fail to recognise sex work as distinct from these concepts. Advocates for the abolition of the sex industry continue to use these terms interchangeably in a way that suggests all sex work is tantamount to sexual exploitation, or that the term 'migrant sex worker' is synonymous with 'victim'. This has undermined efforts to address trafficking and labour exploitation.

Trafficking in Australia

Moral hysteria about the sex industry, panic over the sanctity of the body, xenophobic views on migration, and racial stereotypes have lead to inflated media figures of the incidence of trafficking. Government statistics on trafficking are consistently low. In 2003, Chris Ellison, then Minister of Justice, said, 'no significant' sex slavery problem existed in Australia.³ The 2004 Australian

² Sex Workers Outreach Project, *Response to the Criminal Code Amendment (Slavery and Sexual Servitude) Bill, 1998*, accessed at <http://www.scarletalliance.org.au/library/swop98> 17 May 2011.

³ 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.

Government's Action Plan to Eradicate Trafficking in Persons states that the number of trafficking victims is 'well below' 100.⁴ Between January 2004 and October 2011, the Australian Federal Police Human Trafficking Team undertook over 305 investigations into allegations of trafficking-related offences. These assessments led to 39 matters being referred to the Commonwealth Director of Public Prosecutions for matters related to sexual servitude and other labour exploitation.⁵ Of those, 14 have resulted in convictions.

Australia's discriminatory immigration policies create trafficking

"The [Australian Immigration Department] considers that sex work is not a skilled occupation and so they've been excluded [from 457 Visa's]. Sex workers [are] just as skilled as other workers... There are very limited visa pathways for migrant sex workers. In order to gain a visa, some migrant sex workers enter into 'contracts' with people who will sponsor and assist their entry into Australia, or use a third party or broker to facilitate completion of documentation. The more legal, safe migration pathways you have open to people, the less likely they're going to be vulnerable to exploitation." Jules Kim, Migration Program Manager, Scarlet Alliance, Australian Sex Workers Association⁶

If we were travelling from a rich country with documents, we could be tourists, experts, consultants, researchers, exchanged students or attending a meeting (just like me, I'm here today). But if we were from a poor country and have no documents we would become illegal migrants, smugglers, criminals or even terrorists. But if we are sex workers, it doesn't matter if we have document or not. We will be called victims, sex slaves or prostitutes and nowadays we are called 'victims of human trafficking.'

- Empower Foundation, Thailand⁷

Trafficking is exacerbated by Australia's stringent and discriminatory immigration policies, which favour specific 'skilled' migration from industrialised countries, disadvantage workers from lower-income countries and create a lack of opportunities for sex workers to migrate to Australia legally. 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 Thai and Korean 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 applicants are routinely discriminated against – sex workers report being refused visas at the Australian embassy when they disclose their occupation.

The only way for most sex workers to migrate to Australia for sex work legally is to marry or apply for a student visa. However the vast majority of information on visas, forms and the actual visas themselves are not available in languages other than English. 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.⁸ By creating a need to engage third-party agents in order to travel, and failing to providing adequate language resources,

⁴ Commonwealth Attorney-General's Department, *Australian Government's Action Plan to Eradicate Trafficking in Persons*, Canberra, 2004.

⁵ Australian Government, *Trafficking in Persons: The Australian Government Response*, 1 May 2009 – 30 June 2010, The Second Report of the Anti-People Trafficking Interdepartmental Committee, Commonwealth of Australia, Canberra, 2010, 25.

⁶ Jules Kim, *Foreign Prostitutes wanted on 457 skilled work visas*, News.com, 2013. Accessed 15 July, 2013 from: <http://www.news.com.au/national-news/foreign-prostitutes-wanted-on-457-skilled-work-visas/story-fncynjr2-1226660651907#ixzz2Z4X7WinV>"

⁷ Empower Foundation, 'Travel to Build a Better Life' Presented at an anti-trafficking networking day facilitated by Scarlet Alliance, printed in *Provision*, 5, 28.

⁸ Scarlet Alliance, *Submission*, above n13 at 2.

Australia's migration policies have produced an environment which increases vulnerabilities to deception and trafficking.⁹

Criminal justice approaches to trafficking hurt sex workers

Nowadays there are laws about human trafficking. These laws, consequently, get us arrested. Because of these laws, we are put in jail and sent back to our home town. These laws don't help or respect us. On the other hand it is like a wall so we can't reach our dreams or access our rights. It's good that they want to help us but I've got some questions for those people who think that they rescue us. How would you help us? Do you really help us to reach our dreams? Do you ever care about what happens to us after all? - Empower Foundation, Thailand¹⁰

International human rights organisations increasingly report that the greatest threat to the health, safety and human rights of migrant sex workers is government anti-trafficking policy. Anti-trafficking raids and 'rescue' operations, harassment, and detention of Asian sex workers in visible brothels and massage parlours in Australia have forced sex workers to adapt and change the way we work and have acted to force the industry 'underground'.¹¹ The Global Alliance Against Trafficking in Women report 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.'¹² Raids are often culturally insensitive, create barriers to migrant sex workers accessing justice due to fears of prosecution, curtail sex workers' freedom of movement, restrict their choice of occupation, reduce migrant sex workers' opportunities to negotiate suitable workplace conditions, and instil distrust in outreach workers and community service providers. Internationally, criminal justice approaches have been shown to 'increase migrants' risk of harm and exploitation.'¹³

Police are inappropriate regulators for the sex industry

A significant proportion of sex workers indicated some form of unwanted police attention in the past five years. Illegal sex workers were more likely to report being harassed (42% compared with 13% of legal sex workers). Among the women who had been harassed by a police officer, verbal abuse was common. An African sex worker indicated that a police officer taunted her with racial insults. Other forms of harassment included stalking, arriving at one's private residence, repeated phone calls and requests for sexual favours.
- Charlotte Woodward and Jane Fischer¹⁴

Current anti-trafficking approaches inhibit identification of people affected by trafficking

Anti-trafficking investigations are indistinguishable from the policing of sex work and migration status. This creates an environment of fear which discourages sex workers who are victims of trafficking like situations to access support or justice and in fact drives them further underground and away from services that are designed to help them. Any sex worker who has experienced a raid will be very unlikely to associate the police as the people they are supposed to go to for support. This will be even more the case for many migrant sex workers who have negative experiences of

⁹ 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.

¹⁰ Empower Foundation, 'Travel to Build a Better Life' Presented at an anti-trafficking networking day facilitated by Scarlet Alliance, printed in *Provision*, 5, 28.

¹¹ Elena Jeffreys, 'Migrant Sex Workers Research in Australia', above n1 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.

¹² 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.

¹³ Busza, Castle et al., (2004) 'Trafficking and health', *British Medical Journal* 328: 1269-1371, cited in Scarlet Alliance, *Submission*, above n13 at 3.

¹⁴ Above Page 17.

police in their home country due to active criminalisation of sex work. The policing of sex work and migration status in the name of anti-trafficking only serves to deter real victims coming forward and inhibit the identification of people experiencing exploitation and trafficking like situations.

Migrant sex workers who have been detained and/or scrutinised during an immigration/sex industry compliance visit can see very little incentive in coming forward to report witnessing or experiencing exploitation or coercion. If a sex worker with a debt is deported, the debt remains with reduced opportunity to repay the debt. Fear of possible detention or deportation, combined with low rates of convictions in trafficking cases makes it seem easier to remain in even bad working conditions. Interrogation and pressure creates bad witnesses. Choice, appropriate support and time would make people more willing to actively participate in a criminal investigation.

Limited pathways for safe migration creates vulnerabilities

Introducing a visa to allow migrant sex workers to work in Australia legally for short periods of time would pull the carpet from under the trafficking nexus by allowing women to travel here independently to work. Greater access to generic working holiday visas for sex workers from our region would enable travel for work, without having to resort to a third party or "agent". Elena Jeffreys, Executive Committee Member, Scarlet Alliance, Australian Sex Workers Association.¹⁵

Although trafficking is not characteristic of the Australian sex industry, the lack of visa options for migrant sex workers produces an environment where people are susceptible to deception and trafficking.ⁱ

The Global Alliance Against Traffic in Women directly links the existence of trafficking to Australia's limited migration opportunities. In 2013 there is still no working holiday visa available for African, Pacific or Chinese migrants. Working holiday visa for Thai and Korean migrants are only available to applicants under 30 years old. There is no visa available to migrate for the purposes of sex work, and sex workers are not currently eligible for a business sponsorship visa.

Migrant sex workers report that information, visa forms and even the visa stamps for travelling or migrating to Australia are mostly all written in English and mostly not available translated. In order to gain a visa, some migrant sex workers enter into 'contracts' with people who will assist their entry into Australia or use a third party or broker to facilitate completion of documentation. There is ample evidence to suggest that if occupations (including sex work) are excluded from legal visa options, irregular migration will occur. Debt contracts act as an alternate entry means to those trying to travel for work where the options for legal migration are limited.

Providing safe and legal channels for sex workers (particularly those from lower-income countries) to migrate to Australia would reduce the need for migrant sex workers to engage third party agents in order to travel for work. Transparent and non-discriminatory processes and equitable access to visas would prevent the majority of instances of trafficking in Australia. Information on visa access and conditions should be provided in multiple languages. Application forms and information about visas, once granted, including the visa itself should be translated removing the possibilities for deception. Creating fairer immigration policies will prevent trafficking.

¹⁵ Elena Jeffreys, *Truth and Visas will set sex workers free*, Sydney Morning Herald, 2008. Accessed 15th July, 2013 from: <http://www.smh.com.au/news/opinion/truth-and-visas-will-set-asian-sex-workers-free/2008/04/03/1206851098330.html>

Pathways for safe migration are recommended by the United Nations Special Rapporteur

Following her visit to Australia the United Nations Special Rapporteur on Trafficking Joy Ngozi Ezeilo stated that ‘Australia must commit to developing and maintaining strong pathways for safe and legal migration’. Increasing legal visa options means workers are less inclined to go through broker or third party. Providing genuine migration opportunities for sex workers – and recognising sex workers as *skilled* workers – will bring increased transparency and must be a key step in Australia’s anti-trafficking response. As Thai sex worker organisation Empower Foundation says, ‘We should have the right to travel and reduce the gap between rich and poor countries so every single one of us in the world can travel equally and safely.’

Providing multilingual information and culturally appropriate service provision will prevent labour exploitation

Providing information on visa access and conditions, industrial rights, human rights, justice mechanisms, health and support services and relevant laws in multiple languages is a key step to enhancing the rights of migrant sex workers. Governments should support language-based peer education through culturally appropriate service provision, multi-cultural projects within sex worker organisations, translated resources and community engagement. Governments should develop and promote positive advertising campaigns detailing available avenues for support and redress for people who experience exploitative work conditions.

Civil remedies, labour protections, occupational health and safety and statutory compensation are more effective than criminal justice approaches

[F]alse assumptions [of trafficking] led to a U.S. policy that prompted Japan, in 2006, to reduce the number of visas for Filipina hostesses by 90 percent. Anti-trafficking and anti-prostitution crusaders counted this a triumph. But no trafficking and very little prostitution was stopped, and 81,000 Filipinas lost their livelihoods... Hostesses don't need to be rescued. They need the empowerment that comes from being independent labor migrants. Only then can they remain gainfully employed, free of migrant brokers, and have full control of their own lives.

- Rhacel Salazar Parrenas, *Illicit Flirtations: Labor, Migration, and Sex Trafficking in Tokyo*¹⁶

The best approach to addressing labour exploitation across all industries is through a focus on prevention, labour protections, occupational health and safety, civil remedies and statutory compensation. 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.¹⁷

Migrant sex workers need equitable access to support and justice

Migrant sex workers need equitable access to Australian justice mechanisms, arbitration processes and industrial rights protections akin to Australian citizens. Migrant sex workers who experience poor working conditions often do not have access to these 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.

¹⁶ Stanford University Press

¹⁷ Scarlet Alliance, *Submission*, above n13 at 4.

Access to justice and support should not be conditional upon police assistance

Support for victims of trafficking is currently conditional upon a sex workers' 'substantial 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 substantial 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 re-trafficked 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 traffickers for future travel. The Australian government should increase avenues for statutory compensation and redress for exploitative work conditions that do not necessitate substantial 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.

Supporting the human rights of migrant sex workers

The rights and wellbeing of migrant sex workers are best protected by policies focusing on prevention of exploitative conditions rather than increased surveillance. In her analysis of the Australian Government's response to trafficking, Sarah Steele notes that targets of anti-trafficking policy are constructed as victims needing protection from harm rather than as individuals deserving of positive rights.¹⁸ In her presentation for the Asia Pacific Network of Sex Workers in Calcutta in 1998, Lin Chew noted that women who leave their home, or 'migrate', go against traditional female roles, yet are often 'punished for this (political) act by further marginalisation and stigmatization.'¹⁹ She argues 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.²⁰

Ratifying the Migrant Workers Convention

The government's assertion that there are sufficient protections for migrant workers does not recognise the specific barriers for migrant workers in seeking support and in accessing justice and their rights. The *1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* was created to address these specific vulnerabilities faced by migrant workers.

Ratifying the Migrant Worker Convention would shift the power balance between employers and migrant workers and support a rights based culture that respects the rights of all workers.

¹⁸ Sarah Steele, 'Trafficking in People' above n15 at 20.

¹⁹ Lin Chew, 'Prostitution and Migration: Issues and Approaches', presented to *Asia Pacific Network of Sex Workers*, Calcutta, 1998.

²⁰ Ibid.

Often, migration is perceived negatively, by host governments and communities alike, potentially triggering a backlash against migrants and a denial of many of their basic rights. Increasing xenophobia provoked by recession and unemployment has also exacerbated hostilities against migrants.

- International Organisation for Migration ²¹

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 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.²² Australia is yet to sign or ratify the Convention.²³

Meaningful involvement of migrant sex workers is necessary for self-determination

Migrant sex worker involvement in leading policy development and law reform is valuable and necessary. Listening to and learning from sex workers is essential in developing policies that are evidence-based, transparent, accountable and effective. When others speak for sex workers, the result is policies that injure and endanger sex workers. Sex workers should be at the centre of consultation – driving research initiatives, asking questions, monitoring policy and implementing law reform – on matters that affect their lives. The Australian Government should invest substantial time and resources into the communities of migrant labour who are affected by exorbitant debts in order to travel for work, and develop community infrastructure to encourage participation in, and engagement by, the affected communities.

Peer education is essential in protecting the rights of migrant sex workers

In 2005 and 2006, I resorted to this work as a way of gaining access to the world of Filipina hostesses in Japan. During my first three months in Tokyo, I had struggled to meet hostesses willing to participate in my study of their conditions. My visits to clubs as a customer had not provided any solid leads. Attending church with fellow Filipinas had not gained their trust. Even hostesses whom I befriended had always declined my request for an interview.... After I began working as a hostess, every person I approached agreed to talk to me. By the end of my study, I had completed interviews with 56 Filipina hostesses: 45 females and 11 male-to-female transgendered individuals.²⁴

The gains made for migrant sex workers have been achieved because of a strong community development base created by the multicultural projects of sex worker organisations, translated resources, community engagement and employment. For example, Maria McMahon details the work of the Sex Workers Outreach Project NSW's activities in 'providing culturally appropriate outreach services, with Thai, Korean and Chinese speaking staff to NESB sex industry workplaces; the production of resources in appropriate languages; and referral to immigration, legal and multicultural services and partnership support services.'²⁵ Provide funding and support for multi-

²¹ International Organisation for Migration, 'Identifying Core Rights of Concern to Migrants: Background Paper', in *Regional Consultation Group on Migration: Seminar on Human Rights and Migrants*, Washington DC, 1998, 1.

²² 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.

²³ Status of Ratifications accessed at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtidg_no=IV-13&chapter=4&lang=en on 16 May 2011.

²⁴ Rhacel Salazar Parrenas, *Illicit Flirtations: Labor, Migration, and Sex Trafficking in Tokyo* to be published Oct. 15 by Stanford University Press. Accessed 15th July, 2013 from: <http://www.bloomberg.com/news/2011-10-14/what-i-learned-by-being-a-migrant-sex-worker-part-2-parrenas.html>

²⁵ Maria McMahon, 'Migrant Sex Workers, The Australian Response to Trafficking and Why this is Relevant to Scarlet Alliance and our HIV/AIDS Work', Provision, 1, 18 at 20.

lingual peer education and community outreach will strengthen the human, civil and political rights of migrant sex workers and increase their autonomy, agency and self-determination.

International sex worker organisations are often role models in sex worker rights, activism and organising. The Can Do Bar in Chang Mai, Thailand, is a sex worker owned collective, offering employees fair and just working conditions and an option to enrol in the social security program.²⁶ All profits from the Can Do Bar are split among the sex workers, 80 percent of whom are single parents aged 18 to 66.²⁷ It provides free condom and lubricants and trains all sex workers in safer sex education. In India, the Durbar Mahalia Samanwaya Committee (DMSC) represents 65,000 sex workers and is 'active in identifying and challenging the underlying socio-structural factors that help perpetuate stigma, material deprivation and social exclusion of sex workers.'²⁸ Based in Calcutta, Durbar advocates on respect (respect and dignity to sex work and towards sex workers), reliance (reliance on the knowledge and wisdom of the community of sex workers) and recognition (recognition of sex work as an occupation, and protecting sex workers occupational and human rights). Durbar involves the sex worker community in all decision-making processes.²⁹ Peer education acknowledges the expertise, experience and knowledge actively demonstrated by sex workers on a daily basis.

Evidence-based research is necessary for effective and sustainable policy

Studies of and for migrant sex workers that have been initiated, directed, monitored and evaluated with and by migrant sex workers have generated valuable data about the lives, experiences and needs of migrant sex workers in Australia. Many of these studies have included multi-lingual sex worker peer educators involved in the design, interviews and/or survey collection. Supporting sex-worker led, community-driven research leads to reliable evidence-based policies which are effective in reducing disadvantage by supporting the rights of migrant sex workers.

'Demand reduction' represents a new and dangerous policy direction

The call for a 'demand reduction' approach to anti-trafficking blames clients for wider systemic injustices in law, policy and immigration. The most successful approaches to labour exploitation prioritise the needs, agency and self-determination of sex workers 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, industrial relations mechanisms and support.

The emergence of a 'demand reduction' approach to anti-trafficking represents a disturbing policy shift in relation to sex industry law reform.

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

²⁶ Nicolette Naxalite, 'Living, Laughing and Loving: Working with the Empower Foundation', *Provision: Empowerment*, Issue 3, Scarlet Alliance, 2008, 24.

²⁷ Annamarya, 'Can Sex Work be Legitimized? Thailand's Can Do Bar Says 'Yes'', *The Daily Femme*, 11 February 2011.

²⁸ Durbar Mahlia Samanwaya Committee, accessed at <http://www.durbar.org/> on 28 July 2011.

²⁹ Durbar Mahlia Samanwaya Committee, accessed at <http://www.durbar.org/> on 28 July 2011.

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.’³⁰

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.³¹ 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.’³² They suggest that ‘problems about “demand” would be best met with ‘supply’-side solutions (i.e. strengthening workers’ rights).’³³

A ‘demand reduction’ focus further shifts the attention away from proactive steps that could be taken to improving the rights and working conditions of migrant sex workers – the ‘supply’. 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.³⁴

‘Reducing demand’, criminalising clients, and the Swedish model

*When you criminalise my clients, you criminalise me - Audry Autonomy*³⁵

Policies that suggest ‘reducing demand’ for sex work are often based on sex industry abolition agendas. This concept ultimately blames the client for wider systemic injustices in law, policy and immigration. Clients see sex workers for a variety of reasons, and in some cases have been pivotal to uncovering incidents of exploitation. Regulatory models that propose to ‘reduce demand’ by criminalising the clients of sex workers (the ‘Swedish Model’) reflect the inaccurate assumption that clients are perpetrators and sex workers are victims of violence. Not only does this approach deny the agency of sex workers, but it has acted to endanger the lives and working conditions of sex workers.

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.’³⁶ The Swedish Government has also denied access to the methadone

³⁰ 10. 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, p.10.

³¹ 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, Executive Summary.

³² 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.

³³ 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, 8.

³⁴ 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, 8.

³⁵ Melbourne Feminist Futures Conference in 2011, Melbourne, Australia.

³⁶ 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*

treatment program to sex workers unless they leave sex work.³⁷ The Prostitution Licensing Authority (PLA) Queensland reports that the prohibition on the purchase of sexual services in Sweden has 'driven the sex industry underground'.³⁸ 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.³⁹ 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.⁴⁰ The overall effect of these laws has been to reduce sex workers' control over their workplace. Sex worker

Hexy writes:

[W]hile the legislation does not specifically criminalise the sex worker, it criminalises everyone around the sex worker. It becomes illegal to rent a room, house, hotel room or apartment for anyone to do sex work out of, or the land lord risks being charged with pimping... 'Pimping' is also a charge applied to anyone who assists in finding clients, provides security services, or allows advertising for sex workers. Sex workers cannot work together or they risk being charged with pimping each other, which dramatically decreases our opportunity to look out for each other's safety, reduce overhead costs, and establish peer support networks, which are known to be our most effective method of reducing the STI rate.⁴¹

Decriminalisation is the internationally recognised best practice approach to sex industry legislation

In most countries, discrimination remains legal against women, men who have sex with men, sex workers, drug users, and ethnic minorities. This must change. I call on all countries to live up to their commitments to enact or enforce legislation outlawing discrimination against people living with HIV and members of vulnerable groups... In countries without laws to protect sex workers, drug users, and men who have sex with men, only a fraction of the population has access to prevention. Conversely, in countries with legal protection and the protection of human rights for these people, many more have access to services. As a result, there are fewer infections, less demand for antiretroviral treatment, and fewer deaths. Not only is it unethical not to protect these groups: it makes no sense from a public health perspective. It hurts us all. - UN Secretary General Ban Ki Moon⁴²

A crucial step in addressing trafficking is to recognise sex work as a legitimate occupation, decriminalise sex work in all Australian jurisdictions, and enact nationally consistent anti-discrimination laws to protect migrant sex workers from discrimination. Increasingly, international policy supports the decriminalisation of sex work. It demonstrates that the best regulatory approach is a human rights approach that treats sex workers as partners in health promotion and education. The UNAIDS report on the Global AIDS Epidemic 2010 states that 'countries should now take action to decriminalize sex workers.'⁴³ The Australian Government Sixth National HIV Strategy 2010-2013 states that 'Australia's approach to HIV/AIDS has demonstrated the protection of human rights to be

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.

³⁷ Hexy, 'On the Swedish Model, *Feministe*, 23 July 2011, accessed at <http://www.feministe.us/blog/archives/2011/07/23/on-the-swedish-model/> on 13 August 2011.

³⁸ Bob Wallace (Principal Policy Officer), *The Ban on Purchasing Sex in Sweden*, Office of the Prostitution Licensing Authority Queensland, 19 accessed at <http://www.pla.qld.gov.au/Resources/PLA/reportsPublications/documents/THE%20BAN%20ON%20PURCHASING%20SEX%20IN%20SWEDEN%20-%20THE%20SWEDISH%20MODEL.pdf> on 11 May 2011.

³⁹ '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.

⁴⁰ Susanne Dodillet and Petra Ostergren, 'The Swedish Sex Purchase Act' above n32 at 4.

⁴¹ Hexy, 'On the Swedish Model, *Feministe*, 23 July 2011, accessed at <http://www.feministe.us/blog/archives/2011/07/23/on-the-swedish-model/> on 13 August 2011.

⁴² UNAIDS, Joint United Nations Program on HIV/AIDS, *UNAIDS Guidance Note on HIV and Sex Work*, Geneva, 2009, 2.

⁴³ UNAIDS, *Report on the Global AIDS Epidemic*, 2010, 137.

compatible with and *essential to* the effective protection of public health.⁴⁴ The Commonwealth HIV/AIDS Action Group and the International HIV/AIDS Alliance write:

Removing legal penalties for sex work assists HIV prevention and treatment programmes to reach sex workers and their clients. Rather than arresting sex workers and closing down brothels, the most effective approach to preventing HIV is to view sex workers as partners in prevention, and encourage them to engage in sexual health promotion as peer educators and advocates.⁴⁵

In their paper on Building Partnerships on HIV and Sex Work (report from the Asia Pacific Regional Consultation), UNAIDS and UNFPA (the United Nations Population Fund) recommend that the meaningful participation of sex workers is crucial in developing policy ('Nothing about us without us'). They state that 'successful programmes on making sex work safer and preventing HIV include sex workers as partners in development and implementation', and note that stigma and discrimination against sex workers and our families impedes our human rights. UNAIDS and UNFPA 'insist on universal rights for sex workers' whilst 'removing criminal laws against sex workers' to promote access to justice and create an 'enabling legal and policy environment'.⁴⁶ The paper states that '[v]iolence against sex workers, including by state actors, are human rights violations that should be taken up by human rights institutions':⁴⁷

Experience in the region shows that punitive laws, policies and practices around sex work do not reduce the number of people buying and selling sex but they do form barriers to sex workers' access to services and they change the shape (venue, methods) of the sex industry in ways that increase vulnerability.⁴⁸

International evidence reveals that only rights can stop the wrongs against sex workers. As the Hon. Michael Kirby AC CMG states, 'We will insist on human rights for all, including for sex workers. Nothing else is acceptable as a matter of true public morality.'⁴⁹

Decriminalisation does not increase the size of the sex industry

The New Zealand Prostitution Reform Committee found that the numbers of sex workers in Christchurch had stayed approximately the same between 1999 and 2006 despite the decriminalisation of sex work.⁵⁰ In NSW, the Law and Sexual Health (LASH) report shows that the number of sex workers in Sydney brothels in 2011 was similar to estimates from 20 years ago.⁵¹

⁴⁴ Australian Government Department of Health and Ageing, *Sixth National HIV Strategy 2010-2013*, Commonwealth of Australia, Canberra, 2010 at 6.4, emphasis added.

⁴⁵ Commonwealth HIV/AIDS Action Group and the International HIV/AIDS Alliance, *Enabling Legal Environments for Effective HIV Responses: A Leadership Challenge for the Commonwealth*, 2010, 23.

⁴⁶ UNAIDS and UNFPA, *Building Partnerships on HIV and Sex Work: Report and Recommendations from the first Asia and the Pacific Regional Consultation on HIV and Sex Work*, 2011, 13-15.

⁴⁷ UNAIDS and UNFPA, *Building Partnerships*, above n7 at 29.

⁴⁸ UNAIDS and UNFPA, *Building Partnerships*, above n7 at 13.

⁴⁹ UNAIDS and UNFPA, *Building Partnerships*, above n7 at 14.

⁵⁰ New Zealand Government, *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003*, Ministry of Justice, Wellington, 2008, 13.

⁵¹ Basil Donovan, C Harcourt, S Egger, L Watchirs Smith, K Schneider, JM Kaldor, MY Chen, CK Fairley, S Tabrizi, *The Sex Industry in New South Wales: A Report to the NSW Government*, Kirby Institute, University of New South Wales, Sydney, 2011, vi, preliminary findings presented at the Sex Workers Outreach Project Policy Meeting, Australasian Society of HIV Medicine, 9 September 2011.