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Ms Julie Dennett  
Committee Secretary  
Senate Standing Committees on Legal and Constitutional Affairs  
PO Box 6100  
Parliament House  
Canberra ACT 2600

2 May 2013

Dear Ms Dennett

**Inquiry into the current framework and operation of subclass 457 visa, Enterprise Migration: Agreements and Regional Migration Agreements**

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 workers and 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 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 sex workers in the Australian sex industry.

Please find attached our submission supporting the recognition of migrant sex workers as eligible for a 457 visa to Australia.

We look forward to hearing from you.

Yours sincerely

Bernadette Sobon  
President

## **Inquiry into the current framework and operation of subclass 457 visa, Enterprise Migration: Agreements and Regional Migration Agreements**

*Scarlet Alliance Submission*

### **Recommendation: Sex work should be listed on the Consolidated Sponsored Occupation List**

Scarlet Alliance recommends that sex work should be listed on the Department of Immigration and Citizenship's Consolidated Sponsored Occupation List as an occupation for the purpose of applying for a 457 visa. This would be consistent with approaches by the United Nations, International Labour Organisation, and Australian HIV and STI Strategies, who all recognise sex work as work.

### **Migrant sex workers are part of the Australian workforce**

Sex workers, like other workers, migrate internationally for a variety of reasons, including seeking improved working conditions and income. 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. 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.<sup>1</sup> The most comprehensive study on migrant sex workers in Australia, coordinated by Scarlet Alliance and funded by the Australian Institute of Criminology in 2009/10 found that migrant sex workers had a diversity of ages, are overwhelmingly well educated.

### **There are limited opportunities for migrant sex workers to work in Australia.**

Currently, sex workers are not eligible to apply for a 457 visa. There are limited options for sex workers to migrate for work in Australia. Australia's refusal to acknowledge sex work as a skilled occupation, and exclusion of sex work from the 19 page Consolidated Sponsored Occupation List, has denied sex workers legal options to travel. The 457 visa is the only long-term temporary migration work visa, and unlike the working holiday visa, is not dependent on age. This is significant because research shows that migrant sex workers are often over 30 years of age. The 457 visa is the only visa that allows dependents and spouses of the primary visa holder to work in Australia, albeit with limited protections available.

### **Sex work is work**

Sex work is recognised as work across different Australian regulatory systems, including the taxation system. Recognising sex work as work affords sex workers enhanced access to common law and statutory workplace rights, including occupational safety. The recognition of sex work as work affords us better control over our working rights and conditions, improves our abilities to implement safer sex practices, enhances opportunities for organising and industrial advocacy, and gives sex workers avenues for redress where our workplace rights are infringed.

### **The International Labour Organisation supports that sex work is work**

The ILO *Recommendation 200 concerning HIV and AIDS and the World of Work* covers 'all workers working under all forms or arrangements, and at all workplaces, including persons in any employment or occupation'. The Recommendation applies to all workers whether public, private, formal or informal. It was adopted by record vote at the International Labour Conference at its 99<sup>th</sup> Session in Geneva 2010: 439 voted "yes", 4 "no" and 11 abstained. The Recommendation clearly

recognizes and supports human rights at work, seeing HIV/AIDS as a workplace issue that should be included as an essential part of national response. At the International AIDS Conference in Washington 2012 the International Labour Organisation held a session on sex work as 'A Labour Rights Approach to HIV and Sex Work'.<sup>ii</sup>

### **The United Nations recognises that sex work is work**

The 2012 Report by UNAIDS, UNFPA and UNDP, 'Sex Work and the Law in Asia and the Pacific', states that 'Recognizing that sex work is legitimate work provides a framework within which sex workers can benefit from the same rights and protections as other workers, including access to services and freedom from discrimination and exploitation.'<sup>iii</sup>

### **Sex work is skilled**

The Consolidated Sponsored List includes a large and varied list of accepted occupations. Sex work is skilled work and should be included. Occupations currently included are clearly not exclusively determined by university qualifications and include a diverse range of skills and qualifications. The criteria do not exclude sex workers.

Sex work is no less skilled than other occupations listed in the Consolidated Sponsored List.

At the 15<sup>th</sup> International AIDS Conference in Bangkok, sex workers from twenty countries engaged in skill sharing workshops, which included working with condoms and dams, negotiating prices and services, performing STI checks, making risk assessments and establishing boundaries.<sup>iv</sup> The Scarlet Alliance National Training and Assessment Program (SANTAP) recognises the skills that sex worker peer educators have developed during the course of their work by awarding them with a Diploma in Community Education. The project operates within the national Vocational Education and Training (VET) standards as set by state and federal governments, and the units that make up the diploma are determined by national training standards, as delivered by TAFE and the higher educational sector across Australia.

### **Accreditation processes**

Appropriate processes could be established to accredit sex workers, such as a link to their local sex worker organisation, access to the peak national body, knowledge and access to workplace rights mechanisms, understanding of industry regulations and their intended destination. This is in line with 'membership of a professional or industry association' requirements for some occupations that currently access a 457 visa.

### **Limited pathways for safe migration creates vulnerabilities**

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.<sup>v</sup>

The Global Alliance Against Traffic in Women directly links the existence of trafficking to Australia's limited migration opportunities.<sup>vi</sup> 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 sponsor and 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.

### **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’.<sup>vii</sup> 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.’<sup>viii</sup>

### **Ratifying the Migrant Workers Convention**

Scarlet Alliance recognises there are issues with the current operation of the 457 visa system. The granting of the work permit to the employer rather than the worker has resulted in increased vulnerabilities to exploitation. This is exacerbated by the lack of access to information about labour rights for migrant workers and the difficulties in changing employers for 457 visa holders.

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. In 2010, DIAC reported widespread employer breaches reported of the sponsor sites it visited as part of its monitoring program. This suggests that ratification of the Migrant Worker Conventions and the implementation of a complete framework for the protection of worker rights is urgently needed.

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.<sup>ix</sup>

### **A unique opportunity**

This is an ideal opportunity to support and protect the rights of migrant sex workers in Australia, and bring immigration law in line with Australia’s taxation, workplace and occupational health and safety laws that recognise sex work as work, consistent with approaches by the United Nations and International Labour Organisation. The current review can provide long-term work visa options for migrant sex workers, through which they can bring family and travel in and out of the country. Australia is falling behind best practice in this field, and has a unique opportunity to be a world leader.

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<sup>i</sup> 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 4<sup>th</sup> Australian National Symposium on Sex Work: Nothing About Us Without Us, 2008.

<sup>ii</sup> International Labour Organisation, A Labour Rights Approach to HIV and Sex Work:

[http://www.ilo.org/aids/WCMS\\_185715/lang--en/index.htm](http://www.ilo.org/aids/WCMS_185715/lang--en/index.htm)

<sup>iii</sup> UNAIDS, UNFPA, UNDP, *Sex Work and the Law in Asia and the Pacific*, 2012, UNDP Thailand, accessed at <http://www.snap-undp.org/elibrary/Publications/HIV-2012-SexWorkAndLaw.pdf> on 23 October 2012, page 7.

<sup>iv</sup> Janelle Fawkes, 'Sex Work and Empowerment', *HIV Australia*, 4:1, September-November 2004, accessed at [http://www.afao.org.au/view\\_articles.asp?pxa=ve&pxs=95&id=499](http://www.afao.org.au/view_articles.asp?pxa=ve&pxs=95&id=499) on 18 August 2011.

<sup>v</sup> 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.

<sup>vi</sup> 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, at 28.

<sup>vii</sup> United Nations, Office of the High Commissioner of Human Rights, 'Australia/Trafficking: UN Expert Calls for Greater Focus on the Rights and Needs of Victims', accessed at

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11668&LangID=E> on 21 March 2012.

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

<sup>ix</sup> Department of Immigration and Citizenship Annual Report 2010–11, accessed at <http://www.immi.gov.au/about/reports/annual/2010-11/> on 2 May 2013.