

**Parliamentary Joint Committee on the
Australian Crime Commission**

**Inquiry into trafficking in women for
sexual servitude**

Submission No:27

Received 29 September 2003

Ms Janelle Fawkes

President

Scarlet Alliance

GPO Box

CANBERRA ACT 2601

☎0411 985 135 

E-mail: president@scarletalliance.org.au

Scarlet Alliance,
GPO Box 2072,
Canberra ACT 2601
president@scarletalliance.org.au
26th September, 2003

The Committee Secretary,
Parliamentary Joint Committee on the Australian Crime Commission,
Parliament House,
CANBERRA ACT 2600

Dear Sir/Madam,

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

It is within this context that we are providing a formal submission to seek input into the Parliamentary Joint Committee on the Australian Crime Commission with regard to the inquiry into trafficking in women for sexual servitude.

We applaud the Australian government's initiative in holding this inquiry and would urge you to consider the information provided. Although we understand this inquiry will focus on the performance of the Australian Crime Commission and current legislative frameworks we would impress upon you the need for any such inquiry to encompass the factors effecting all persons who are 'trafficked' to work in the sex industry as the issues are intrinsically linked and in fact often assumed to be one and the same. Addressing one without the other will result, at best, in piecemeal understanding and recommendations.

Scarlet Alliance has included some recommendations at the end of the submission and believes that changes to the legislative frameworks along with changes to our strategic response to trafficking can assist Australia in creating legislation and environments that will provide protection and support to the women involved whilst ensuring the interests of both sex workers and the broader Australian community are represented by law and immigration enforcement policies. However, we are reluctant that any such inquiry should endorse the implementation of harsher laws or greater power of surveillance over the sex industry or further endorsement of the singling out of this industry for excessive policing. Equally, we would hope that any outcome of this inquiry would seek to avoid the pitfalls that other countries have experienced in introducing 'rescue model' style programs which are a superficial response to a complex set of issues. It is our opinion that it is possible to achieve positive results without victimisation or discrimination.

We look forward to the outcomes of the inquiry and offer our support in the future. Should a face to face meeting be afforded to Scarlet Alliance it would enable us to discuss these issues in more detail and with the inclusion of anecdotal evidence and case studies of those we have worked with over our considerably experience of this issue.

Yours Sincerely,

Janelle Fawkes
President,
Scarlet Alliance
0411 985 135

Maria McMahon
Vice President,
Scarlet Alliance
02 9319 4866



Submission to:

*Parliamentary Joint Committee on the
Australian Crime Commission*

*Inquiry into trafficking in women -
sexual servitude*

September 2003

Scarlet Alliance membership comprises:

**ACT SWOP – Australian Capital Territory
NT SWOP – Northern Territory
RhED – Victoria
SA SIN – South Australia
SWOP – New South Wales
SQWISI – Queensland
SWAG – Western Australia**

**Submission produced by: Janelle Fawkes, Maria McMahon,
Tamsin Baker, Julie Futol and Elena Jeffreys.**

Submission endorsed by:

- APNSW – Asia Pacific Network of Sex Workers,

Contact: Andrew Hunter , Concrete House, 57/60 Tiwanon Road, Nonthaburi 11000, Thailand

- NSWP - Network of Sex Work Projects,

Contact: (chair) Khartini Slamah, Tel: + 55 (21) 2523 9602, Email: chair@nswp.org.au

Website: www.nswp.org

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Scarlet Alliance Information

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

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

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

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

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 close to 100% 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) or NESB (Non English Speaking Background) Projects employing bi-lingual project workers. These staff provide information, education and support to women who may be working under contract in Australia, or who are being detained by DIMIA. It is these experiences and the high level of contact and support provided by our membership to CALD communities within the sex industry, including women who have entered Australia under contract, which informs our input into this Inquiry. Scarlet Alliance is the most experienced body in Australia to comment accurately on the current situation for contract workers.

Examples of multicultural resources produced by Scarlet Alliance members include:

Production of resources in a variety of forms, -visual, verbal and printed, in key languages

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

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

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

CD rom on sexual health (SQWISI, 2003), in Chinese, Thai, Vietnamese, Japanese

“No Regrets” video in Mandarin and Thai (SWOP)

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

“Streetwise” comics in Chinese and Thai on sex work

Multicultural services provided by Scarlet Alliance member organisations:

Workshops on health issues for NESB sex workers, including:
Negotiating skills (to increase ability to negotiate safer sex with clients)
Safer sex practices
Contraception
Identification of symptoms of STI's
Information on HIV prevention

Workplace safety, the laws and rights

Taxation information and referrals

English classes

Immigration information

Scarlet Alliance Objectives

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

The Scarlet Alliance objectives are:

To promote the civil rights of past and present sex workers and to work towards ending all forms of discrimination against them.

To lobby for legal and administrative frameworks which do not discriminate against sex workers.

To ensure that sex industry legislation seeks to maximise rather than minimise sex workers occupational health and safety;

To challenge and lobby government when and where it implements legislation, regulations, rules, policies or law enforcement practices which are discriminatory and/or repressive to the rights and autonomy of sex workers.

To actively promote the rights of all sex workers to work in their chosen occupation and sector, including street, brothel, escort, private or opportunistic work.

To actively work towards guaranteeing the right of all sex workers to optimum occupational health and safety provisions. This will promote conditions where safe sex and general health knowledge can be converted to safe work practices.

To challenge any legislation, policy or process which does not so promote the rights of the worker.

To strive to eradicate sex worker stereotypes and stigmatisation in the popular consciousness and to communicate the diversity of ideas, opinions and aspirations of past and present sex workers.

To liaise with international sex worker rights groups in the development of regional and international networks, programs and objectives.

To support sex workers and sex worker organisations to become more politically active.

To gather and disseminate sex industry related information to its members.

Executive Summary:

Scarlet Alliance estimates that there are less than 400 sex workers entering Australia in any one year on a contract, the majority of whom knowingly consent to the work. Our organisations have collectively had direct contact with less than ten women in the last year who have been deceptively recruited. The extent of trafficking of sex workers into the Australian sex industry, and the level of duress has been inadequately researched, both within Australia and the countries of origin.

Trafficking of persons to work in Australia and persons working illegally in Australia is a feature of many industries, such as the cleaning industry, clothing production and other textiles work. Singling out the sex industry prevents a broader understanding of how to deal with this situation within the context of its scale, and the reasons and motivations for persons seeking to migrate for work.

Current Australian Immigration policies, such as risk profiling in countries of origin, have resulted in women who seek to work in the sex industry in Australia finding no other option but to agree to enter into unfair, exorbitant and unacceptable contracts in order to gain entry into Australia.

The goal of legislation should include safeguarding the health and safety and rights of persons who are migrating for work, whether trafficked and despite consent; or travelling legitimately yet working unlawfully.

Current Australian responses to this issue have not provided incentives for women on contracts to report poor occupational health and safety conditions or unsafe sex practices, who on arrival find their working conditions vary from those agreed.

The legislative framework is not effective and results in the victimisation of individuals who are working under contract or who are working illegally in Australia. In addition, joint operations by DIMIA and AFP have pushed the sex industry underground thus cutting sex workers off from service providers.

Insufficient debriefing or support is provided to individuals found by Immigration to be working illegally in Australia or who are working under contract.

Australia's response – the deportation of women found working unlawfully in the sex industry - reinforces a cycle which further disempowers the individual (ie return to country of origin and agree to another contract) and may assist the organisers to "clear" workers who've just finished contracts.

Insufficient information has been gained as to what would decrease the incentive for women to agree to a contract in their country of origin. Research must be funded and conducted, in particular research by sex worker organisations.

Building partnerships between sex worker organisations in Australia and other countries would assist persons in both the countries of origin and destination being informed about their rights and support services before agreeing to a contract.

“I am a mother, daughter, wife, aunty, farmer, friend, sister working woman, but to you all I am is a sex slave.” Sydney based contract sex worker

Scarlet Alliance believes there is a pervasive and unhelpful equation of the ‘trafficking’ of South East Asian sex workers to Australia with ‘sexual servitude’ and ‘slavery’. This simplistic reading of such complex issues has resulted in a limited understanding of the experiences of the women involved, and allowed the introduction of poorly planned and researched responses both in legislation and law enforcement strategies.

Our current legislation is built on a lack of understanding of these issues and has resulted in a legislative and law enforcement focus on the sex industry over all other industries. The focus has not been on protecting those who are exploited, but on singling out those who are found working in the sex industry rather than the many and diverse industries employing contract labour in Australia. The result is an increased level of surveillance of one industry over others, and the criminalisation and deportation of the sex workers or deceptively recruited women involved.

The discussion paper ‘Offences Against Humanity, Slavery, Model Criminal Code Officers Committee’ 1998 indicates clearly this intention when it states that the need for new offences, which were subsequently made law, were related to the problem of illegal migrants in the prostitution industry¹. This statement and subsequent action also illustrates the Governments equation of illegal workers in the industry (particularly from Asian countries) with slavery *per se*.

It is this level of lack of understanding of complex issues which has resulted in unworkable and discriminatory legislation which:

- treats those who are trafficked as criminals, who, upon detection, are detained and then rapidly deported with little to no “victim care”, care or support.
- pushes the organisers to develop more elaborate mechanisms to enable undetectable travel, thus further exposing the individuals to criminal networks, and increasing the price of contracts.
- does not seek to address the real issues surrounding trafficking, offering in place policy which worsens the plight of the very women who need support.
- provides no incentive for those who are exploited to report crime.
- leaves those who get out of these workplaces (thus breaking their contracts) exposed to threats, or forced into long term hiding.
- provides a barrier to health service providers because those working here illegally are sent ‘underground’, thus removing them from support networks.
- increases the power of bond agents over trafficked women by directing enforcement strategies to target individual women and not agents. Individual women are therefore fearful of reporting unfair and unsafe working environments, and exploitation, for fear of being deported.
- allows DIMIA to single out the sex industry for excessive surveillance not experienced by other contract or illegal migrant workers, the level of which amounts to discrimination.

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

1. The extent of people trafficking for the purposes of sexual servitude;

The current rhetoric in immigration legislation allows the Government and Government bodies only to understand the issue of people who are illegal migrant sex workers as those who have been forced against their will as 'sex slaves'. This approach singles out sex industry businesses for an inappropriate level of closer scrutiny in relation to illegal contract workers, which in turn criminalises and harms individual sex workers more than other workers. In actuality there are many varying degrees of consent at different stages for each worker and the oversimplification of this complexity has resulted in haphazard and prejudicial methods of understanding the issue. Current Government and Government agency response create increased opportunity for exploitation of contract and illegal migrant sex workers.

Scarlet Alliance does not deny that there are women who have been 'trafficked' in the sense that they have gained entry into Australia by illegally supported means; with their migration usually being organised through the mechanism of a bond/contractual agreement from their country of origin. Scarlet Alliance member organisations have had contact with many women on contract and we are aware of how the current Australian response to this issue has resulted in these women being even more susceptible to exploitation.

We estimate that there would be 300 – 400 women on contract in Australia in any one year. In addition, we have also had contact with up to ten individuals in the last year who have been 'deceptively recruited', where they did not consent to working in the sex industry or to the conditions of their contracts. Also, we have had contact with workers who have been "sold" on to another "shop" upon entering Australia, with an increase in the contract price (= number of jobs) against their will.

The level of duress has not been extensively researched, and thus is poorly understood. Women talking with SWOP (NSW) and Empower have said that although they themselves would do it again, they wouldn't recommend it to others as "living under contract is very difficult and causes suffering."

In order to understand this issue it is imperative that we acknowledge one of the key factors creating 'trafficking' is the need for women from impoverished backgrounds, including from South East Asian countries, to migrate. These women are seeking an improved earning capacity within their chosen occupation. This issue is one of migration. It is our experience that the key factor of migration must be understood in order to analyse what drives both those who agree to a contract/bond and those who organise such arrangements, and for us to address the issues and find a workable resolution.

To these ends Scarlet Alliance believes this investigation must go beyond considering 'the extent of people trafficking for the purposes of sexual servitude'. The investigation must also identify those people who are 'trafficked' not for sexual servitude but in order to work under bond or contract in order to facilitate their migration to Australia to potentially gain increased financial reward. In Scarlet Alliances' experience it is these persons who are currently being caught up in badly modelled legislation and who are most likely to be further exploited as a result of the current legislative framework, and the impact of enforcement practices.

These sex workers usually have agreed to repay a fee to be “trafficked” to enable them to work in the Australian sex industry because legal avenues of migration are largely unavailable to them. In our experience, the situation and the conditions in which women are to work often turn out to be different to those negotiated and agreed, and the women are often expected to ‘pay off’ greater sums of money than expected, by way of providing a set number of sexual services “free” to the owner/operator/organisers, thereby paying an unacceptably high amount of money in exchange for their arranged migration. This often occurs because the sex workers don’t know about the exchange rates for the Australian dollar, and so can’t understand what a vast sum the contract figure represents. Mostly, the sex workers are focused on the money they can make after paying off the contract, which will be explained to be substantial in their own currency.

It is Scarlet Alliances’ experience that our current legislative frameworks, by the creation of a criminal and underground industry, are providing more power to those Agents, who make such Migration arrangements, to exploit these women. Also as the risks of an “interrupted”² contract increase with more intensive enforcement operations, so too does the contract price (\$35,000 -\$45,000). Paradoxically, DIMIA operations conveniently ‘clear out’³ workers who have finished their contracts. This is aiding the organisers to retain a 100% profit over the basic costs of the initial travel arrangements (passports, documentation, bribes, tickets). Those who have finished a contract are, in effect, simply competition for sex workers still on contract, as the only profit is to the brothel operator. Workers who have completed their contract move onto the usual terms of the “split” arrangement (60/40 favouring the worker is common), like other sex workers in Australia: the promised “profit” for the risk they’ve taken with entering the contract.

Another factor also plays in the favour of the organisers. Most SE Asian sex industries operate illegally, yet flourish within a complex nexus of corruption, where the police, army and local government may all play a role. Sex workers are employed within this framework, and are aware of the “rules” of the “game”. Such workers have few reasons to implicitly trust authorities, and are used to having their work organised on a “less known the better” basis. In coming to Australia, they would again be dependant upon the verbal culture of their workplaces, giving little room for options to be understood or thought viable. For example, they may not know that their work and workplaces are legal in Australia, or that they have the right to report violent crimes. Our organisations have met sex workers who may have been eligible to obtain a visa in their own right, yet have still entered into a contract.

Scarlet Alliance would argue that it is not productive to attempt to separate out those who have consented to work in the sex industry via contract and those that have not, as exploitation in the current environment effects intentional and non-intentional sex workers in the same way. Whether they were ‘deceptively recruited’ and not aware they would work in the sex industry; or ‘deceptively recruited’ in that

² Interrupted meaning the worker is detected and deported.

³ ‘clear out’ meaning the workers who have finished their contract or nearing finish are detected and deported. Therefore they have worked for all of their time in Australia with up to 100% of their earnings going to the owners to pay off their debt. In effect they work for free under the assumption that they will be able to continue to work and these earnings will be all theirs however if they are detected before, or soon after this time, they have essentially worked for free.

their working conditions or costs to migrate or agreed working terms changed on arrival, they are in both cases exploited.

These persons are currently negatively impacted by Australia's response to this issue and are unable to affect a change to their conditions in Australia. These persons, who are deemed criminals ("unlawful non-citizens" or "illegal workers") within our system, are less likely to be in contact with mainstream health services, more likely to be forced to provide unsafe services for more money in order to pay off the contract quickly, and are unlikely to be able to report violence against them due to fear of disclosure and deportation.

Contract workers who rely on brokers to organise their transportation and employment in Australia are charged excessive amounts and must work in conditions that are far below those of the current standard in the domestic sex industry in Australia. These conditions usually include:

- working 7 days a weeks
- 10-12 hour shifts
- seeing over 70 clients a week, and any client selecting them
- 700 -1,400 "jobs" or clients to repay \$35,000 - \$50,000
- being moved to many work locations ("new" workers make more money)
- may only go out when accompanied by others
- their passports and papers held by the owner or agent
- no visa or passport at the end of the contract, so must stay within the system.

These unacceptable conditions are below the Australian sex industry's general standard of occupational, health and safety conditions. They are endured in order to pay off a \$35,000 contract as early as possible within the 3 months window of opportunity if provided with a tourist visa, *within which the workers have an opportunity to make any money for themselves.*

The majority of "raids" result in detaining persons who are judged to be illegal workers or legitimate visa holders deemed to be breaching conditions. The conditions deemed breached are working on a tourist visa, or genuine students deemed to be working more than 20 hours per week. In the case of students, even though they may be 'rostered' on for over 20 hours, they are in reality only working when they are providing services to clients, a small proportion of their rostered-on time. Despite this fact, genuine students have been caught up in "raids". There have been very few people detained that are 'enslaved women', reinforcing the Scarlet Alliance members' experiences that this is a small-scale phenomena. Unfortunately, the current legislation has resulted in DIMIA and the AFP singling out and targeting the Sex Industry for frequent raids under the premise of seeking to protect such women. These women are often not in 'sexual servitude' and may be consensual workers, however are not differentiated. The fact that many women who are working in a contractual agreement have knowingly entered a contract to ensure their entry into a country, which would otherwise be difficult or impossible, goes ignored in current Government responses.

Further, the combined effects of media hype, police and Department of Immigration activity results in the workers being pushed further "underground", isolating them and forcing them to be kept away from mainstream society and channels of information. This makes it harder for supporting organisations including HIV/AIDS

outreach workers to provide safe sex education information, safe sex supplies, advocacy and referral.

Currently for many sex workers their only means of coming to Australia to work is through a contract system with an agent. The system of contracts differs as to the amount of money agreed upon, the system of payment, length of visas and living arrangements. It is their illegal status as workers rather than the nature of the work that is a potent form of control in the hands of their employers⁴. The public discourse mainly conducted through the media to describe the movement of Asian sex workers into Australia is fraught with panic mode polemics and is devoid of rigid, substantiated, factual data. Murray⁵ contends that rigid analysis of this commentary displays stereotypes/myths around 'trafficking' and 'debt bondage' which become truths through repetition. There is lack of information and research and the media has focused on sensationalising Asian workers as weak, stupid AIDS carriers who can never choose to enter the sex industry.

According to figures released by the Department of Immigration and Multicultural Affairs (DIMA), of 10,138 overstayers located in 1996-97, 21% (2103) admitted they had been working.⁶ The figures for detected sex workers working illegally for the period July '97- May '98 is 21. With extrapolation for increased numbers with time and for the entire year, this represents 0.9% of all illegal workers. Current NSW figures give us less than 200 "illegal" sex workers deported (2%), from an industry employing about 10,000. This includes overstayers, backpackers and other visitors working on tourist visas, and genuine students deemed to be over the 20 hour limit who have been picked up in the intensified joint operations of the Sex Industry Taskforce. Of these less than 10 (0.1% or less) had been deceptively recruited and so could be witnesses under the current sexual servitude legislation.

This hardly represents a problem of the scale the community might imagine. In fact what these figures indicate is that the problem of people working illegally in Australia must be very large in other industries. Yet, there has not been a call from Australian Governments to enact specific legislation that only applies to workers in those industries.

The Textile, Clothing and Footwear Union (TCFUA) has stated that outworkers typically work 12-18 hour days, 7 days a week. They receive about one fifth to a third of the award rate of pay and have no access to even the minimum conditions enjoyed by other workers in Australia today.⁷ In considering these aspects one might equate this with slave labour. It points to the central issue for illegal workers

⁴ Alleged Trafficking of Asian Sex Workers in Australia. A joint statement of policy drafted by the Prostitutes Rights Organisation for Sex Workers, the Sex Workers Outreach Project, Workers in Sex Employment in the ACT, Self-Help for Queensland Workers in the Sex Industry, the Support, Information, Education, Referral Association of Western Australia, the South Australian Sex Industry Network, the Prostitutes Association of South Australia, the Prostitutes Association of the Northern Territory for Health, Education and Referral, Cybelle Sex Worker Organisation Tasmania, Sydney Sexual Health Centre, the Queer and Esoteric Workers Union and representatives of the Asian sex working communities.

⁵ Murray, A. Of Peers and Queers: Sex, Subcultures and AIDS Discourses in the Asia-Pacific. Monash Asia Institute 1998.

⁶ Fact Sheet 80: Locating Overstayers in Australia, Department of Immigration and Multicultural Affairs.

⁷ TCFUA Media Release, 29 May 1997.

in the sex industry, that it is unregulated and “out of sight” industries which are more likely to expose workers to exploitative working conditions.

Mobility and Labour Migration

Labour migration for the purposes of working in the sex industry is an element in the international movement of labour, which has been a pronounced aspect of the globalisation process. This process is marked by increased commoditisation of the Asia-Pacific region and rising aspirations among those communities in relation to consumer capitalism. Labour migration increases are a result of ease of transport, communication and trade, expanding multi-national business and rising economic differentials between countries and regions. According to an ILO (International Labor Organisation) report⁸, 1.5 million Asian women are working abroad, both legally and illegally.

It is this economic differential that subjects women to discrimination in education and work and also restricts their work to unregulated, unskilled areas of labour. Within a gendered labour market, sexual or domestic work are most prevalent of the few income generating options available to women, especially from poorer countries or regions, to make a living. Many women from developing countries consciously enter prostitution or domestic work and move in and out of a particular activity during their lifetime.⁹

Since women have few opportunities to travel independently and to work legally in destination countries they are heavily dependent on recruiting agencies and brokers and thus at risk of falling victim to criminal networks. Restrictive immigration laws indirectly favour traffickers (who will always find ways to circumvent laws). These same laws increase the dependence of the women who want to migrate- again, a favourable situation for criminal networks.¹⁰

Anti-immigration attitudes and policies, especially in Western countries, act to discredit women seeking asylum by referring to them and to other persons in economic need as “false refugees”.¹¹

Scarlet Alliance estimate that there are 300 – 400 people working on contract in Australia each year. Of the 20,000 sex workers working at any one time in Australia, Scarlet Alliance has had contact with 10 (0.1% or less) people who were deceptively recruited. That is, when the person entered a contract with the immigration organiser in their country of origin, they were not made aware of the fact that they would be expected to work in the sex industry in Australia, or they were lied to about working conditions. People migrate from developing countries for economic reasons. Viewing people under contract as ‘trafficked’ denies the personal agency people exercise when they desire to work in Australia and then choose to enter a contract in order to do so. These workers promise to pay a fee to access avenues of migration that would be largely unavailable to them. Once


⁸ Lim, Lin Lean and Oishi, Nana. International Labour Migration of Asian Women, Distinctive Characteristics and Policy Concerns. ILO, Geneva, February 1996.

⁹ Wijers, Marjan and Lap-Chew, Lin. Trafficking in Women, Forced Labour and Slavery - Like Practices in Marriage, Domestic Labour and Prostitution. STV(Dutch Foundation Against Trafficking in Women) & GAATW (Global Alliance Against Trafficking in Women), Utrecht, 1997, pg. 45.

¹⁰ Wijers, M & Lap-Chew, L, op cit, pg. 57.

¹¹ Pheterson, G. pg 102. Right to Asylum, Migration and Prostitution in The Prostitution Prism, Amsterdam University Press, 1996.

entering Australia they attempt to pay off their contract quickly so that they have more time to earn money for themselves after their contract is finished, and before they leave Australia or are detected by DIMIA. DIMIA operations effectively 'clear out' many contract workers before the workers have earned much or any money for themselves. This benefits the contract organisers, because it decreases competition, and the organisers then are able to bring in new contract workers. This constant exploitation is detrimental to the health and welfare of both actively recruited and deceptively recruited sex workers alike. Contract workers are less likely to access mainstream health services or demand the use of condoms. The illegality of a contract workers situation meant they cannot report crimes that are committed against them. Contract workers conditions are worse than non-contract workers, and the harsh laws currently in place in Australia reinforce all of these problems by heightening the 'risk' factor of the industry, increasing reliance of workers on the contract organisers and allowing the organisers to demand higher and higher fees.



2. The ACC's relationship with other relevant agencies (State & C'wealth)

It is Scarlet Alliances' experience that DIMIA and AFP have worked in isolation on this issue and there has been little recognition of the important role sex worker organisations currently play in the lives of contract workers. The succession of raids on brothels throughout the country, largely by DIMIA but also AFP, has not deterred the organisers, decreased the level of persons trafficked for 'sex servitude', nor has it reduced the number of persons 'deceptively recruited' or those working illegally according to the parameters of their tourist or student visa's. In fact, these raids have largely only resulted in the deportation of individual sex workers. Whilst on one level this may seem a worthy result it is an extremely expensive, discriminatory and unsuccessful strategy if the desired result is truly to prevent the trafficking of persons for the purpose of 'sex servitude' and to detect and prosecute organised crime rings said to be responsible.

Australian sex worker organisations have been working directly and exclusively over a substantial period of time with CALD (culturally and linguistically diverse) sex workers, the majority of who are from South East Asian countries¹². Most sex worker organisations have specific CALD Projects that work solely and in detail with CALD sex workers. Through in-depth contact with thousands of CALD women in the industry over a substantial period of time, sex worker organisations have key insights into the issues facing CALD sex workers. Aside from DIMIA and federal and state police, sex worker organisations remain the only organisations working directly and comprehensively with CALD sex workers and owners of these workplaces, yet we remain largely unconsulted about the issues.

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

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

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

Extensive service provision by sex worker organisations to CALD sex workers reveals little evidence of sexual servitude and slavery. The reality is that in a global economy, with increasingly feminised poverty, many South East Asian women are flocking internationally through unregulated sectors of the global market in order to pursue improved socio-economic opportunities. In a gendered labour market, where

¹² SWOP, for example saw around 1,000 CALD people in sex industry settings in 2002/3, and outreached to 230 sex services premises employing CALD sex workers.

women often do not have access to formal education and employment, work opportunities are restricted largely to the sphere of domestic labour, which is lowly paid and low in status. CALD sex workers have identified time and time again that sex work employment is substantially more appealing than other limited work avenues most likely for migrants, such as outwork, factory, or domestic cleaning etc.

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

SWOP (Sex Worker Outreach Project) in NSW has had extensive contact particularly with contract workers. For over 10 years, SWOP in Sydney has employed Thai speaking workers, and the team currently includes Thai, Chinese and Korean speakers. Over 230 workplaces are visited, and 1,007 occasions of service for CALD sex industry workers occurred in the year 02/03.

RHed (formerly the Prostitutes Collective of Victoria (PCV) has significant contact with CALD sex workers across Melbourne, including those from the Vietnamese, Chinese and Thai community. The National SIREN project was based there.

Phoenix in Western Australia employed a p/t CALD project worker for the first time in 1998, and during the last financial year (02/03) met with CALD workers 221 times.

SIN (South Australian Sex Industry Network) secured funding and employed a CALD worker from May 2002, and met with CALD sex workers 892 times (200 new contacts) within the first 9 months, an increase in access to the project for CALD sex workers by almost 300%.

SQWISI in Queensland has employed a CALD project worker since 1994, and averages 600 contacts with CALD workers per annum.

There are distinct differences between states with few numbers of debt-contract workers (workers who have arranged to work in order to pay off costs of visa, travel and accommodation, eventually becoming autonomous) such as WA, SA, NT, and Queensland, and states with higher numbers of contract workers, such as Melbourne and Sydney.

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

Scarlet Alliance believes responses based on increased enforcement powers, further criminalisation and surveillance of the sex industry, and increased resources to police and immigration departments will not work effectively on this issue. One such response was announced on 8 September, 2003¹³ in which enforcement agencies in Australia would receive increased resources in order to work with enforcement agencies in SE Asia, increase intelligence skills and collecting methods in the country of origin. Whilst we do not deny that AFP and DIMIA are key stakeholders in addressing the detection of agents who traffic people, we believe they are not the organisations most skilled or prepared to work with individuals who have been 'deceptively recruited', or who agreed to a contract in

¹³ ABC report 8 September, 2003.

order to gain entry to Australia or who are working in the sex industry in Australia whilst on tourist or student visa's.

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

If Australia is to establish successful methods of preventing the exploitation of those persons who are 'deceptively recruited' it is essential that a partnership approach, similar to that which has proven so successful for working with marginalized communities and particularly the sex industry in response to HIV/AIDS, must be adopted. (Outlined in recommendations) Scarlet Alliance has attempted to work, without dedicated resources, toward developing strong partnerships to address the exploitation and human rights inequities which currently surround the issue. We have developed strong links with individual grassroots sex worker organisations, such as Empower in Thailand, Zi Teng in Hong Kong and the peak body throughout the Asia Pacific region APNSW (Asia Pacific Network or Sex Workers), as well as working with a diverse range of other organisations on the issue. We have at many points attempted to provide insight and information to both Police and DIMIA and have invited them to speak to Outreach workers on several occasions.

Evidence of Scarlet Alliances partnership approach:

- Working with members from Empower as part of a research project conducted in NSW (SWOP) looking into the level of trafficking and issues effecting debt-bonded sex workers.
- Scarlet Alliance AGM and National Forum held in Kuala Lumpur, 1999 to provide the opportunity to network with local Malaysian sex workers and sex worker organisations as well as those same groups from many other SE Asian countries who were attending the International Conference on AIDS in Asia and the Pacific (ICAAP) conference 1999. This also enabled our delegates from each state and territory of Australia to attend the ICAAP conference to promote skill development.
- Attending and presenting information at ICAAP,2001, Melbourne, as well as providing support to visiting sex workers and endorsing Australian sex workers attendance at the conference.
- Melbourne, 2001 Scarlet Alliance National Forum included members from Empower and GAATW and a spokesperson from European Network to inform Scarlet Alliance members about the migration of sex workers in other countries.
- Initiating and funding a CALD skillshare conference (2002)¹⁴ to foster links between CALD project workers around Australia. CALD project workers from each state were funded to attend the forum. Speakers included DIMIA, Sydney Sexual Health Centre Multicultural Project, and Livingston Road Clinic. A strong theme emerged for the need for state, national, and international approaches to be developed on the issue of 'trafficking'. The conference fostered stronger networks between state sex worker

¹⁴ See Appendix 2

organisations, enabling us to examine some of the commonalities and differences between the issues at local levels, ultimately enhancing service provision and informed support networks.

- Development of policy documents, resources and information in several languages aimed at sex workers, organisations, media and policy makers from as early as 1994 through to a current position paper to be released in November 2003.
- Scarlet Alliance membership to AFAO informs this national HIV/AIDS body on this issue for their extensive work in international forums.

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

We strongly believe that until a partnership approach is developed and each party is involved in a shared level of understanding of this complex issue, and until focus is placed on a shared approach incorporating peer sex worker organisations and not reliant on criminal enforcement agencies alone, Australia's response will remain inconsistent and ineffective.

DIMIA and the AFP are working in isolation on this issue, whilst Australian sex worker organisations and projects have contact with thousands of CALD sex workers each year. This outreach contact is guided by existing Australian and International policies on health, and related frameworks and treaties. Scarlet Alliance members have built up a strong relationship of trust and understanding with CALD sex workers, as service providers and peers. CALD workers come to Australia to enter the labour market. Sex work is a financially appealing and accessible industry for CALD workers. In response to the specific needs of CALD workers, there are currently five CALD projects run by Scarlet Alliance members, encompassing thousands of individual contacts with CALD sex workers each year. The ACC has failed to build relationships with Scarlet Alliance. Scarlet Alliance believes the lack of co-ordinated knowledge of the issue has led to a disjointed, misinformed and problematic response by the ACC. A partnership approach is vital to an improving understanding. Scarlet Alliance has had much experience in facilitating a partnership approach, and should be key consultants to the ACC in this area.

3. The adequacy of the current legislative framework

Scarlet Alliance asserts that the current Australian legislative framework does not effectively protect persons:

- 'deceptively recruited'
- 'trafficked' for the purpose of 'sexual servitude' or
- migrant sex workers.

The legislation does not effectively detect those who organise the work or migration. The current framework does not provide incentives to those who hold information to come forward, nor does it promote the detection and prosecution of organised crime involvement.

Those "deceptively recruited" or "trafficked" who report voluntarily experience:

- No "victim care" or debriefing
- No access to legal advice or support services (such as Scarlet Alliance CALD workers, sexual assault counsellors)
- No "cooling off" period to reflect on the risks of giving evidence
- No protection whilst giving evidence, as evidence is often deemed of "low quality" (unable to provide exact dates, locations, real names)
- Visa cancellation and deportation within 48 hours or
- imprisonment in detention centres or other protected locations
- immediate repatriation to country of origin following giving information or court appearances, despite evidence of personal safety risks

Those victims of trafficking or sexual servitude who are detected experience:

- imprisonment in detention centres or other protected locations
- extended interviews to ascertain information on the agents methods and identity
- offer of criminal justice visas to give evidence
- immediate repatriation to country of origin following court appearances
- No follow-up protection in country of origin
- No debriefing, care and support services

Migratory sex workers (non-contract) detained by DIMIA/AFP experience

- Discriminatory treatment and extensive questioning
- Visa cancellation
- rapid deportation (48 hours)
- no or little access to services
- no or little opportunity to collect personal possessions, wages, savings

Scarlet Alliance is particularly concerned at the plight of illegal sex workers who come and work in Australia. The current legislation does nothing to deter these workers coming to Australia. Instead, the legislation results in workers being forced to endure poor working conditions as they agree to a contract in order to get into Australia and have a place of employment and visa papers organised for them. As it becomes more difficult to contract women to work in the Australian sex industry, the workers are subject to increased debt. In 1990, the estimated cost of contracts ranged between \$15,000 to \$20,000¹⁵, in 1996 contract fees had risen to \$35,000

¹⁵ Brockett, L. & Murray, A., 1994. 'Thai sex workers in Sydney' pg. 192 in Perkins R. et. al.: Sex work and Sex Workers in Australia. UNSW Press, Sydney, 1994.

and \$40,000¹⁶. The higher contract fees have put workers under strong pressure to make money as quickly as possible before the Department of Immigration deports them, resulting in workers being encouraged or forced to take *any* client, with *any* service request and take increased health risks when working.

Since the definitions of “sexual servitude” and “sexual services” explicitly apply to commercial sexual services we believe the current legislation is discriminatory without benefit. The current laws act in opposition to their purpose. Instead of protecting workers in the sex industry, the laws have produced an underground and criminalised sector of the sex work community. This has increased the likelihood that those ‘in charge’ of such environments will be able to exploit women. The laws also prevent those women from coming forward to report crime, for fear of deportation.

In essence our legislative response is punitive and dangerous. The current laws have not resulted in the successful targeting of organised crime or investigation of the existence of persons trafficked for the purpose of ‘sexual servitude’. Rather the laws single out one industry and target that one industry for the incidence of illegal migrant workers.

Furthermore, the current legislative response is an ineffective use of resources for little gain. The cost of enforcement is high and resource intensive. It currently involves state and federal police, Department of Immigration staff, court appearances, lawyers’ fees, embassies, detention and deportation centres and personnel, and is based on a punitive response.

Although we welcome the opportunity to provide information to this inquiry, it is our concern and the concern of our members that the inquiry may result in further punitive approaches and simply provide ammunition for increased police and immigration powers, and provide increased access to sex industry premises by criminal enforcement agencies. It is our experience that these responses have the potential to further marginalise this sector and increase the level of exploitation.

As we have stated it is our experience that the majority of women who are ‘trafficked’ do so understanding they will work in the sex industry in Australia. However, we have also had contact with a number of women who have been ‘deceptively recruited’ and who were not aware that their ‘contract’ would mean working in the sex industry on their arrival in Australia.

Scarlet Alliance are aware of the implementation of ‘rescue’ model programs that are employing people with no knowledge of the sex industry. This is occurring in South-East Asian countries, and we are particularly familiar with the experience of this model in Thailand (see Appendix #1). As we have reiterated throughout this submission, the main problem of mainstream approaches to this issue is the inability for policy enforcers to differentiate between actively recruited and deceptively recruited sex workers. The ‘rescue’ model attempts to remove workers who have chosen to work in the sex industry from their workplaces. The ‘rescuers’ are unable to ever fully understand the complexity of the issue, seeking instead to remove all migrant sex workers from their workplaces.

¹⁶ Purser, P. 1996. ‘Empowerment for International Sex Workers’ pg. 22, National AIDS Bulletin 10:5.

In brief we believe the current legislation is unworkable as it:

Has principally resulted in the criminalisation of individual women who have agreed to a contract/bond in order that they may gain access to working in the Australian sex industry in order to improve their financial situation.

Treats persons who are trafficked as little more than criminals.

Does not target those who organise the trafficking of persons into Australia but rather enables greater scrutiny of the sex industry to detect illegal immigrants.

Does not take into account the current working practices of the Australian sex industry. (Calculation of 20 hour 'work time' by those on student visas).

Does not provide incentive for those affected or those with information to come forward.

Does not identify the migration of sex workers to Australia and therefore does not differentiate.

Does not protect persons who are 'deceptively recruited'.

Does not support mechanisms which might enable persons who are involved in working under contract to access health services, or offer safe sex services.

Provides an excuse for the singling out of the sex industry for an unprecedented level of raids. If singling out the sex industry for immigration raids is a Government policy then it should be pursued in different legislation, not under the guise of attempting to address the trafficking of persons for the purpose of 'sexual servitude'.

Is discriminatory against the women who work in the industry.

"I have been to Australia, Germany, Japan, Austria and Belgium and back to Australia. The first time was dreadful. I had to see dozens of men each day, no condoms. I don't want to talk about it. But since then I have found a much better (broker). I will come back again. I hope I am not arrested next time until I have made plenty of money. I had only just started making money this time.... I pretend to the police that I was not a prostitute in Thailand and that I want to go back. That way I will get voluntary departure rather than being deported" (Thai sex worker awaiting deportation).¹⁷

¹⁷ Making Sex Work Safe. Network of Sex Work Projects, pg 26.

Preface

The most important support that the Australian Government could provide for these workers is to ratify the UN *International Convention on the Rights of All Migrant Workers and their Families* (the ‘Migrant Workers Convention’). The Convention attempts to balance the right of all States to control immigration, with the urgent need to further human rights in this area. As Bosniak has noted:

The International Convention seeks to accommodate these competing concerns by providing human rights protections to undocumented migrants which are substantial but less extensive to those provided to documented migrants, and through ensuring states’ continuing authority in spheres of immigration control and national “membership policy”.¹⁸

The “Migrant Workers Convention” states:

- (1) Migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the State of employment in respect of remuneration and:
 - (a) Other conditions of work, that is to say, overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of employment relationship and any other conditions of work, which, according to national law and practice are covered by this term.

Article 25(3) provides that

State Parties shall take all appropriate measures to ensure that migrant workers are not deprived of any rights derived from this principle by reason of any irregularity in their stay or employment. In particular, employers shall not be relieved of any legal or contractual obligations, nor shall their obligations be limited in any manner by reason of any such irregularity.

The Convention would also require State Parties to provide deportees with a reasonable opportunity to settle any claim for wages or other entitlements.¹⁹

In the Vienna Declaration, states are urged to consider ratifying, at the earliest possible time, the Migrant Workers Convention²⁰. Accordingly, the Convention is listed in the National Action Plan as a human rights instrument that Australia should consider ratifying²¹. Interdepartmental consideration of the Convention’s provisions is presently underway.

Under the *Migration Reform Act 1992* (Cth), the Australian Government has arrangements with UK and Canadian governments such that women from these countries can get short term working visas. A similar system could be set up with countries in the Asia-Pacific region. Women holding such visas would be able to

¹⁸ L. Bosniak, Human Rights, State Sovereignty and the Protection of Undocumented Workers Under the International Migrant Workers Convention. *International Migration Review*, 737, 737.

¹⁹ Art 22(6)

²⁰ Vienna Declaration and Programme of Action, World Conference on Human Rights, 1994, recommendation 33.

²¹ National Action Plan. AGPS, 1994.

work legally as sex workers in those jurisdictions where sex work is legalised or decriminalised. In those jurisdictions that have a system of legalised brothels this could be taken further and employers could sponsor workers to work in the industry. A code of practice could be developed for brothel operators to comply with. Under this scenario the women would only be required to repay their employers the *true* cost of their travel arrangements.

It is likely that the introduction of working visas or sponsorship for sex workers would be widely criticised as supporting the sexual exploitation of women, and particularly the sexual exploitation of women from poor countries due to the plethora of misinformation on the subject which exists and needs to be countered. Against this, it could be argued that Australia does not have an obligation to end the practice of prostitution *per se*, but rather the exploitation of the prostitution of women²². Given the existing policies that are based on targeting agents, and that do not consider the ramifications for these workers, it is arguable that the obligation to end the exploitation of these women working in prostitution is better achieved by a more pragmatic policy, such as one that seeks to address their health and safety needs.

The available evidence suggests that overseas workers in the Australian sex industry are in a particularly vulnerable and dangerous position with respect to infection with STIs (sexually transmitted infections) and HIV, and that they are a public health risk²³. Given that the Federal government is committed to minimising the spread of these diseases, the suggestion is that undocumented migrants in the sex industry be given employment rights as this is likely to increase their use of health care and sex education programs and increase their bargaining power with clients and employers.

The granting of employment rights for these workers is one strategy for reducing the risk of the spread of HIV/AIDS or STIs among these workers and among the general community. However, it should be noted that this option would have other positive effects. By removing the criminality attached to these individuals and their work, it would effectively remove the current need for them to be 'underground'. This would result in these highly marginalised workers having increased access to information, support, health services, protection from exploitation and access to victim of crime support services, and the opportunity to provide valuable information and intelligence to Police both State and Federal and DIMIA.

It is clear that a punitive approach which targets the agents who facilitate passage into Australia of Asian sex workers will achieve little without consideration of the complexity of issues involved. The Australian Government must consider the rights of undocumented migrant sex workers as central to any public policy response and the simplistic notion of adding new laws to the repertoire of laws which already exist is not a solution. At the very least standard minimum policies and procedures should be put in place for the treatment of undocumented migrant sex workers.

Sex servitude offences appear to single out sex work as an occupation where women are sexually exploited. Scarlet Alliance contends that in the context of sex work it is the labour of some sex workers which is exploited, and that this confuses 'sexual norms' with 'work norms'.

²² Art 6, Convention on the Elimination of Discrimination Against Women (CEDAW).

²³ Briefing Paper on Movement of South East Asian Women for Prostitution in Australia, AFP, pg. 4.

Recommendations

1. Acknowledge that the current punitive approach has been unsuccessful.
2. A partnership approach should be developed. All parties should be involved in the shared development of an understanding of the many aspects of this complex issue and a 'whole of government approach', in partnership with: peer sex work organisations; AFP and state police; DIMIA; health (including sexual health) and counselling support services; sexual assault referral centers and migration services. This partnership should be adopted for the purposes of implementing strategies aimed at:
 - Developing alternative structures which would enable persons to work legally in Australia for short periods of time effectively removing 'Agents' or 'traffickers' from the picture. This would make women who are trafficked for the purpose of 'sex slavery' more easily detectable.
 - Identifying the issues surrounding the migration of sex workers into Australia.
 - Improving access to protection and care for those 'deceptively recruited' and referral of such persons to services other than law enforcement agencies.
 - Informing a review of current legislation and any proposals to alter or introduce further legislation concerning this issue.
 - Providing resources and support to enable the building of effective partnerships for adequate advocacy, education and referral services between Australian sex worker organisations and sex worker organisations in countries of origin. Such a partnership would recognise that those who are most skilled and knowledgeable (ie. peer educators) are most likely to be in contact with sex worker communities, and will formulate and provide services for best and most lasting results.
 - Removal of barriers (eg punitive laws) to HIV/AIDS health organisations providing education and information on industry standards of condom use, and providing of safe sex equipment to all sex industry places of work.
 - Providing greater support and contact with sex industry premises by bi-lingual peer educators in order to provide information to all workers on the laws, Australian standards of condom use and support services.
 - Preventing the introduction of legislation that will drive migrant workers to the most marginal fringes of the sex industry making them difficult to access and isolated from access to support services.
 - Providing resources and information to better inform the public and community.

Unless this partnership incorporates peer sex worker organisations and other agencies, rather than remaining reliant on criminal enforcement agencies alone, Australia's response will remain inconsistent and ineffective.
3. The Commonwealth should recognise that restrictive immigration policies contribute to the potential exploitation of international sex workers. Therefore we recommend that the Commonwealth review visa granting mechanisms (the so-called "black lists" used for risk assessment), and laws with the aim of allowing migrant workers to work in the sex industry legitimately for short periods of time.

4. Legislation and enforcement strategies must be changed to be consistent with the work environments/practices of the Australian Sex Industry. In particular, in the case of student visa holders working in Australia – the 20 hour per week limit should be assessed by the total time spent with clients, not by time rostered on as available to work. Sex Workers in Australia are only paid when they are in a booking with a client, not when in the building but not working. Retainers are not paid. Sex workers are not required to perform other duties between jobs. This is one of the attractions for students, as they are free to use their time between clients to study.
5. Working visas or Employer Sponsored Migration programs for sex workers allowing persons from other countries to work in the legal sectors of the Australian Sex Industry for short periods of time should be considered, in order to pull the carpet from under the trafficking nexus. This would impact on the current environment that *enables* the exploitation of those who can not gain legal entry for employment in the sex industry.
6. Scarlet Alliance recommends that the Commonwealth encourage and support state and territory governments to decriminalise all forms of sex work, thereby improving working conditions for all sex workers including migrant sex workers, and preventing the creation of a two tiered industry (an illegal industry operating alongside the legal industry) which is the current outcome from some sex industry legislative frameworks within some states and territories (Victoria and Queensland) It is poor legislation with creates an environment whereby this activity may be disguised as simply another illegal brothel.
7. The Commonwealth Government should recognise sex work as a legitimate occupation and investigate the possibility of amending Federal discrimination laws to make it unlawful to discriminate on the grounds of “profession, occupation, trade or calling”²⁴.
8. Current policing and interpretations of regulations regarding students working in the sex industry do not take into account current work practices in the Australian sex industry resulting in persons being unsure of their rights and being detained and deported unfairly.
9. The Government should not single out “sex servitude” offences committed in the sex industry, in doing so the Government discriminates against the sex industry.

10. Labour legislation

The Commonwealth Government should review Australian labour laws (Cth, state and territory) to ensure compliance with ILO Conventions, including:

ILO Convention No. 122: Employment Policy Convention, particularly Article 1 (1) & Article 1 (2) and allow freedom of choice to work in the sex industry.

ILO Convention No. 111: Discrimination (Employment and Occupation) Convention, Article 1(1) and Article 1 (3) and allow

²⁴ For example see the *Discrimination Act 1991* (ACT).

equality of opportunity for those who want to work in the sex industry to do so.

ILO Convention No. 29: Forced Labour, which provides that each ratifying member shall undertake to suppress the use of forced or compulsory labour in all its forms within the shortest possible period with a view to complete suppression.

11. The Federal Government should consider ratifying the Migrant Convention as a matter of urgency.
12. The Commonwealth should investigate the use of existing legislation both Federal and State to prosecute agents for offences such as forgery²⁵ and uttering²⁶, conspiracy²⁷, passport offences, offences against liberty including kidnapping²⁸, unlawful confinement and deprivation of liberty²⁹, offences against the person including obtaining financial advantage by deception³⁰, threats to inflict serious injury³¹, abduction³², extortion³³, money laundering, procuring and migration offences.
13. The focus of legislation must be the health and safety of the women rather than the need to detect traffickers. It is imperative that the Commonwealth recognise as it has done within the National HIV Strategy that marginalised communities, like those who are entering the sex industry via these means, are at heightened risk of HIV/AIDS and STI's. Current programs must be resourced to provide peer education and safe sex equipment to all who participate in provision of sexual services.
14. Education by peer educators in the country of origin as well as Australia would ensure those in the industry are aware of the reality of working in Australia, be given information on workplace rights, such as OH&S regulations, and know how to make contact with services and support networks.
15. The Commonwealth should repeal the Sexual Servitude legislation as it has proven ineffective in dealing with trafficking into the sex industry, in particular as it depends heavily upon the sex worker as witnesses to any case, thus placing individual victims and their families at further risk of violence.
16. It is important that the Commonwealth, in investigating ways to successfully deal with this issue, consider the impact of current sex industry legislation in

²⁵ *Crimes Act 1914 (Cth) s.63, Criminal Code 1913 (WA) s473, Criminal Code 1899 (Qld) s484, Crimes Act 1958 (Vic) s83A, Crimes Act 1900 (NSW) s250-299.*

²⁶ For example *Crimes Act 1914 (Cth) s64, Criminal Code 1913 (WA) s473.*

²⁷ For example *Crimes Act 1958 (Vic) s321, Criminal Code 1913 (WA) s558, Criminal Law Consolidation Act 1935 (SA) s267, Criminal Code 1899 (Qld) s541, Crimes Act 1914 (Cth) s86.*

²⁸ For example *Criminal Code 1913 (WA) s332, Criminal Code 1899 (Qld) s354, Crimes Act 1958 (Vic) s63A.*

²⁹ For example *Criminal Code 1913 (WA) s333, Criminal Code 1899 (Qld) s355.*

³⁰ For example *Crimes Act 1958 (Vic) s82.*

³¹ For example *Criminal Code 1899 (Qld) s359, Criminal Code 1913 (WA) s338B, Crimes Act 1958 (Vic) s21-22.*

³² For example *Criminal Code 1899 (Qld) s351, Crimes Act 1958 (Vic) s55, Crimes Act 1900 (NSW) s86-91.*

³³ For example *Criminal Code 1899 (Qld) s416, Crimes Act 1900 (NSW) s99, Crimes Act 1958 (Vic) s94.*

some states of Australia. Poor sex industry regulation creates an environment ideal for reducing access to individuals who may have been trafficked.

17. Scarlet Alliance is aware, and has been witness to the outcomes of 'rescue' models being used in relation to contract sex workers in Australia and other countries. We recommend avoiding implementation of the simplistic and problematic 'rescue' model on a Government policy level. Attempting to 'rescue' individual workers from their choice of employment does not address the long term issues surrounding illegally assisted migration.
18. Accurate research in this area should be supported, particularly research conducted by sex worker organisations in both countries of destination and origin. The motivations for contract work in particular needs attention, in order to better inform education programs for sex workers, owners and operators.



Appendix 1

A report on the human rights violations women are subjected to when "rescued" by anti-trafficking groups who employ methods using deception, force and coercion

Empower, Chiang Mai

** "Anti-trafficking measures shall not adversely affect the human rights and dignity of persons in particular the rights of those who have been trafficked and of migrants, internally displaced persons refugees and asylum seekers."

- The Primacy of Human Rights; Number 3: Recommended principles and guidelines on human rights and human trafficking report of the UN high commissioner for human rights to the economic and social council recommended principles on human rights and human trafficking. **

Empower Foundation is a Thai organization [started] in 1985. Empower promotes opportunities for women workers in the entertainment industry.

Empower strives to promote these opportunities and rights to all women workers regardless of their country of origin.

Far from being a "bold new method" as being proclaimed, Empower Chiang Mai has been dealing with the issue of "raids and rescues" of women working in brothels for the past 11 years. Empower abhors the trafficking of any persons; forced labor including forced sex work; and the sexual abuse of children, whether for commercial exploitation or not.

Over the past three years there has been an increased international and national focus on the situation of women who have been trafficked.

However, the focus on trafficking in persons has meant many groups with little or no experience on the issues of migration, labor, sex work or women's rights have been created to take advantage of the large sums of money available to support anti-trafficking activities. Their inexperience and lack of contact with the sex worker community has meant they are unable or unwilling to differentiate between women who have been trafficked and migrant workers. They also show a great deal of trouble differentiating between women and girls, often applying identical standards and solutions for both. It is obviously inappropriate to treat a girl as an adult and just as obviously inappropriate to treat an adult as a child.

Empower has monitored the methods and results of these group's activities and we are very alarmed at the increasing violations and inhumane treatment women are subjected to by unworkable and unethical methods.

Empower has used the most recent experience of "rescue" to further highlight our concerns.

Rescue by Trafcord with the support of the International Justice Mission, Chiang Mai, Thailand, 2nd May 2003

Prior to the 2nd of May women from a brothel called Baan Rom Yen had been studying Thai daily with Empower, joining our outside activities e.g.

attending a workshop on migrant's rights, going to swimming lessons, going to a local water fall. Women also had access to the public health weekly and were provided with safe sex equipment and skills by Empower. None of these women had talked about being trafficked and

when they discussed their work, plans and dreams none showed any need or wish for outside rescue.

On the 1st of May three of the women collected their savings from the owner and contacted a van in order to take them home to Burma on Friday 2nd of May. One of these three went with a customer on the 1st of May and didn't come back. Her friends and employer were worried for her. The other women postponed their trip home in order to wait for her.

At 11pm May 2nd women heard people yelling "police". Those that could get away did and the others were "caught". Everyone, including the brothel owner saw the missing woman in the police car, saw her name on the arrest warrant and assumed that she had gone to the police.

** "Ensuring that trafficked persons are effectively protected from harm, threats or intimidation by traffickers and associated persons, To this end there should be no public exposure of the identity of trafficking victims and their privacy should be protected and respected."

- Guideline Six (6): Recommended principles and guidelines on human rights and human trafficking report of the UN high commissioner for human rights to the economic and social council recommended principles on human rights and human trafficking. **

Journalists and photographers also accompanied the police and "rescue team". Photos of the women were taken without their consent and appeared in the local papers and TV the next day.

** "States should protect the privacy of identity of victims of trafficking in persons, inter alia, by making proceedings confidential."

- Article 6, Trafficking Protocol 2000 **

Women who were "rescued" understood they had been arrested. They had their belongings taken from them.

** "No one shall be arbitrarily deprived of her property"

- UHRD Article 17(2) **

They were separated from each other. They were unable to contact friends, family or Empower.

** "No one shall be subjected to arbitrarily interference her privacy, family home or correspondence."

- UHRD Article 12 **

In all 28 women were "rescued". Some of the women were not employees of that brothel but were simply visiting friends when they were "rescued".

Women were transported by Trafcord and the police against their will to a Public Welfare Boys Home. Nineteen women were locked inside and have remained there for the past 31 days. We have no information on the whereabouts or situation of the other ten women.

**"Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of her liberty except in such grounds and in accordance with such procedures as established by law"

- Article 9 (1) International Covenant on Civil and Political Rights

"Women suspected of being trafficked must not be detained for longer than 10 days."

- Article 10 MOU: Measures of Prevention and Suppression of the Trafficking in Woman and Children Act 1997 (Thailand) **

As soon as they had their mobile phones returned women contacted Empower.

They are only permitted to use their phones for a short time each evening and must hide in the bathroom to take calls outside that time. They report that they have been subjected to continual interrogation and coercion by Traficord. Women understand that if they continue to maintain that they want to remain in Thailand and return to work that they will be held in the Public Welfare Boys Home or similar institution until they recant. Similarly they understand that refusing to be witnesses against their "traffickers" will further delay their release.

** "Migrant workers and their families shall have the right security and liberty of person .They shall be entitled to effective protection by the state against violence, physical injury threats and intimidation whether by public officials private individuals groups or institutions."

- Article 16 International Convention on the Protection of All Migrant Workers and Members of their families.

"States shall ensure that trafficked persons are protected from further exploitation and harm and have access to adequate physical and psychological. Such protection and care shall not be made conditional on the capacity or willingness of people to cooperate in legal proceedings."

- Protection and Assistance Principle 8: Recommended principles and guidelines on human rights and human trafficking report of the UN high commissioner for human rights to the economic and social council recommended principles on human rights and human trafficking. **

Five days after the 'rescue" four women who had escaped the rescue team came to Empower Chiang Mai. They were still shaken and very worried about their friends and their own safety. They were shocked to hear that the raid had not been about arresting women but rather in order to 'rescue" those women who were victims of trafficking. Each of the women were emphatic that all the workers were well informed before coming, had made satisfactory salary arrangements with the employer, had the freedom to leave and all were 19 years and over. One woman who has a 50,000 baht advance from the owner had traveled home twice in the past two months to visit family etc. Although she had borrowed the money as an advance against her wages she felt no fear or threat. She and the others were all supported by the management to refuse customers, attend to health care, access safe working equipment, education and training. They were receiving an average of 600 Baht a day (the minimum wage in Chiang Mai Thailand is 133 Baht a day) They now find themselves unable to work.

** "States will ensure the rights of women to protection and working conditions as well as the right to choose a profession"

- Article 11 c & f Convention on the Elimination on All Forms of Discrimination against women.

"Everyone has the right to work to free choice of employment to just and favorable conditions of work and protection against unemployment

" - Article 23 (1) UDHR **

They had fled the brothel leaving their possessions and savings behind. The brothel was now locked and they were unable to regain their goods.

** "No one shall be arbitrarily deprived of her property"
- UHRD Article 17(2) **

These women have nowhere to stay, no money and therefore are unable to access basic needs including medical care and education.

** "Everyone has the right to a standard of living adequate for the health and well being of herself and her family including food, clothing housing and medical care and necessary social services and the right to secure in the event of unemployment, sickness disability widowhood old age or other lack of livelihood in circumstance beyond her control."
- Article 25 (1) UDHR **

Many of the women come from Shan State in Burma. In an area where systematic rape, forced labor, food shortages and a multitude of other human rights abuses have been well documented. (One of the most telling and relevant reports "License to Rape" released just last year) There is no real process whereby people fleeing the situation can claim refugee status in Thailand. After "rescue" their situation will be made known to Burmese authorities, local village officials and family members. Under these circumstances a safe and beneficial return home is impossible.

** "Repatriation of victims of trafficking: When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or had the right to permanent residence, such return shall be with due regard for the safety of that person and shall preferably be voluntary."
- Article 8 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing The United Nations Convention Against Transnational Organized Crime UN 2000. **

On May 16th we found we were no longer able to contact the women by phone.

On May 26th we called the Public Welfare staff where nineteen women were being held. The majority of women have been transferred to a rehabilitation center in central Thailand and the other seven will be sent to the same institution for an indefinite period. They are homesick, worried and furious and in the meantime their families are left without financial support. All the women being held plan to return to work as soon as possible after their inevitable deportation. This will of course result in them paying yet another transport fee and facing more risks, including the risk of being "rescued" again.

Traffickers and many anti-trafficking groups employ very similar methods to achieve their goals. Both groups deceive women, transport them against their will, detain them, and put them in dangerous situations.

Appendix One Continued

Recommendations

On the 12th of May Empower held a meeting on trafficking and anti-trafficking responses with 64 female entertainment workers from 3 major centers in Thailand. The large majority of the group was women from Burma, some of who had at some time been "victims of trafficking" and all of who had at one stage or other enlisted help to migrate for work in Thailand.

They were unanimous in their recommendations that:

1. No person should be trafficked, or forced to work in work they have not chosen to do and that no child under the age of 18 years should be abused sexually either commercially or domestically.
2. Methods to combat trafficking must be revised and solutions found that do not violate the rights of workers but support true victims of trafficking.
3. The rights of adult trafficked victims as workers must be acknowledged.
We should receive recognition of our work and compensation, so we are not financially worse off after our "rescue".
4. All women affected by trafficking or anti-trafficking measures must receive adequate compensation and if we are victims of trafficking we be given full support to seek asylum and/or residency with the right to work included.
5. The primary goal of prosecuting traffickers must be altered to a primary goal of assisting trafficked women and children. We propose that if trafficked women and children (whether trafficked or not) are continually rescued and assisted, the use of trafficked women and children will become unprofitable and entertainment places will only wish to employ those women who are over 18 years, informed and willing to work.
6. Understand that all women, who are unable to access travel documents and need or wish to migrate, must secure the assistance of an agent or broker. If our situation as refugees from Burma is not recognised we must secure work for the survival of our families and ourselves. While we are willing to work our illegal status leaves us with no recourse against exploitation by agents or employers regardless of the work we do.
Anti-trafficking groups must work toward improving the human rights situation in Burma, securing the ability for women to travel independently, and fully supporting the recognition of our refugee status.
7. Currently women who work in entertainment places have their own methods of assisting trafficked women, those being forced to work, and those under 18 years. Anti-trafficking dialogue and groups have yet to consider us as anti- trafficking workers and human rights defenders even though the numbers of women and children we assist far out way the handful women and children serviced by the recognised anti-trafficking groups. Instead we are ourselves caught up in the "rescues and repatriation". The latest stance from the USA government calling us "inappropriate partners" is just the latest example among many of the way we are ignored and our expertise sidelined.

Empower appeals to anti-trafficking campaigners, funding bodies and policy makers to urgently and very carefully consider these recommendations and ensure that they protect the rights of the women they propose to assist.

Appendix 2

SCARLET ALLIANCE NESB/CALD SKILLS SHARE

Saturday 29th & Sunday 30th June 2002
at AFAO conference space
74 Wentworth Ave (Level 4)
Darlinghurst Sydney

Saturday 29th June (Please arrive at 9.30)

- 10.00 - 11.00 Sex Workers in Globalisation and Trafficking Discourse
Julie Futol
Rhed (VIC)
Morning Tea
- 11.00 -12.00 Specific Issues for Chinese Workers (NSW)
Tara Hunter , Clinic 16 with Ding Xing Ding, Livingstone Road Clinic
- 2.30 -1.30 LUNCH
- 1.30 - 2.30 Immigration issues for migrant workers
Dave Armstrong
Department of Immigration - DIMA
- 2.30 - 3.00 SWOP/EMPOWER/GAATW research findings on Thai migrant workers in Sydney
SWOP (NSW)
Afternoon Tea
- 3.00 - 4.00 Current issues effecting migrant workers : A sexual health workers perspective
(NSW)
Marlin and Sennetra
Sydney Sexual Health Centre Multicultural Project
- 4.00 - 5.00 Sex Work in the Asia Pacific Region
Alison Murray (NSW)

Sunday 30th June

- 10.00-11.00 State by State report-
Issues effecting NESB/CALD sex workers in States or Territories
Morning Tea
- 11.00 - 1.30 WORKSHOP : Identifying barriers and ideas for change.
Each State and Territory to identify one issue in regards to NESB/CALD sex workers
in their area. Present issue to group as a case scenario.
(see also the SIREN kit handout "What can we do?- sex worker
organisations")
- 1.30 - 2.30 LUNCH
- 2.30 - 4.30 Resources for NESB Sex Workers
Strategies for sharing, developing, funding etc...
- 4.30 -5.00 Afternoon Tea
Close