Submission to the Home Affairs Select Committee Prostitution Inquiry

Please accept this submission to inform the Select Committee’s deliberations in relation to sex work and the sex industry in the UK. Scarlet Alliance is concerned that the terms of reference of this inquiry which will “assess whether the balance in the burden of criminality should shift to those who pay for sex rather than those who sell it” misses an important consideration. The criminalisation of sex workers, our workplaces, or our clients has, wherever introduced, resulted in negative impacts for sex workers. Our organisation has contributed to hundreds of government inquiries and we are seriously concerned that the terms of reference of this inquiry demonstrates a failure of the committee to understand sex work as work and the current concerns impacting on sex workers in the UK. The terms of reference do not focus on outcomes that will improve the health, safety, and rights of sex workers in the UK.

We ask that you consider the evidence that we provide from the experience of New South Wales in Australia, and New Zealand, where models of decriminalisation have delivered positive health, human rights, and safety outcomes for sex workers.

Our organisation

Scarlet Alliance, 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. Scarlet Alliance and our member organisations and projects have the highest level of contact with sex workers in Australia of any agency, government or non-government. Through our project work and the work of our membership we have high levels of access to sex industry workplaces in the major cities and many regional areas of Australia. Scarlet Alliance has a migrant sex worker project and many of our member sex worker organisations and projects within Australia have CALD (culturally and linguistically diverse) projects employing bi-lingual project staff. It is these experiences and the high level of contact and support provided by our membership to sex workers, including CALD communities within the sex industry, which informs our submission.

Decriminalisation in Australia

Each state and territory of Australia has taken a different approach to regulation of the sex industry. Some states have licensing or registration schemes and some are still partially criminalised; New South Wales has decriminalised the sex industry. Scarlet Alliance and our membership have reviewed, documented, and analysed the impact of different models of regulation in Australia and other parts of the world since the late eighties. This has included analysis of available research, government and non-government reports, consultation with our membership and consideration of the lived experiences of sex workers working within different models of regulation. Scarlet Alliance is therefore well placed to understand and advise on many aspects of sex industry regulation. The Scarlet Alliance resource Principles for Model Sex Work Legislation collates current evidence on these issues and can be accessed at [http://www.scarletalliance.org.au/library/principles_2014](http://www.scarletalliance.org.au/library/principles_2014) and we ask that you refer to this document as part of our submission.
In NSW, a decriminalisation model similar to that of New Zealand has delivered exceptional public health outcomes, minimal opportunities for police corruption, increased transparency, improved safety for sex workers, and far higher levels of compliance than any other model of regulation, including licensing. Rather than no regulation, decriminalisation is a whole-of-government system of regulation, whereby a number of government authorities and agencies play a role in contributing to the effective regulation of different components of businesses, making for a highly transparent sex industry. The regulation of sex industry businesses occurs in the same manner as regulation of many other businesses. Councils are responsible for regulation of zoning, planning and location controls, and environmental health in regard to sex industry businesses.

The outcomes that have been produced under decriminalisation in NSW are significant and cannot be assured under any alternative model. They include:

a. Exceptionally good public health outcomes and low rates of STIs and HIV (recognised by Australia’s National Strategies and the Kirby Institute Annual Surveillance Report);\(^1\)
b. Better access to health promotion (finding of the Law and Sex Worker Health Study, which compared the health impacts of legal frameworks across Victoria, NSW and WA);\(^2\)
c. Little to no amenity impacts (recognised by Crofts and Prior);\(^3\)
d. No evidence of organised crime (recognised by the Land and Environment Court);\(^4\)
e. Better access to Occupational Health and Safety (WorkCover and NSW Health worked with sex workers to create the Health and Safety Guidelines for Brothels, which has been translated to Thai, Chinese and Korean);\(^5\) and
f. No increase in the size of the sex industry (Kirby Institute report to Ministry of Health).\(^6\)

**Criminalisation**

Criminalisation of sex workers, our clients, or our workplaces, has a significant negative impact on the human rights, and health and safety of sex workers.

The ‘Swedish Model’ criminalises the clients of sex workers but also socially excludes and reduces the autonomy of sex workers. The model criminalises sex workers working in pairs, makes it difficult for sex workers to find independent housing and work options by criminalising landlords who rent

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\(^4\) *Martyn v Hornsby Council*, cited in Nothing About Us Without Us, ‘North Sydney Council Prohibits Home Occupation (Sex Services) in All Zones under the New Draft LEP’.

\(^5\) NSW Government and Workcover, ‘Health and Safety Guidelines for Brothels’.

property to sex workers, prevents sex workers from owning our own properties, and results in the homes and workplaces of sex workers being staked out by police trying to detect clients of sex workers. In practice, the law has proven to be dangerous to the mortality of sex workers, with increases in sex worker deaths since the laws were implemented and high levels of isolation and social exclusion.\textsuperscript{7} Petra Ostergren and Susanne Dodillet report that in Sweden they have found “serious adverse effects” of the legislation despite the fact that the lawmakers stressed that it would not have a detrimental effect on sex workers.\textsuperscript{8} In a paper studying the Swedish system of sex work regulation, The Prostitution Licensing Authority Queensland reported that the prohibition on the purchase of sexual services in Sweden has “driven the sex industry underground” leaving sex workers “at greater risk of violence.”\textsuperscript{9}

Criminalisation places sex workers at risk, and does not reduce demand for sex services. The estimated number of sex workers in Sweden is the same now as it was prior to the criminalisation of behaviours related to sex work.\textsuperscript{10}

Licensing models stigmatise, alienate and disenfranchise sex workers, creating barriers to best practice occupational health and safety, and access to justice. In comparison to a decriminalised model of regulation that promotes compliance, licensing models promote the development of a two-tiered industry whereby many are excluded from operating legally – often because meeting the requirements of licensing is excessive or unreasonable. The Kirby Institute’s 2012 report on the Sex Industry in NSW to the NSW Ministry of Health, which followed a three state and three model of regulation comparative study, states that “licensing is a threat to public health” and recommends that licensing should not be regarded as a viable legislative response for New South Wales.

\textbf{Trafficking}

There is no evidence to demonstrate criminalisation of sex workers or the clients of sex workers reduces trafficking. In fact, criminalisation drives the industry underground, reducing transparency, access to justice, and reporting of crimes. The Swedish government does not distinguish between trafficked people and sex workers when making claims about the effectiveness of the Swedish Model. The Swedish government admits that it does not “have completely reliable knowledge about the occurrence of human trafficking for sexual purposes in Sweden.”\textsuperscript{11} They instead rely on police statements and conjecture that the model has reduced trafficking, when in fact; it is just as likely that trafficking has increased due to the need for third party protections for sex workers and clients.\textsuperscript{12}

\begin{itemize}
\item \textsuperscript{7} J. Levy and P. Jakobsson, ‘Sweden’s abolitionist discourse and law: Effects on the dynamics of Swedish sex work and on the lives of Sweden’s sex workers’ (2014) Criminology and Criminal Justice.
\item \textsuperscript{9} Bob Wallace (Principal Policy Officer), The Ban on Purchasing Sex in Sweden, Office of the Prostitution Licensing Authority Queensland, 19.
\item \textsuperscript{10} Scarlet Alliance and Rose Alliance, The Swedish Model of Criminalising Sex Worker Clients Since 1999 (2011).
\item \textsuperscript{11} A. Skarhed Ban on the Purchase of Sexual Services (2010) 35. [http://www.sweden.gov.se/content/1/c6/15/14/88/0e51eb7f.pdf]
\end{itemize}
Any approaches to trafficking prevention must be rights based and support prevention of the circumstances that create vulnerabilities to trafficking such as access to safe migration, translated information and services. Preventative approaches that address the circumstances that create trafficking should be pursued over criminal justice approaches. The most successful approaches prioritise the needs, agency and self-determination of trafficking victims over criminal prosecutions and increased surveillance. They address labour exploitation through a focus on prevention, industrial rights, occupational health and safety, civil remedies, statutory compensation, and equitable access to visas, migration channels and support. Workplace rights and safety are best supported through the decriminalisation of sex work.

**Recommendations**

1. **Criminal sanctions shouldn't fall on sex workers or the clients of sex workers.** Scarlet Alliance recommends that decriminalisation is the best-practice approach to achieving positive public health outcomes. This is supported by current evidence from The Lancet which states that the decriminalisation of sex work would have the greatest impact on the HIV epidemic, reducing HIV by up to 46% in the next decade and result in cost saving thresholds of tens of millions of dollars globally.¹³

2. **The positioning of sex work as violence against women is erroneous, stigmatising, and does nothing to improve the health and safety of sex workers.** Instead, the Crown Prosecution Service policy results in increased arrests of sex workers.

3. **A previous proposed amendment to the Modern Slavery Act 2015 to criminalise sex workers’ clients was resoundingly defeated.** Scarlet Alliance recommends specifically against the criminalisation of sex workers, sex workers’ clients, and our workplaces. Laws which criminalise sex workers’ clients significantly undermine sex workers autonomy, independence and control over workplaces, and contribute to isolation and social exclusion.

The outcome of this inquiry will impact directly on sex workers. Models of regulation other than decriminalisation will have negative impacts on the health, rights and safety of sex workers. Current sex workers and sex worker peer organisations should be recognised as experts, and key stakeholders in this inquiry.

If you require further information please contact our Chief Executive Officer Janelle Fawkes.

Ryan Cole
President

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