



Phone – 02 9690 0551

Fax – 02 9690 1013

Post – P. O. Box 2167, Strawberry Hills, NSW 2012

Suite 9/245 Chalmers Street, Redfern NSW 2016

Email – info@scarletalliance.org.au

Web – www.scarletalliance.org.au

Assistant Secretary
International Human Rights and Anti-Discrimination Branch
Attorney-General's Department
Robert Garran Offices
3-5 National Circuit
BARTON ACT 2600
Fax: 02 6141 4925
E-mail: antidiscrimination@ag.gov.au (preferred)

31 January 2011

Dear Assistant Secretary

Thank you for the opportunity to comment on the Government's Consolidation of Anti-Discrimination Laws.

This is an exciting and important step in the development of Australia's Human Rights Framework.

Scarlet Alliance is the Australian Sex Workers Association. Through our objectives, policies and programs, Scarlet Alliance aims to achieve equality, social, legal, political, cultural and economic justice for past and present workers in the sex industry.

Formed in 1989, Scarlet Alliance is Australia's national peak body representing a membership of individual sex workers, and sex worker networks, groups and community-based projects and organisations from around Australia. Scarlet Alliance is a leader when it comes to advocating for the health, safety and welfare of workers in Australia's sex industry. 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 projects and the work of our membership we have a high level of access to sex industry workplaces in the major cities. Scarlet Alliance represents sex workers on a number of Commonwealth committees and ministerial advisory mechanisms.

Please find our submission attached.

Scarlet Alliance looks forward to receiving the Exposure Draft in early 2012.

Kind regards,

[signature removed]

Janelle Fawkes, CEO on behalf of,

Kane Matthews

Scarlet Alliance President

Executive Summary

'In most countries, discrimination remains legal against women, men who have sex with men, sex workers, drug users, and ethnic minorities. This must change.'

– Ban Ki Moon, UN Secretary General

Scarlet Alliance welcomes the consolidation of anti-discrimination legislation and views this process as a prime opportunity to ensure that sex workers are protected from discrimination, harassment and vilification in Australia.

Sex workers experience systemic discrimination in our access to goods and services, housing and accommodation, employment opportunities and access to justice. Further, we experience state-sanctioned discrimination from governments, organisations and the public and suffer criminal record and HIV status discrimination because of the criminalisation of our professions in some states. We experience regular and relentless vilification from media. This discrimination and vilification affects our personal lives, professional lives, families, health, wellbeing and working conditions.

Current protections for sex workers are inconsistent and insufficient. Although Queensland protects people from discrimination on the basis of 'lawful sexual activity', this protection is limited to people working legally, and does not cover street-based sex workers, private workers operating together or sex workers operating out of unlicensed agencies or brothels. Some protections also exist in Tasmania and Victoria, however the continuing criminalisation of many aspects of sex work renders the use of a 'lawful' sexual activity category inadequate. In addition, in Victoria, while lawful sexual activity is a protected attribute, sex workers are specifically singled out as an *exception*, so it remains lawful to discriminate against people engaging in *commercial* lawful sexual activity when providing accommodation. Although the Australian Capital Territory protects people from discrimination on the basis of 'profession, trade, occupation or calling' this does not include people who experience discrimination because of their involvement in alternative or stigmatised sexual communities, or people who trade sex in kind but do not identify as a sex worker. Inconsistencies between jurisdictions creates a greater need for blanket federal reform. These protections are important to include at a federal level – but the reality is that they are not enough. A recent case in Queensland shows that this legislation has been ineffective in protecting sex workers from discrimination.

Scarlet Alliance welcomes protection on the basis of 'sexual orientation and gender identity'. However, it is crucial that any provisions include protection on the basis of sexual behaviour, attraction, identity and practice, rather than solely orientation.

It is Scarlet Alliance's view that protection should also extend to discrimination on the basis of association with sex workers. Historically, in Australia and overseas, laws have punished people for their association with sex

workers. These discriminatory laws have reduced sex workers' control over our own health and safety, where we are unable to work with security guards, receptionists or colleagues, are unable to rent apartments, are prevented from advertising, are prohibited from sharing income with our families or are forced to live alone. Protection on the basis of association with a sex worker is necessary to ensure sex workers can access safe peer education and occupational health and safety.

Anti-discrimination protection for sex workers is recommended by various United Nations bodies, including the UN Secretary General, Ban Ki Moon. It is in line with the World Association for Sexual Health's Millennium Declaration of Sexual Rights, Australia's National STI and HIV Strategies, and the whole-of-government approach to Social Inclusion.

Consolidation of Commonwealth Anti-Discrimination Laws

Scarlet Alliance welcomes the consolidation

Scarlet Alliance welcomes the consolidation of anti-discrimination legislation under the new Human Rights Framework, to make clearer and more consistent anti-discrimination laws in Australia. The consolidation will provide an important step towards addressing concerns of the United Nations Human Rights Committee about comprehensive protection of the rights to equality and non-discrimination at federal law.¹

Sex workers experience systemic discrimination

Sex workers' daily and ongoing experiences of discrimination, harassment and stigma signal the crucial need for legislative reform. Sex workers experience discrimination in our access to goods and services, housing and accommodation, employment opportunities and access to justice, which affects our personal lives, professional lives, families, health, wellbeing and workplace conditions. As one sex worker explains:

[Discrimination] means not answering the question 'what do you do?' without considering that at best, I'll probably end up answering a bunch of naff questions to satisfy someone's curiosity, at worst, someone will cut off from me and do something hostile. Discrimination means applying for a job and leaving big chunks of things out, hoping the police check doesn't disqualify me. Discrimination means trying to rent a place, to work without being able to declare my income, give a job reference, or tell the landlord what I really intend to do there...²

Discrimination on the basis of occupation

In 1999 a National Survey was conducted by Scarlet Alliance and the Australian Federation of AIDS Organisations to identify discrimination in the employment conditions and personal lives of sex workers in Australia. Their subsequent report, *Unjust and Counter-Productive: The Failure of Governments to Protect Sex Workers From Discrimination*, found that sex workers experienced discrimination on the basis of their occupation in a number of areas.

Goods and services

Sex workers reported discrimination in their access to personal and professional goods and services, such as when attempting to access credit or loans, due to 'banks not applying the same business standards as they

¹ Human Rights Committee, 95th session, Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Concluding observations of the Human Rights Committee on Australia, 2009, 12, accessed at <http://www.universalhumanrightsindex.org/documents/825/1520/document/en/pdf/text.pdf> on 25 May 2011.

² DD, 'Discrimination is an Odd Thing', Provision: Whore Stigma, Issue 2, Scarlet Alliance, 2007, 20.

would to other service industries.³ Applications for credit cards often sought information about the applicant's occupation rather than their income, and sex workers reported having their applications refused despite no evidence of bad credit rating or unstable or low income. In loan applications, banks often required business records covering a longer period for sex workers than other occupations.⁴

Similarly, sex workers documented discrimination in securing home, contents and mortgage insurance against loss of income, despite proven good credit ratings. They reported being refused private health insurance or facing higher superannuation premiums due to an assumption they were at greater STI/HIV risk, despite evidence that sex workers in Australia enjoy lower rates of STIs/HIV than the general population. Mobile phone companies had denied sex workers applications for phones because their income and address was not considered stable.⁵ These restrictions to banking and business facilities continue to prevent sex workers from access to small business opportunities and hinder the development of workplace safety mechanisms.

Advertising

Regardless of the legal status of our work, sex workers reported discriminatory advertising policies. Complaints included newspapers refusing to accept advertising for sexual services, publishers failing to place advertisements or making unapproved changes to pre-paid advertising, regularly changing policy, and creating special conditions applying to sex industry advertising such as advance payment, higher fees, limits on running length or having to place the advertisement in person rather than by telephone.⁶ Despite often being small business owners and sole traders, sex workers are regularly charged disproportionately to advertise our services, facing fees that are much higher than if we were to advertise in other sections of the newspaper. Discriminatory advertising costs has been consistently raised as an issue at Scarlet Alliance annual National Forums, and in their investigation Triple J radio's Hack program have noted that the NSW Daily Telegraph was one of the papers that charged several times more for sex worker advertisements.⁷ These arbitrary discretions and conditions appear to apply to sex workers solely by virtue of our occupation.

Housing and accommodation

When accessing housing or accommodation, the survey revealed that sex workers experienced difficulties in obtaining rent agreements or housing once their occupation was known, regardless of whether they intended to be working from the premises. Sex workers had experienced eviction from hotels as well as private rental accommodation, rude treatment by accommodation staff, and council staff informing landlords about their

³ Scarlet Alliance and the Australian Federation of AIDS Organisations, *Unjust and Counter-Productive: The Failure of Governments to Protect Sex Workers From Discrimination*, Sydney, 1999, 19, accessed at <http://www.scarletalliance.org.au/library/unjust-counterproductive> on 19 May 2011.

⁴ *Ibid* at 19.

⁵ *Ibid* at 19-20.

⁶ *Ibid* at 17.

⁷ Scarlet Alliance Media Release, 'International Whores Day 2009: Sex Workers Take to the Streets to Fight Discrimination; Sex Workers Paying Too Much For Their Box; Bonking Not Good Enough for Banks', 2 June 2009, accessed at http://www.scarletalliance.org.au/media/News_Item.2009-06-01.2711 on 26 May 2011.

occupation. The majority of respondents indicated they would 'never put my occupation because I feel sure my application will be rejected.'⁸ Fly-in-fly-out sex workers continue to face discrimination in housing and accommodation when working away from home. In their article 'Motel Sex Check: Scrutiny Insults Women', the Townsville Bulletin reported that women booking into motels are being asked to sign statements promising they won't be 'offering goods and services for sale' from their room. One operator in Mackay reported having a rule that 'people can't run businesses from their rooms,' and asks guests upon registering to sign a form agreeing they won't use the room 'as a place to conduct business.' This is despite legislation in Queensland preventing discrimination on the basis of lawful sexual activity – the Queensland Anti-Discrimination Commission even states that the laws are to protect, for example, 'a lesbian couple being refused a motel room for the night because the manager said he didn't "want your sort here"'.⁹ By contrast, for sex workers, Kelly Davidson, a Mackay operator says, 'We can't say "you can't stay", but what we do say, is that you can't run a business from your room'.¹⁰ Michele, Townsville spokesperson for United Sex Workers in North Queensland, says of accommodation operators, 'They throw sex workers out and make them homeless. Women fly in from all over Australia and from New Zealand thinking they have a room and when they get there they find there isn't one.'¹¹ One sex worker was banned from the Drovers Rest Hotel in Moranbah, and lost her case at the Queensland Civil and Administrative Tribunal seeking compensation for \$20,000 economic loss, humiliation and stress. Anti-discrimination legislation specifically designed to protect sex workers has failed.

Seeking other employment

Stigma surrounding sex work continues to affect the decisions of employers when recruiting and dismissing staff. A number of high profile cases illustrate that discrimination against sex workers, particularly in occupations such as teaching or policing, is ongoing. In 2011 a New Zealand teacher was de-registered after she appeared in Australian Penthouse magazine,¹² and in 2010 in the United States a teacher was charged with 'conduct unbecoming a teacher' and assigned non-teaching duties after writing about her former sex worker experience in an online essay.¹³ In November 2005, a high school teacher in Brisbane was 'caught' 'moonlighting' as a sex worker in a licensed Gold Coast brothel (Candi Forrest notes that both these terms 'infer illicit behaviour' even though the teacher's actions were lawful). The teacher had been seen by a

⁸ Scarlet Alliance and AFAO, Unjust and Counter-Productive, above n3at 20.

⁹ Anti Discrimination Commission Queensland, 'Sexuality Based Discrimination', accessed at <http://www.adcq.qld.gov.au/pubs/sexdiscr.html> on 31 January 2012.

¹⁰ John Anderson, 'Motel Sex Check: Scrutiny Insults Women', Townsville Bulletin, 15 November 2011, 1 and 4, accessible at http://www.townsvillebulletin.com.au/article/2011/11/15/283231_news.html on 16 November 2011.

¹¹ John Anderson, 'Motel Sex Check: Scrutiny Insults Women', Townsville Bulletin, 15 November 2011, 1 and 4, accessible at http://www.townsvillebulletin.com.au/article/2011/11/15/283231_news.html on 16 November 2011; Jessica Burke, 'Sex Workers in Mining Towns Facing Discrimination', Australian Mining News, 5 August 2011, accessed at <http://www.miningaustralia.com.au/news/sex-workers-in-mining-towns-facing-discrimination> on 20 December 2011.

¹² Tamara McLean, 'NZ Teacher Deregistered Over Penthouse Pic', AAP, 3 May 2011, accessed at <http://au.news.yahoo.com/world/a/-/world/9301012/teacher-deregistered-over-aussie-mag-porn/> on 25 May 2011.

¹³ Sean Gardiner and Barbara Martinez, 'Sex Worker Turned Teacher's Bad Conduct', News Core, 3 December 2010, accessed at <http://www.dailytelegraph.com.au/lifestyle/sex-worker-turned-teacher-faces-charge/story-e6frf00i-1225964698577> on 25 May 2011.

colleague of hers, a male teacher, who was attending the brothel as a client.¹⁴ As Candi writes, 'In an astounding act of moral hypocrisy the prospective client informed the school principal what he had discovered about the woman's second job. Still more astounding, while both of the teachers were 'counselled' about the appropriateness of their behaviour, only the female sex worker was penalised.'¹⁵

In Australia, information provided to Scarlet Alliance illustrates that when applying for jobs outside the sex industry, sex workers are reluctant to inform potential employers about our work history for fear of discrimination throughout the interview process. Navigating this discrimination means that sex workers may then have gaps on our resumes or have trouble explaining skills we have acquired during our working lives.

Criminal record discrimination

Seeking other employment may be particularly difficult where one has a criminal conviction because the place or nature of our employment as a sex worker has been deemed illegal. Currently, Criminal Record Discrimination is lawful federally, but unlawful in some states.¹⁶ In their summary of the Discussion Paper on Criminal Record Discrimination, the then Human Rights and Equal Opportunity Commission wrote that 'Australians who have a criminal record often face significant barriers to full participation in the Australian community. Trying to find a job is one of the areas of greatest difficulty for former offenders.'¹⁷ Sex workers are more likely to have a criminal record because vast sections of our industry are criminalised. Criminalisation continues despite the fact that decriminalisation is the best-practice approach to HIV prevention, health promotion and sex industry regulation.¹⁸ Discrimination in seeking employment and during the course of employment remains a pertinent issue that disproportionately affects sex workers, and one which is ripe for legislative reform.

Intersectional discrimination - HIV status and sex work

Sex workers face discrimination in relation to assumed HIV risks based on occupation rather than actual risk behaviour. Policies for donating blood illustrate how sex workers are discriminated against on the basis of assumed health status. Despite the need for blood donors, the Red Cross prohibits potential donors from giving blood for 12 months after they have been a sex worker, despite evidence that sex workers have lower

¹⁴ Rosemary Odgers, 'Teachers May Face Second Job Ban', Courier Mail, 7 November 2005, accessed at http://www.scarletalliance.org.au/nm/australia/qld/Odgers_2005/ on 19 August 2011.

¹⁵ Candi Forrest, '(Anti) Discrimination in the Sunshine State', Provision: The Whore Stigma, Issue 2, Scarlet Alliance, 2007,13.

¹⁶ Australian Human Rights Commission, 'Discrimination in Employment on the Basis of Criminal Record' http://www.humanrights.gov.au/human_rights/criminalrecord/index.html.

¹⁷ Ibid.

¹⁸ Christine Harcourt, J O'Connor, S Egger, C Fairly, H Wand, M Chen, L Marshall, J Kaldor, B Donovan, (2010), 'The Decriminalisation of Prostitution is Associated with Better Coverage of Health Promotion Programs for Sex Workers', Australian and New Zealand Journal of Public Health, 34:5 at 482; Australian Government Department of Health and Ageing, Sixth National HIV Strategy, 6.4; G Abel, L Fitzgerald, C Healy, and A Taylor (eds) (2010), 'Taking the Crime out of Sex Work: New Zealand Sex Workers' Fight for Decriminalisation', Bristol, Policy Press; C Harcourt, S Egger, B Donovan (2005), 'Sex Work and the Law', Sexual Health 2(3) 121-8; B Donovan, C Harcourt, S Egger, C Fairley, (2010), 'Improving the Health of Sex Workers in NSW: Maintaining Success', NSW Public Health Bulletin 21(3-4) 74-7; E Jeffreys, K Matthews, and A Thomas, (2010), 'HIV Criminalisation and Sex Work in Australia', Reproductive Health Matters 18(35): 129-36.

rates of STIs and HIV than the general population.¹⁹ As Rachel Wotton writes, this discriminatory policy ‘perpetuates myths that current sex workers are vectors of disease... and that we are unable to perform our work activities safely, minimising all elements of transmission just like doctors, nurses and surgeons do every day.’²⁰ The National Needs Assessment of Sex Workers who Live with HIV in 2008 found that many health organisations ‘are judgmental and critical of the involvement of HIV positive people in sex work and often attempt to dissuade them from continuing.’²¹ Participants in the study reported that ‘[i]nstances of disclosure of both HIV status and sex work generally lead to very poor treatment and harassment, and in one reported case included physical violence by a health care worker.’²² Others reported ‘misinformation’ being provided to them about the legality of participating in commercial sex,²³ or felt health services were ‘taking on more of a law enforcement role.’²⁴ In 2008 an Australian sex worker living with HIV was prosecuted and jailed in the Australian Capital Territory for providing a sexual service while knowingly HIV positive even though no evidence of unsafe behaviour was presented. The person’s name, HIV status and unrelated personal details were released to the media.²⁵ Articles appeared across Australia, New Zealand, Germany, Vietnam, Belgium and Hong Kong, contributing to their public stigma.²⁶

Laws which criminalise sex workers living with HIV discriminate against us on the basis of our health status, without reference to whether individual workers practice safer sex, cater to specifically HIV positive clients, or offer non-penetrative services. The criminalisation of sex workers living with HIV impedes health promotion, marginalises workers, poses barriers to effective outreach, and perpetuates discrimination against people who already suffer the dual stigma attached to sex work and HIV. Criminalisation is contrary to the National HIV and STI Strategies. Men who have sex with men already undertake a range of non-condom based HIV risk reduction strategies.²⁷ The annual national surveillance report between 2001-2009 demonstrates prevalence of HIV among sex workers has remained consistently low – less than 1%.²⁸ Both the Sixth National HIV Strategy 2010-2013 and the Second National STI Strategy 2010-2013 note that ‘the incidence of HIV/STIs in sex workers in Australia is among the lowest in the world.’²⁹

Harassment, vilification and social exclusion

¹⁹ Australian Red Cross Eligibility Policy, accessed at <http://www.donateblood.com.au/faq#10n294> on 29 June 2011.

²⁰ Rachel, ‘Bleedin’ Ridiculous –The Red Cross Policy’ Provision: The Whore Stigma, Issue 2, Scarlet Alliance, 2007, 16 at 18.

²¹ Kane Matthews, The National Needs Assessment, above n25 at 24.

²² *Ibid* at 32.

²³ *Ibid* at 24.

²⁴ *Ibid* at 32.

²⁵ Elena Jeffreys, Kane Matthews and Alina Thomas, ‘HIV Criminalisation and Sex Work in Australia, Reproductive Health Matters, 2010, 18:35, 129 – 136 at 130.

²⁶ *Ibid* at 130.

²⁷ Martin Holt and Jeanne Ellard, HIV Risk Reduction Strategies Among Gay Men, Discussion Paper, Australian Federation of AIDS Organisations, Sydney, April 2011, 1.

²⁸ National Centre in HIV Epidemiology and Clinical Research, HIV/AIDS, Viral Hepatitis and Sexually Transmissible Infections in Australia, Annual Surveillance Report 2010. National Centre in HIV Epidemiology and Clinical Research, The University of New South Wales, Sydney, NSW; Australian Institute of Health and Welfare, Canberra, ACT, 2007 at 26 and Figure 36.

²⁹ Australian Government Department of Health and Ageing, Sixth National HIV Strategy 2010-2013, Commonwealth of Australia, Canberra, 2010, 16; Australian Government Department of Health and Ageing, Second National STI Strategy 2010-2013, Commonwealth of Australia, Canberra, 2010, 16.

Sex workers further experience harassment, vilification and social exclusion on the basis of our sex work status.

We are subject to systemic vilification, including severe ridicule and serious contempt, which is largely accepted and endorsed by media, policy and laws. As one sex worker writes, we experience ‘years of overt, systemic, structural, ongoing, accepted, supported, celebrated discrimination.’³⁰ Stigma is exacerbated by vilification of sex workers in television, films and newspapers and by some organisations, where sex work is perpetually portrayed as dangerous and sex workers as dead or degraded victims without families or support. Both the Family Protection Society and the Salvation Army have publically apologised for proclaiming that sex work is damaging to families and harmful to women.³¹ The Salvation Army apologised after Scarlet Alliance accused them of ‘capitalising on discrimination against sex workers’.³² Scarlet Alliance commenced action under the Tasmanian Anti-Discrimination Act 1998 in relation to the Family Protection Society. A conciliation was held and an apology given and published by the Family Protection Society in Hobart’s Mercury newspaper in April 2010.³³ These depictions hurt sex workers, wrongly inform public policy on sex work law reform and ensure our social exclusion. Continuing discrimination against sex workers damages Australia’s whole-of-government approach to Social Inclusion, which aims to ensure that all Australians will have the resources, opportunities and capability to connect with people, use their local community’s resources and ‘have a voice so that they can influence decisions that affect them.’³⁴

Anti-Discrimination protection for sex workers is recommended by United Nations bodies

United Nations Secretary General Ban Ki-Moon states that ‘In most countries, discrimination remains legal against women, men who have sex with men, sex workers, drug users, and ethnic minorities. This must change.’³⁵ Former Australian High Court judge the Hon. Michael Kirby AC CMG states that ‘We will insist on human rights for all, including for sex workers. Nothing else is acceptable as a matter of true public morality.’³⁶ UNAIDS and the United Nations Population Fund state that it is essential for governments to create an enabling legal and policy environment which insists upon universal rights for sex workers and ensures our access to justice.³⁷

³⁰ Because I’m a Whore, ‘An Open Letter to Australian Feminists Concerned about Sex Worker Exploitation’, *Feminaust: Contemporary Australian Feminism*, 20 August 2011, accessed at <http://feminaust.org/2011/08/20/open-letter-to-australian-feminists-concerned-about-sex-worker-exploitation/> on 31 August 2011.

³¹ Kate Holden, ‘Sex Work and Feminism’, *Meanjin Quarterly*, Volume 71:1, 2011, accessed at <http://meanjin.com.au/editions/volume-70-number-1-2011/article/sex-work-and-feminism/> on 11 August 2011.

³² Australian Broadcasting Corporation News, ‘Salvos Apologise to Sex Workers Over Ads’, 22 May 2009, accessed at <http://www.abc.net.au/news/2009-05-22/salvos-apologise-to-sex-workers-over-ads/1691098> on 27 September 2011.

³³ Emily Fletcher, ‘Stop Vilifying People Because of their Work Choices’, *The Scavenger*, accessed at <http://www.thescavenger.net/feminism-a-pop-culture/stop-vilifying-people-because-of-their-work-choices-85675.html> on 7 September 2011; Australian Broadcasting Corporation, ‘Family Group Apologises to Sex Workers’, 29 April 2010, accessed at <http://www.abc.net.au/news/stories/2010/04/29/2885604.htm?site=northtas> on 7 September 2011.

³⁴ Australian Government, ‘Overview of the Social Inclusion Agenda’, accessed at <http://www.socialinclusion.gov.au/SIagenda/Pages/Overview.aspx> on 26 May 2011.

³⁵ UNAIDS, Joint United Nations Program on HIV/AIDS, UNAIDS Guidance Note on HIV and Sex Work, Geneva, 2009, 2.

³⁶ UNAIDS and UNFPA, *Building Partnerships on HIV and Sex Work: Report and Recommendations from the first Asia and the Pacific Regional Consultation on HIV and Sex Work*, 2011, 14.

³⁷ *Ibid* at 13.

Current protections for sex workers are inconsistent and insufficient

Anti-discrimination protection for sex workers is inconsistent and insufficient. The piece-meal and ad-hoc development of anti-discrimination law across Australia means that there remains significant variation between jurisdictions and only partial coverage to protect sex workers. The Commonwealth now has an opportunity to address these inconsistencies.

Although Queensland protects sex workers from discrimination on the basis of 'lawful sexual activity', and the Australian Capital Territory protects sex workers on the basis of 'profession, trade, occupation or calling', these protections are limited. In Queensland this legislation only protects sex workers working lawfully, and does not cover street-based sex workers, private workers operating together for peer support and safety or sex workers operating out of unlicensed agencies or brothels. In the ACT, protection on the basis of profession does not include people involved in alternative sexual communities (for example, BDSM/leather/kink or polyamorous/swinging communities) or people who trade sex in kind but who do not identify as a sex worker.

'Sexual Orientation' not enough: Protection must cover sexual behaviour and practices

Scarlet Alliance welcomes the Government's commitment during the 2010 election to introduce protections on the basis of Sexual Orientation. Sex workers have a variety of sexual orientations. In a 1991 survey of sex workers in Sydney, Rachel Sharp and Frances Lovejoy found that of sex workers who were working as female, a quarter did not identify as heterosexual. Of sex workers who were working as male, only 11% identified as heterosexual.³⁸

However, the Discussion Paper defines Sexual Orientation generally as homosexuality, lesbianism, bisexuality and heterosexuality. Scarlet Alliance notes that these categories should not be exhaustive, and that people have a range of sexual orientations that fall outside these categories, including queer. Further, it should be noted that sex workers may identify their sexual orientation in one way, but engage in a wide range of sexual activities. For example, Alina Thomas interviews a number sex workers who identify as lesbian and queer in 'Up Close and Political: Lesbian Sex Workers' who also engage in heterosexual activities at work.³⁹ This should not preclude people from being covered by sexual orientation protections.

It is unclear whether protection on the basis of sexuality is intended to cover sex workers. Freedom! Gender Identity Association argue that coverage on the basis of 'sexual orientation' should include attraction, identity and also behaviour.⁴⁰ Scarlet Alliance submits that the consolidation process opens up further opportunities to

³⁸ 'Sexual Orientation of Worker by Perceived Sex of Worker', in Rachel Sharp and Frances Lovejoy, *An Evaluation of HIV/AIDS Education for Workers and Managers in the Sex Industry*, NSW Department of Health, 1992, Sydney, Table 3.1.

³⁹ Alina Thomas, 'Up Close and Political: Lesbian Sex Workers' Provision: Defining Sex Worker Space, Issue 1, Scarlet Alliance, 2006, 22.

⁴⁰ Australian Human Rights Commission, *Addressing Sexual Orientation and Sex and/or Gender Identity Discrimination: Consultation Report*, Sydney, 2011, 23.

extend this coverage to sex workers who experience systemic discrimination on the basis of our sexual activity and sex worker status, rather than only sexual orientation.

'Gender Identity' should be inclusive not exhaustive

Sex workers also have a range of gender identities that fall outside the categories listed in the Discussion Paper. The report of a 2010 focus group on sex and gender diversity recognises the 'huge diversity of people who are not cis-sexual or cis-gendered, and that these diverse bodies, identities, sexualities and experiences cannot be contained under the limiting terminology of male, female and transgendered.' The focus group identified a number of non-exhaustive gender identities, including intersex, transsexual, transgender, trans*, tranny, genderqueer, cross dressers, butches, femmes, boydykes, bois, transmen, transwomen, T girls, gender non-specific trans* people, gender pirates, androgynes, neutois, dandies, drag kings and queens, bearded ladies, ladyboys, gender outlaws, girly boys, princess boys, tomboys, cissies, androgynous, sinandrogynous (without sex and gender identity), and people of sex and/or gender cultural differences.⁴¹ Sex workers may also work in a different gender to the one with which they identify with outside work. Protections also need to apply to people on the basis of gender identities where they do not identify as male, female or transgender.

Extending coverage to discrimination on the basis of association

It is Scarlet Alliance's view that protection should extend to discrimination on the basis of association with a person who has a protected attribute. Historically, laws have punished people for their association with sex workers. These laws have isolated sex workers and impeded our access to safe working conditions. In the Northern Territory, it is illegal for us to work with another person, including hiring security or a driver. In Fiji it is an offence to live with a sex worker.⁴² In Sweden, the overall effect of new laws has been to reduce sex workers' control over their workplace. As Susanne Dodillet and Petra Ostergren reflect:

The overall implications of these laws is that no one can operate a brothel, rent an apartment, room or hotel room, assist with finding clients, act as a security guard or allow advertising for sex workers. This in turn implies that sex workers cannot work together, recommend customers to each other, advertise, work from property they rent or own or even cohabit with a partner (since that partner is likely to share part of any income derived from sex work).⁴³

Sex worker blogger Hexy notes that laws which prohibit anyone 'living off the earnings of prostitution' have been used to charge sex workers' children with pimping, where they have been living

⁴¹ Scarlet Alliance, Focus Group on Sex and/or Gender Diversity, Sydney, 2010.

⁴² Rowan Callick, 'Fiji Cracks Down on Sex Work' The Australian, 12 December 2011, accessed at <http://fijitoday.wordpress.com/2011/12/12/the-military-approach-to-sex-workers-is-consistently-characterised-by-round-up-parading-and-summary-punishment/> on 23 December 2011.

⁴³ Susanne Dodillet and Petra Ostergren, 'The Swedish Sex Purchase Act' above n32 at 4.

with their parents and not paying rent.⁴⁴ Protection from discrimination on the basis of association with a sex worker is a crucial part of ensuring sex workers' occupational health and safety and self-determination.

Anti-discrimination law must specifically protect sex workers

The World Association for Sexual Health Millennium Declaration of Sexual Rights lists a number of fundamental and universal rights, including 'freedom of choice in adult sexual relationships' and 'freedom to experience and express sexual pleasure', free from 'legal or social sanctions'.⁴⁵ Anti-discrimination protections for sex workers are a necessary and practical step towards sex worker and community health, safety, inclusion and wellbeing.

⁴⁴ Hexy, 'On the Swedish Model', above n2.

⁴⁵ World Association for Sexual Health, Millennium Declaration of Sexual Rights, accessed at http://assertnational.org.au/?page_id=362 on 23 December 2011.