
Mr Owen Walsh, Secretary
Senate Legal and Constitutional Legislation Committee
via email to: LegCon.Sen@aph.gov.au

February 16, 2005

Dear Mr Walsh,

I am writing to you on behalf of the Network of Sex Work Projects (NSWP) the global organization committed to defending the health and human rights of sex workers. The NSWP was established in 1991 and has member organizations in all regions of the world. We have heard recently from one of our affiliate organizations, the Scarlet Alliance of Australia, that new legislation is proposed to amend the Australian Criminal Code in regards to trafficking in persons. Our comments are to be taken in conjunction with the submission from the Scarlet Alliance that the NSWP endorses. In this letter we hope to bring some useful additional information from the global arena about migration, sex work, and human rights. Please do not hesitate to contact me by email at apnsw@yahoo.com or by telephone in Malaysia on 603 4041 8966 for more information. You may also contact the secretary of the NSWP, Penelope Saunders, at secretary@nswp.org or by calling her in the US on 1-917-817-0324 and Melissa Ditmore at rights@nswp.org.

The NSWP supports the Committee's efforts to bring Australian legislation in line with international standards set forth in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. The UN Protocol includes slavery, servitude and forced labour as core elements of trafficking. This is consistent with the NSWP stance that trafficking is not synonymous with sex work and this distinction is particularly important in Australia where sex work is decriminalized in a number of states and territories. The Protocol does refer to "sexual exploitation" as an element of trafficking but this term was intentionally left undefined by drafters to provide States latitude in their own drafting processes and Protocol drafters were clear that the document should be utilized "*without prejudice* to how States Parties address prostitution in their respective domestic laws" (see the official UN Interpretative Notes to the Protocol, Travaux Préparatoires, A/55/383/Add.1 Addendum). Since forced or coerced adult sex work (and any other forced or coerced work) is covered in the Trafficking Protocol in the context of slavery, forced labour or servitude, it is not necessary for States seeking to comply with the UN Protocol to include specific reference to abuses occurring in any particular form of work, including sexual labour, in their domestic laws.

This broad approach is important for anti-trafficking legislation to be inclusive of all current and future forms of work in the global realm. In this increasingly interconnected world workers from any sector, for example agriculture, garment production, or high tech, may be harmed as they seek opportunities elsewhere. In this spirit the NSWP recommends that the new Australian legislation be made more inclusive by referring throughout to "slavery, forced labour or servitude," terms that all have clear meanings in existing international human rights agreements, rather than by introducing terms such as 'exploitation' or 'sexual servitude' that limit the scope of action on the issue of trafficking. Elements of the definition of trafficking would be re-written as follows:

"(2) A person (the *first person*) commits an offence of trafficking in persons if the first person organises or facilitates the entry, or the receipt, of another person into Australia for the purposes of forced labour, slavery,

or servitude.”

The idea ‘deceptive recruiting’ should apply to all workers, not just sex workers, because it is unacceptable to deceive any migrant worker about the terms and conditions of work in Australia (ie, a migrating computer programmer who is told she will be working in IT has her labour rights violated if she arrives to Australia and is forced to work as a fruit picker). It would then follow that recommendation 7 (repeal **Subsection 270.7(1) of the *Criminal Code*** and proposed substitution) would read: “(1) A person who, with the intention of inducing another person to enter into an engagement for employment, deceives that other person about: (a) the fact that the engagement will involve the provision of other services not listed in the original agreement; (b) the extent to which the person will be free to leave the place or area where the person provides services; (c) the extent to which the person will be free to cease providing services; or (d) the extent to which the person will be free to leave his or her place of residence; or (e) the fact that the engagement will involve the confiscation of the person’s travel or identity documents; is guilty of an offence.”

It would also seem logical to the NSWSP that the issue of deceptive recruiting pertaining to all workers would be better handled under the Industrial Relations and Fair Trading Acts (both State and Federal) rather than under the Criminal Code.

The NSWSP encourages the committee to be guided by a human rights framework in the drafting of new legislation. It is a serious oversight that the new legislation contains no provisions that protect immigrant workers directly and the proposed changes open many instances in which sex workers may become victims of the system supposedly set up to assist them. The NSWSP has collected many examples of how sex workers are harmed by ill-planned anti-trafficking initiatives. These include so-called “rescues” from brothels that are nothing more than raids and arrest, immigrant sex workers are forced to bribe authorities to escape such “anti-trafficking” assistance programs, and sex workers are deported to countries of origin with no compensation for their work. “Rescued” sex workers are frequently denied their basic needs while under the care of the state as sadly illustrated by the case of Thai sex worker Puangthong Simaplee who died in Australia’s Villawood Detention Centre when she was not provided with medical care. Scarlet Alliance has already provided a comprehensive list of actions that are appropriate for the Australian context including remedying immigrant contract and labour violations via civil action under the Industrial Relations and Fair Trading Acts (both State and Federal) rather than under the Criminal Code. Scarlet Alliance also recommends court hearings be fair and unbiased in relation to a person’s migratory, English speaking or financial status in Australia. From the international arena, the NSWSP suggests the Committee consider the principles provided by the UN High Commissioner on Human Rights in her 2002 report to the Economic and Social Council [Recommended Principles and Guidelines on Human Rights and Human Trafficking, E/2002/68/Add.1]. This report, which we have attached to this letter, provides specific instruction on how appropriate protection and support can be given to trafficked persons (ie adequate shelter—trafficked persons should not be held in immigration detention, adequate health care—victims should be protected from mandatory testing for diseases including HIV) and ensuring that law enforcement does not violate rights via ill-planned “rescues” or punishing victims for offences committed as a consequence of trafficking. The Special Rapporteur on Violence Against Women in her statement to the Commission on Human Rights (E/CN.4/2000/68, 29 February 2000) cautions that State actions to prevent trafficking that restrict women’s rights to freedom of movement and mobility cause trafficking rather than remedy it. Thus the recommendations made by Scarlet Alliance to provide more options for workers to migrate to Australia under programs already in existence for other sectors would strike at the heart of the power of traffickers.

We would welcome an opportunity to provide you with more detailed comments if you should wish. Please do not hesitate to contact the Network of Sex Work Projects and we wish you the best in the completion of the revision of the legislation.

Sincerely,

Khartini Slamah, Board Chair
NO. 276B, Batu 2 1/2 Jalan Ipoh,
51200 Kuala Lumpur
Malaysia