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25 February, 2022

To the Department of Social Services,

Thank you for the opportunity to respond to the draft *National Plan to End Violence Against Women 2022-2032 (the Plan)*.

Scarlet Alliance, Australian Sex Workers Association is the national peak body representing a membership of individual sex workers and sex worker networks, groups, projects, collectives and organisations from around Australia since 1989. 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, in order for sex workers to be self-determining agents, build their own alliances and choose where and how they work. Scarlet Alliance represents sex workers on a number of government and non government committees and advisory mechanisms.

As sex workers engaged in much of the foundational work of violence prevention, including peer education, harm reduction, community development, peer support and navigation, and advocacy, we request the addition of our organisation to your stakeholder list. We would also like to request an opportunity to view any adoption of our recommendations, or other inclusion of sex work-related text to the Plan. In order for the Plan to successfully end violence against *all* women and children, sex workers must be partners in our own inclusion. We request an urgent meeting with your department to work in partnership to ensure sex workers are not excluded from Australia's response to violence against women and children.

Please do not hesitate to contact CEO, Jules Kim on [ceo@scarletalliance.org.au](mailto:ceo@scarletalliance.org.au) if you have any further questions or require any clarifications.

Sincerely,

Jules Kim  
Chief Executive Officer  
Scarlet Alliance, Australian Sex Workers Association

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## Executive Summary

A number of federal and jurisdictional laws in Australia facilitate the criminalisation, police targeting, over-regulation and forced medical testing of sex workers. These laws and policies are a direct result of stigma;<sup>1</sup> they tend to be moralistic rather than evidence-based, and create grounds for cruel and deliberate exclusion and control over sex workers in all forms of our lives because we are believed to be a social problem.

Sex workers are some of the most criminalised, villainised, and stigmatised women in Australia. The laws, policies and social attitudes relating to sex work create circumstances in which sex workers are viewed as a threat to the morality and safety of the community, and thus must be carefully controlled. This environment emboldens individuals, organisations, and institutions to discriminate and enact violence against sex workers with the knowledge that this behaviour is socially and culturally accepted and legally sanctioned. This is conducted via a combination of marginalising, eliminating, and silencing actions that see us expending significant resources to achieve the benchmarks of human rights that ought to be presumed by all women in Australia.

The omission of sex workers from the diverse groups of women to which the *National Plan to End Violence Against Women and Children (the Plan)* turns its attention has the potential to perpetuate this violence for the life of *the Plan* and beyond. Gendered violence and violence against sex workers are inextricably linked; while either exists, we have failed to fully address the other.

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<sup>1</sup> Z. Stardust, C. Treloar, E. Cama & J. Kim ‘‘I wouldn’t call the cops if I was being bashed to death’’: Sex work, whore stigma and the criminal legal system’, *International Journal for Crime, Justice and Social Democracy*, vol. 10, no. 2, 2021, p. 2.

This submission aims to assert a sex worker stakeholder presence, both within *the Plan* itself and in the larger Australian dialogue about gendered violence that informs such initiatives. We do this by providing the foundational rights-based approach taken by the sex worker rights movement in addressing violence in all its forms. This provides a theoretical basis for a list of concrete high-level and text-level recommendations that, if adopted in the spirit that they are presented here, will help to achieve meaningful inclusion of sex workers in *the Plan* and allow us to fully participate in the work to end violence against all women and children in Australia.

## Summary of recommendations

### High-level recommendations for the life of the plan

**RECOMMENDATION 1:** Action plans produced under the umbrella of *the Plan* must align with the full decriminalisation of sex work as the best practice model for sex work legislation that supports sex workers to prevent, take action against, and recover from experiences of violence.

**RECOMMENDATION 2:** Address the unique stigma and discrimination faced by sex workers seeking support following experiences of violence. Take proactive measures to dismantle sex work stigma among the whole of Australian society by engaging sex worker peer organisations as partners in education-as-prevention. Support those who provide services to victim-survivors to deliver non-stigmatising, appropriate services to sex workers.

**RECOMMENDATION 3:** Promote the inclusion of ‘sex work’ and ‘sex worker’ as attributes in anti-discrimination and anti-villification legislation to provide robust protections for sex workers, address stigma and discrimination that impact our experiences as victim-survivors of violence, and remove barriers to accessing appropriate, non-shaming violence intervention, response and recovery services.

### *National Plan* amendment recommendations

We make the following recommendations to the text of *the Plan* to safely and constructively include sex workers. These are re-iterated at the end of each pillar, and are listed below.

#### Foundation Principles: Intersectionality

##### PAGE 27

- End of paragraph 2: Add **‘Women who are sex workers are less likely to report violence against them due to criminalisation, stigma, and discrimination, and lack access to anti-discrimination protections.’<sup>2</sup>**

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<sup>2</sup> Z. Stardust, C. Treloar, E. Cama & J. Kim ‘I wouldn’t call the cops if I was being bashed to death’: Sex work, whore stigma and the criminal legal system’, *International Journal for Crime, Justice and Social Democracy*, vol. 10, no. 2, 2021, p. 2.

- Add **'sex workers'** to the first bullet point, which provides a serialised list of women who are intersectionally impacted by unique forms of violence. Sex workers experience unique stigma associated with our work, and also with the widespread criminalisation of sex workers.<sup>3</sup>
- Final paragraph: Edit to read 'The intersections of a range of structural and systemic forms of discrimination and disadvantage – racism, ableism, homo-, bi- and transphobia, **sex work stigma**, ageism, class discrimination and experiences of trauma – produce particular forms and patterns of violence.'

## Pillar One: Prevention

**PAGE 30:** Add **'sex workers'** to the final bullet point in 'Focus Area 1', which commits to 'develop, implement and evaluate targeted primary prevention activities designed by, and tailored for, the specific communities they are intended to support'. It is imperative that sex worker peer organisations are resourced to lead the development of primary prevention activities for sex workers. We are already engaged in harm reduction, violence prevention and peer support work for our communities, and inclusion in *the Plan* and its action plans in this way will enable us to build upon the strengths of this (usually un-funded) work.

**PAGE 31:** Amend the final bullet point of Focus Area 2 to read: **'Encourage literacy around pornography in order to address harmful sexual behaviours and the reinforcement of negative attitudes towards sexuality among children and young people.'**

## Pillar Two: Early Intervention

**PAGE 33:** Amend the fourth bullet point in Focus Area 1 to read 'Build the data and research base on what drives men to perpetrate violence, including the role of their own lived experience of violence and trauma, **their attitudes toward their victims**, and the impact of use of alcohol and other drugs.' We know that men who perpetrate violence against sex workers and other marginalised women do so, in part, because they believe that they can do so with impunity, and that capturing this in the research base is important to understanding the forces influencing perpetrators' decisions to use violence.

**PAGE 34:** Amend the first bullet point in Focus Area 5 to **include sex workers** in its serialised list of groups of diverse women for whom service providers must be capacity-built to support. Scarlet Alliance and our member organisations provide this education and are able to support service providers to offer the most relevant, caring and effective services to members of our community. Sex workers expect to experience discrimination and poor-quality services from the workforce of many of the sectors described in this point.<sup>4</sup> Inclusion here will create a basis for more concrete inclusions in

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<sup>3</sup> Scarlet Alliance, *Anti-Discrimination and Vilification Protections for Sex Workers in Australia*, Briefing Paper, 2022, <[https://scarletalliance.org.au/library/Anti\\_Discrim2022](https://scarletalliance.org.au/library/Anti_Discrim2022)>.

<sup>4</sup> Z. Stardust, C. Treloar, E. Cama & J. Kim 'I wouldn't call the cops if I was being bashed to death': Sex work, whore stigma and the criminal legal system', *International Journal for Crime, Justice and Social Democracy*, vol. 10, no. 2, 2021, p. 2.

the action plans to build on the work that Scarlet Alliance and our member organisations are already doing in this space.

### Pillar Three: Response

**PAGE 36:** Add a bullet point to Focus Area 2: ‘Embed understanding of the unique and specific challenges diverse communities face in relation to family, domestic and sexual violence’ to read as follows: **‘Acknowledge and address barriers to sex workers seeking intervention, reporting or recovery support, especially those created by the criminalisation and licensing of sex work. Enable sex worker access to support and justice through the elimination of structural and systemic barriers, resourcing the peer based responses to violence against sex workers, and the full decriminalisation of sex work.’**

**PAGE 37:** Amend the fourth bullet point on this page to ‘Recognise the particular housing challenges faced by women with disability, LGBTIQ+communities, **sex workers** and migrant and refugee women as well as women in remote and regional communities and Aboriginal and Torres Strait Islander women.’

### Pillar Four: Response

**PAGE 38:** Amend the first sentence of the eighth paragraph on this page to read: ‘Some victim-survivors experience compounding traumas, such as from racism, homophobia, **whorephobia**, transphobia, ableism, and intergenerational trauma.’

**PAGE 39:** Amend the last bullet point in Focus Area 2 to read: ‘Support LGBTIQ+ communities **and sex workers** to access to inclusive, and affirming recovery support.’

### Definitions

**DEFINITIONS:** Add ‘**sex worker**’ to the definitions list. **A sex worker is a person who performs the provision of services that involve the person participating in sexual activity with another person in return for payment or reward.**<sup>5</sup>

## Sex workers must be included in the *National Plan*

*In recent years, the #MeToo movement has galvanised millions of people around the world to share their experiences of gender-based violence and to demand change. However, despite the growth of strong sex worker-led activist movements, the issue of sex workers’*

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<sup>5</sup> Sex Industry Act 2019 (NT) s 4, <<https://legislation.nt.gov.au/en/Legislation/SEX-INDUSTRY-ACT-2019>>.

***human rights and their experiences of gender based violence have been largely ignored or dismissed in these conversations...***(Amnesty International 2022)<sup>6</sup>

*The Plan* makes a solid declaration that ‘our national vision is a country free from violence against women and children’. Scarlet Alliance shares this vision where sex workers<sup>7</sup> are included in it. The current draft makes no mention of sex workers as stakeholders. This omission is glaring and powerful. It sends a message that sex workers are not considered an inclusion in the category ‘women’ as imagined by *the Plan*, and that women who are sex workers are not seen as stakeholders, let alone as a priority. We note that even in passages that display serialised lists of *the Plan*’s ‘intersectional’ inclusions, we do not appear.

We view this omission as both indicative of and complicit in the perpetuation of violence against sex workers. Where an active stance opposing and addressing violence against sex working women is not taken, we fail to acknowledge the unique and pervasive stigma and erasure that position sex workers as deserving of violence, complicit in violence committed against us, or un-credible victims of violence.

Sex workers must be recognised and included in the *National Plan* for its vision to be realised. **In the fight to end gender-based violence, sex workers must not be left behind, excluded or silenced.** As one of the most criminalised, marginalised and stigmatised groups of women<sup>8</sup> in Australia, sex workers should have been included in the extensive process of consultation that informed the draft *Plan*. *The Plan* will remain incomplete and less effective in its response if it fails to include the voices, needs and concerns of sex workers through consultation with sex worker peer-led organisations, including Scarlet Alliance, the national representative body for sex workers and sex worker organisations in Australia.

This submission strives to fill the silence on violence against sex workers that results from exclusion in the extensive but unexhaustive consultation process for *the Plan*. In addition to specific recommendations on how the text of *the Plan* can constructively include sex workers, we also provide the some of the background information we would have provided in consultation if it had been conducted.

We note that a single submission offered this late in the process cannot achieve what would have been possible through opportunities for targeted stakeholder consultation with sex workers and sex worker peer organisations. In the final period of drafting, we strongly recommend further discussion with Scarlet Alliance and our members as to how *the Plan* and the upcoming Action Plans can adequately support sex workers in our fight to end violence against our community. Any decision made to include sex working women in *the Plan* and Action Plans must be done in consultation with

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<sup>6</sup> Amnesty International (2022), “*We Live Within a Violent System*”: *Structural Violence Against Sex Workers in Ireland*, < <https://www.nswp.org/sites/default/files/eur2951562022english.pdf>>.

<sup>7</sup> The terms ‘prostitute’ and ‘prostitution’ are considered by the Australian sex worker rights movement to be outdated and stigmatising, and laws in several jurisdictions have been changed to reflect this. The terms ‘sex work’ and ‘sex worker’ are favoured.

<sup>8</sup> Our use of the term ‘woman / women’ is inclusive of trans, non-binary and gender non-confirming people. Throughout this document, it should be understood that the issues we raise apply to all sex workers, and may impact in similar or different ways for male sex workers.

Scarlet Alliance to ensure that it is non discriminatory, evidence-based and in line with best-practice law and policy development and service provision for sex workers. Without recognising and advocating for the safety, health and human rights of sex workers, gender-based violence will remain a salient issue within Australia.

No woman should be left behind in this process. Exclusion of sex workers from *the Plan* only serves to undermine its beneficial intent and by extension, our collective safety.

### **A note on sex working parents and our children**

We primarily address violence against women who are sex workers throughout our submission. We do wish to note that a significant number of sex workers are parents. Sex work is a desirable occupation for many parents, especially those who are sole carers, as it provides high earning potential, flexible working hours, and sex workers can come and go from the work as it suits their needs and parenting schedules. Few other jobs allow this level of flexibility and high hourly rate. There is a great deal of stigma surrounding parents who are sex workers, informed by moral panic that sex workers are amoral, unfit parents, or unable to appropriately occupy and separate the roles of parent and sex worker. This is an important stigma to challenge in the work of ending violence against women and children.

While violence borne of sex work stigma impacts sex workers the most, the children of sex working parents who experience violence are also impacted by the fear, isolation and lack of access to response or justice experienced by their parent. This is particularly the case where state intervention on sex working parents are condoned through the weaponisation of sex work status in family court disputes, discrimination against sex workers who wish to adopt or foster children, and in other contexts where sex work stigma levelled at a parent impacts a young person who is or would be in their care.

Further consultation on the needs of sex working parents is recommended, and should be conducted in partnership with Scarlet Alliance and our member organisations.

### **A note on sex work research**

*In no area of the social sciences has ideology contaminated knowledge more pervasively than in writings on the sex industry. Too often in this area, the canons of scientific inquiry are suspended and research deliberately skewed to serve a particular political agenda. Much of this work has been done by writers who regard the sex industry as a despicable institution and who are active in campaigns to abolish it.<sup>9</sup>*

We support *the Plan's* commitment to enabling further research into gender-based violence in Australia. For this research to be effective, sex workers must be included through meaningful participation and partnership with Scarlet Alliance and our members. This collaboration is essential to working ethically with sex worker stakeholders and research participants and ensuring that the

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<sup>9</sup> R. Weitzer, 'Flawed Theory and Method in Studies of Prostitution', *Violence Against Women*, vol. 11, no. 7, 2005, p. 934.

products of the research are indeed beneficial to the aim of ending violence against all women, including sex workers. Our organisation is currently engaged in a number of successful collaborative projects, but have also witnessed the fallout of research conducted without adequate sex worker involvement.

*Sex workers are a highly researched community who have rarely been afforded the level of engagement or involvement in research necessary to ensure data collection and interpretation can be successful. Data integrity and the correct interpretation of data benefit substantially from the effective engagement of communities in the research process.<sup>10</sup>*

## Sex work is work

A foundational aspect of our inclusion must be to recognise that sex work is work. When we say ‘sex work is work’, we acknowledge that sex work is a legitimate and skilled occupation and that sex workers deserve access to rights and redress equitably with other Australian workers. The following section explains the labour of sex work through the framework of industrial rights. This framework is foundational to understanding the *how* of appropriate sex worker inclusions on *the Plan*. This framework must be adopted within *the Plan* to combat the framework of ‘victimhood’ that anti-sex work advocates levy against sex workers to delegitimise our labour and portray us as complicit in our own experiences of violence. The fight to end violence against sex workers involves the direct recognition of our status as workers, and as individuals deserving of the full suite of human rights afforded to others.

A sex worker is a person who performs the provision of services that involve the person participating in sexual activity with another person in return for payment or reward.<sup>11</sup> Sex work can involve the trade of services engaging different levels of sexual and corporeal labour, as well as a variety of interpersonal, emotional and physical skills. Sex work in Australia takes diverse forms, with a range of types of labour, workplaces, employment arrangements, and levels of formality. Most sex workers operate as independent contractors, either working for ourselves, together with other sex workers in a cooperative structure or employed as independent contractors by sex industry businesses. Some sex workers may come and go from the industry, and others may work consistently with sex work as their sole, primary or secondary source of income. Sex workers will often move between sectors fluidly in a manner that best suits our working needs and our navigation of the constraints of local sex work legislation and regulation. Not all people who do sex work identify as sex workers, and many people who trade sex for goods, housing, food, or anything other than money, may see this more as a form of trade than as formal labour.

There are many different forms of sex work, which include but are not limited to: full service sex work, social and companionship services, BDSM and fetish services, pornography performance, webcam work, phone sex work, stripping and peep show work, nude or erotic waiter or waitress work, sugaring work, sex for favours, opportunistic sex work and erotic massage work. Sex workers may work in establishments such as brothels, massage parlours, BDSM venues and adult entertainment venues. Sex workers can also work from residential premises, accomodation premises

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<sup>10</sup> J. Fawkes, *Sex workers and PREP trials*, Oral Presentation, Pan Pacific AIDS Conference, November 2005

<sup>11</sup> *Sex Industry Act 2019* (NT) s 4, <<https://legislation.nt.gov.au/en/Legislation/SEX-INDUSTRY-ACT-2019>>.

(hotel, motels, caravan parks, other short-term accommodation), public areas (street-based or in social settings such as restaurants or bars) and online. Sex workers may also provide incall or outcall services and can work independently, in establishments, engage escort agencies, work with other workers or work in co-operative structures.

Sex workers may organise our own work, or engage a third party such as an agency, receptionist or manager to arrange the work for us. Many sex workers work across multiple digital or physical workplaces, and are influenced by a range of factors such as the legal and regulatory environment, policing practices, access to capital, and workplace health and safety considerations, when making decisions about where, how and when to work. Some sex workers may work as fly-in, fly-out (FIFO) workers who travel to urban, regional and remote locations to engage in sex work in establishments or independently.

The services provided in any given sex work exchange vary. Sex work is skilled work, and many sex workers have small business skills in addition to the social, WHS, erotic, boundary setting, negotiation and customer service skills exercised in the course of conducting sex work.

Scarlet Alliance's '[Principles for Model Sex Work Legislation](#)'<sup>12</sup> states the importance of acknowledging sex work as legitimate work within law and policy:

“Understanding sex work as ‘work’ – in law and policy – brings a range of industrial and occupational health and safety protections to sex workers. Legislation that recognises sex work as a legitimate occupation affords sex workers better control over our working rights and conditions, improves our abilities to implement safer sex practices, enhances opportunities for collective bargaining and advocacy (for holiday pay, sick leave, superannuation, parental leave, industrial awards), recognises contracts made for working purposes (between sex worker and client, or in the hiring of premises, drivers or security), legitimises income (paying taxes, claiming work-incurred expenses and applying for loans), and gives sex workers better legal redress unfair dismissal and other injustices in the workplace. Recognising sex work as legitimate occupation also has important flow-on effects for Australia’s whole-of- government approach to Social Inclusion, which envisages an inclusive society in which ‘all Australians feel valued and have the opportunity to participate fully in the life of our society.’<sup>13</sup>

The lack of recognition of sex work as legitimate labour creates massive barriers to sex worker’s access to justice in the event of a crime against us. The characterisation of all sex work as a form of violence or exploitation disables the ability to recognise and respond appropriately to acts of violence against sex workers.

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<sup>12</sup> Scarlet Alliance, 2014, '*The Principles for Model Sex Work Legislation*', [https://scarletalliance.org.au/library/principles\\_2014](https://scarletalliance.org.au/library/principles_2014).

<sup>13</sup> Ibid.

# Violence against sex workers

Like other women, sex workers experience violence because of the capitalist, patriarchal and white supremacist bedrock of the so-called Australian state. Like other women occupying multiple marginal identities, sex workers experience compounded violence as a result of our stigmatised status as sex workers. Sex work in and of itself is not inherently violent - it is instead the legal and social environment in which it takes place that most significantly contributes to the prevalence of violence. Violence against sex workers is caused by historical and contemporary stigma and discrimination against sex workers, which manifests in the criminalisation and licensing of our work, our perceived disposability and unbelievable status as victim/survivors of crime and our lack of access to justice and police protection.

Due to sex work stigma and the criminalisation of our work, the prevalence of violence against sex workers is difficult to ascertain quantitatively as there are serious barriers to reporting violence. As noted above, any attempt to collect data on this would need to be conducted in close partnership with Scarlet Alliance and our members. We do, however, have an expansive body of consultation and survey data, organisational statistics, and experiential and anecdotal evidence reported to us through the course of our work and that of our member organisations.

## State violence against sex workers<sup>14</sup>

Sex work stigma is deeply entrenched in the Australian national consciousness, particularly in jurisdictions where some or all aspects of sex work are criminalised. Violence committed against sex workers occurs in various contexts, ranging from intimate partner violence to workplace violence to the violence enacted by the state. State based violence against sex workers are executed in the form of laws that criminalise and control our work, which leads to targeting and brutality at the hands of police, government agencies, immigration authorities and individuals in the public and private spheres.

While the removal of all criminal penalties related to sex work, which sex workers refer to as the full decriminalisation of sex work,<sup>15</sup> goes some way to address this, the remaining stigma will continue to be perpetuated without intervention at all levels of culture, policies and practice. This stigma, informed not by evidence but by moral judgement, condones and encourages private citizens to act violently against us, as we are understood as criminals, deviants or vectors of disease who cannot expect public protection nor action. This creates a climate of impunity, wherein perpetrators of violence can view us as 'easy' and even 'justifiable' targets.<sup>16</sup> As such, addressing and acknowledging the role that state violence plays in the broader picture of violence against sex workers is essential in the fight to end gender-based violence.

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<sup>14</sup> This framework is drawn from the World Health Organization, United Nations Population Fund, Joint United Nations Programme on HIV/AIDS, Global Network of Sex Work Projects, The World Bank. *Implementing comprehensive HIV/STI programmes with sex workers: practical approaches from collaborative interventions*. Geneva, World Health Organization, 2013. Chapter 2, *Addressing Violence Against Sex Workers* pp. 19-39

<sup>15</sup> Scarlet Alliance, *Full Decriminalisation of Sex Work in Australia*, Briefing Paper, 2021, <[https://scarletalliance.org.au/library/briefing\\_paper\\_full\\_decrim](https://scarletalliance.org.au/library/briefing_paper_full_decrim)>.

<sup>16</sup> M.Smith & J.Mac, *Revolting Prostitutes: The Fight For Sex Workers Rights*, Verso Publishing, 2018.

## *State violence*

The origin point of violence against sex workers is the state. Sex workers face violence from state actors such as immigration officials, prison guards and, most commonly, police.<sup>17</sup> These forms of violence are enabled by laws that criminalise and license our work, reducing sex workers to ‘criminals’ who do not deserve protection nor response from the state, and from whom other citizens must be protected. This leads state actors to act violently against us with impunity and leaves sex workers with little to no access to justice or public protections. It is clear that police cannot effectively occupy both roles of (alleged) protector and prosecutor in a way that provides appropriate services to sex worker survivors of violent crime<sup>18</sup>. This conflicting role has long been criticised by sex workers as the cause of various barriers that sex workers face when considering reporting violence<sup>19</sup>. As such, we assert that criminalising and punitive laws that target sex workers, our clients, or our families and associates are forms of state violence, as these laws directly aid and abet ongoing violence against sex workers by state actors *and* the public.

State violence is particularly insidious as it positions violence against sex workers as ‘lawful’ or otherwise excusable and thus ‘socially acceptable’ violence. Understanding and challenging the manifestations of state violence is essential to ending violence against sex workers.

## **Criminalisation**

Laws and regulations that criminalise sex work increase our vulnerability to violence, because they force us to simultaneously occupy the role of criminal and victim of violent crime. Criminalisation can apply to sex workers, our clients and associates, the activities that surround our work (i.e. advertising, safety strategies), and / or our workplaces. Criminalisation fails to recognise that sex work is work and forms significant barriers to accessing justice, safety and job security for sex workers. It places police in the role of regulators of industry, often resulting in targeted, corrupt and predatory policing with no benefit to the worker. For sex workers working under criminalised models of sex work legislation, the need to prioritise avoiding law enforcement comes at the cost of safer, well-negotiated and more secure work. Criminalisation forces sex workers to choose between reporting violence and exploitation in our workplaces with the prospect of being criminally charged ourselves, or not reporting or seeking justice. This model exists to various degrees in Tasmania, Western Australia and South Australia.

Criminalisation affords sex workers little to no control or autonomy over our work, which directly impacts vulnerability to violence or exploitation because it allows both state and private actors to hold their knowledge that we are working outside of the law as power over us. **No form of sex work criminalisation can exist in a vision of a ‘country free from violence against women and children’.**

Examples of the link between criminalisation and violence against sex workers include:

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<sup>17</sup> World Health Organization, United Nations Population Fund, Joint United Nations Programme on HIV/AIDS, Global Network of Sex Work Projects, The World Bank. *Implementing comprehensive HIV/STI programmes with sex workers: practical approaches from collaborative interventions*. Geneva, World Health Organization, 2013. Chapter 2, *Addressing Violence Against Sex Workers* pp. 19-39

<sup>18</sup> Stardust, Treolar, Cama & Kim, ‘I wouldn’t call the cops if I was being bashed to death’, p. 9.

<sup>19</sup> Ibid.

- '[F]orced rescue and rehabilitation raids by the police in the context of anti-trafficking laws may result in sex workers being evicted from their residences onto the streets, where they may be more exposed to violence. Fear of arrest or harassment by the police may force street-based sex workers to move to locations that are less visible or secure, or pressure them into hurried negotiations with clients that may compromise their ability to assess risks to their own safety.'<sup>20</sup>
- Laws criminalising clients of sex worker create difficulty for sex workers when screening clients, as clients will resist providing personal details to a sex worker for fear of being criminalised. Screening is a safety strategy and a mode of preventing violence and other negative experiences at work.
- 'Laws criminalizing HIV exposure may prevent sex worker living with HIV from seeking support in cases of sexual violence, for fear of being prosecuted.'<sup>21</sup>

## Licensing

Licensing models for sex work legislation prescribe a narrow window of legal sex work, requiring sex workers to comply with burdensome, unworkable over-regulation including;

- restrictions on the types of work or workplaces one may choose;
- tight controls on advertising;
- mandatory health testing;
- the requirement to register one's details with police or government agencies; *and*
- the criminalisation of common sex worker safety strategies and business practices.

Licensing creates a two-tiered sex industry where many are forced to work outside of the law in order to work safely. As with criminalised models, licensing takes bargaining power away from sex workers, installs police and other sex work-specific government bodies as regulators of the industry,<sup>22</sup> and fails to support sex worker rights, privacy, or WH&S. Sex workers working in licensed environments have few options for legal work, less control over the conditions of our work, and are often forced to work outside of the narrow licensed framework in order to work safely.<sup>23</sup>

Licensing is based on an unevidenced premise that the sex industry requires extra controls that are not required for other industries. It may allow for the existence of sex industry businesses and sole traders, but only within very tight restrictions that are unworkable for most sex workers. Like criminalisation, it sets up environments in which police corruption and entrapment can be an everyday workplace concern. In settings where sex work is licensed, continuing stigma and discrimination, lack of agency at work, and concerns for privacy and safety around government or police registration of our legal names to sex work status prevent many sex workers from registering

<sup>20</sup> World Health Organization, United Nations Population Fund, Joint United Nations Programme on HIV/AIDS, Global Network of Sex Work Projects, The World Bank. *Implementing comprehensive HIV/STI programmes with sex workers: practical approaches from collaborative interventions*. Geneva, World Health Organization, 2013. Chapter 2, *Addressing Violence Against Sex Workers* pp. 19-39

<sup>21</sup> Ibid.

<sup>22</sup> Such as the Prostitution Licensing Authority in QLD.

<sup>23</sup> For example in Queensland, approximately 80% of sex workers cannot work legally within the restrictive licensing framework ([Respect Inc 2017](#))

and working in the 'legalised' sex industry. Licensing frameworks exist in Queensland and the ACT, with the Victorian Parliament passing legislation to abandon the problematic framework and move to a decriminalised model from 10th May 2022.

The criminalisation of sex worker safety strategies directly impacts the experiences of sex workers seeking justice, police intervention in violence, and other support from the victims services and the criminal justice system. The Queensland Law Reform Commission's *Review of consent laws and the excuse of mistake of fact* report recognised "[v]ulnerable populations tend to experience a higher incidence of sexual violence, including Aboriginal and Torres Strait Islander people, women with disability, and sex workers."<sup>24</sup> *Prevent. Support. Believe: Queensland's Framework to Address Sexual Violence*, also recognises that sex workers experience high rates of sexual assault.<sup>25</sup>

## Addressing state violence against sex workers addresses other forms of violence against sex workers

### Decriminalisation

Scarlet Alliance's Briefing Paper on the 'Full Decriminalisation of Sex Work in Australia' describes the best practice regulatory model for sex work:

"Full decriminalisation of sex work is the removal of all sex work-specific criminal and licensing laws that apply only to sex workers, our workplaces, clients, and third parties. Criminal laws that apply to everyone are still enforced by police. Civil laws are implemented by government agencies and regulators, not the police. Civil laws protect people's health, safety, privacy, autonomy, human and industrial rights, and are meant to apply to everyone."

Decriminalisation of sex work enables sex workers to focus on our workplace health and safety, enables choice over how and where we work, and drastically improves access to justice, services, and rights. The removal of criminal penalties for all aspects of sex work opens up access to a greater degree of choice and control over our work and enables regulation via the laws and regulations that govern other industries. It precludes the access of violent actors from holding the knowledge of illegal sex work as power over us, enables the sharing of safety information and peer education among sex workers without fear of criminalisation, and is a necessary step in de-stigmatising sex work. Criminalisation always begets stigma, and stigma is a root cause of violence against sex workers. In Australia there is growing support for decriminalisation, with New South Wales adopting the model in 1995, the Northern Territory in 2019, and Victoria voting to implement it in 2022. There are active decriminalisation campaigns currently in play through law reform processes in Queensland and South Australia.

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<sup>24</sup> Queensland Law Reform Commission, *Review of consent laws and excuse of mistake of fact*, Report, 2020, <[https://www qlrc.qld.gov.au/\\_\\_\\_data/assets/pdf\\_file/0010/654958/qlrc-report-78-final-web.pdf](https://www qlrc.qld.gov.au/___data/assets/pdf_file/0010/654958/qlrc-report-78-final-web.pdf)>.

<sup>25</sup> Department of Child Safety, Youth and Women (QLD), *Prevent. Support. Believe: Queensland's Framework to Address Sexual Violence*, Report, 2021, p. 6 .

There is no evidence that decriminalisation of sex work increases the size of the industry, or the size of ‘demand’.<sup>26</sup> Research from jurisdictions that have adopted decriminalised frameworks to regulate sex work, demonstrates that decriminalisation does not lead to an increase in the size of the sex industry, nor in any increase of ‘demand for paid sex’. Australian research, drawn from the second *Australian Study of Health and Relationships* suggests that legal frameworks are not a variable factor that influence the prevalence of paying for sex work.<sup>27</sup>

While decriminalisation alone will not end violence against sex workers, it is a fundamental requirement in order to move towards this goal. We elaborate below on other measures that are necessary in order to meaningfully include sex workers in *the Plan*, but an alignment with decriminalisation as the best practice model for sex work legislation that supports sex workers to prevent, take action against, and recover from violence, is imperative.

**No form of sex work criminalisation can exist in a vision of a ‘country free from violence against women and children’.**

### The ‘Nordic Model’ is not decriminalisation

The ‘Nordic model’ claims the removal of criminal charges against sex workers, but maintains criminalisation of clients and third parties.<sup>28</sup> This model is sometimes referred to as ‘partial decriminalisation’, ‘asymmetrical criminalisation’ or ‘ending demand’, and is implemented in a misguided attempt to decrease the ‘demand’ for sex work, thus decreasing the size of the industry, or abolishing it altogether. While the Nordic Model is currently not in force within Australia, it is often proposed by anti-sex work advocates in the process of reforming jurisdictional sex work legislation. We provide evidence of the failures of the Nordic model in other countries to further illustrate the importance of advocating for the full decriminalisation of sex work in *the Plan*.

Nordic model advocates identify this mode of criminalisation as a measure to ‘protect’ sex worker safety, and may or may not be proposed by individuals, organisations and governments who describe themselves as anti-sex work. We assert clearly that the criminalisation of clients and those that ‘profit’ off our earnings (such as landlords, family members, friends, and subcontractors including drivers, cleaners, receptionists) increases our vulnerability to violence. Criminalisation of any aspect of a sex work exchange has the impact of criminalising the whole exchange. It maintains police as regulators of industry, forces sex workers to operate out of view of others, and instills fear of criminalising our colleagues and loved ones. This has the same impact as other forms of criminalisation, such as, sex workers’ focus on avoidance of law enforcement over our workplace health and safety, having smaller or no support networks, or access to safety information shared among peers, and the inability to employ strategies that are essential to our safety.<sup>29</sup>

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<sup>26</sup> C. Rissel et al., Decriminalization of Sex Work Is Not Associated with More Men Paying for Sex: Results from the Second Australian Study of Health and Relationships (2017) <https://link.springer.com/article/10.1007/s13178-016-0225-1>.

<sup>27</sup> Ibid.

<sup>28</sup> Global Network of Sex Work Projects (NSWP), *Challenging the introduction of the Nordic Model*, n.d., p. 2, <[https://d8dev.nswp.org/sites/default/files/sg\\_to\\_challenging\\_nordic\\_model\\_prf03.pdf](https://d8dev.nswp.org/sites/default/files/sg_to_challenging_nordic_model_prf03.pdf)>.

<sup>29</sup> For further resources on the negative impact that the Nordic Model is having on sex workers globally see the Global Network of Sex Work Project’s (NSWP) Resource List <<https://www.nswp.org/resources/tags/24>>.

**No form of sex work criminalisation can exist in a vision of a ‘country free from violence against women and children’.**

Amnesty International reports that under the Nordic model, sex workers have less control over their work and are forced to compromise their usual safety strategies such as screening clients, working together and organising.<sup>30</sup> Sex workers can also face difficulties in securing accommodation as their landlords can be prosecuted for letting premises to them. This can lead to forced evictions of sex workers from their homes. A different Amnesty International study, which focuses on the effects of the Nordic Model in Ireland states that:

*“The Irish government’s reliance on dated and flawed research that conflated human trafficking for sexual exploitation with sex work, as well as unpublished information [...], has led to the establishment of a legal and policy framework which our research indicates both directly causes and in other ways exacerbates violations of sex workers’ human rights.”<sup>31</sup>*

The United Nations, UNDP, UNFPA and UNAIDS joint report examining the impact of sex work laws in the Asia Pacific found that there is no evidence that laws that criminalise clients of sex workers reduce the demand for sex work or improve the quality of life of sex workers.<sup>32</sup> Instead, there are numerous documented instances of an increase in violence against sex workers and an erosion of our health, rights and safety. A recent study published by Medecins Du Monde on the impact of the Nordic model in France found

- 63% of sex workers surveyed have experienced a deterioration of their living conditions,
- 42% of sex workers surveyed are more exposed to violence than before the law’s introduction, and
- 73% reported a deterioration in their relationships with police.

Fear of the police is an obstacle to accessing legal protection, especially for victims of violence. The report also states that there has been no decrease in the number of sex workers.<sup>33</sup>

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**RECOMMENDATION 1:** Action plans produced under the umbrella of *the Plan* must align with the full decriminalisation of sex work as the best practice model for sex work legislation that supports sex workers to prevent, take action against, and recover from experiences of violence.

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<sup>30</sup> Amnesty International, Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers. POL 30/4062/2016. Accessed at <<https://www.amnesty.org/download/Documents/POL3040632016ENGLISH.PDF>>

<sup>31</sup> Amnesty International (2022), *“We Live Within a Violent System”*: Structural Violence Against Sex Workers in Ireland, <<https://www.nswp.org/sites/default/files/eur2951562022english.pdf>>. p. 5

<sup>32</sup> UNDP, UNFPA, UNAIDS, *Sex Work and the Law in the Asia Pacific*, 2012, p. 2.

<sup>33</sup> Médecins du Monde, *Que pensent les travailleur.ses du sexe de la loi prostitution*, 2018.

## Other contexts of violence

### Workplace violence

Workplace violence can include violence from managers, support staff or clients. It is important that workplace violence is understood as a labour rights issue as well as a gender-based violence concern, including within the sex industry. This is best achieved through the application of workplace standards and regulations that address workplace violence in other industries, which is only possible where sex work is decriminalised and therefore regulated as work. Laws that criminalise and license sex work, including those criminalising migrant sex workers<sup>34</sup>, severely degrade access to workers' rights and mechanisms for redress where they are violated. This increases vulnerability to workplace violence and exploitation.

Workplace violence is not inherent to the sex industry, nor is sex work itself a form of violence. Instead, workplace violence against sex workers is a confluence of gendered violence, inadequate or harmful legislative frameworks that fail to maximise safety for sex workers, and whorephobia. Abolitionist frameworks that seek to eradicate the sex industry frame the sex industry as inherently violent. This singles out the sex industry and ignores the widespread violence and harassment that exists in all industries, from agricultural work to the halls of Parliament. The tendency to blame victims of violence for their experiences of violence - a tendency which is becoming taboo as our literacy around the tactics of violent actors increases - must be challenged in *the Plan*, and it must apply to all women, including sex workers.

Sex workers are strong in our understanding that workplace violence against us will not be remedied by abolitionist, end-demand or other anti-sex work approaches, which advocate for the criminalisation of some or all aspects of the sex industry in an effort to abolish sex work. There is a lack of evidence base for this frame, and a growing body of evidence that it actually *increases* experiences of violence. This framework fails to acknowledge sex worker agency and autonomy, speaking for and over sex workers in a paternalistic and punitive way. Rights-based legislation is what sex workers are seeking, and what *the Plan* must align with us in promoting.

### Violence from intimate partners and family members

Like other women, sex workers can experience violence from intimate partners and family members. Where sex work is criminalised or licensed, knowledge that a sex worker is working outside the law can be weaponised by intimate partners or other people close to a sex worker in order to exercise control or perpetrate violence. Deeply-embedded sex work stigma can create tension in personal relationships and lead to intimate partners and family members thinking that it is justifiable to enact violence against us on the basis of our profession. This links to societal assumptions that sex workers should be 'punished', controlled and judged due to our sex working status. It also links to the

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<sup>34</sup> See for example: Canadian HIV/AIDS Legal Network, *Sex Work Law Reform in Canada: Considering problems with the Nordic model*, Briefing Paper, January 2013, <<https://www.nswp.org/sites/nswp.org/files/NordicBrief-ENG.pdf>> and UglyMugs.ie, *Crime has almost doubled in the two years since new law came in*, Statement, 2019, <<https://uglymugs.ie/wp-content/uploads/um-statement-26-mar-2019.pdf>>.

stigmatising and damaging stereotype that our status as equal family members, partners and parents is compromised and degraded by our sex work.

Sex workers can be vulnerable to coercive control, through intimate partners or family members threatening to 'out' us as sex workers, especially when attempting to exit abusive intimate and familial relationships. This can be especially difficult for sex working parents, as we face stigma in child custody settings, with stigma about sex work often weaponised as 'evidence' that we are unfit parents.

Sex workers enter the sex industry for the same reason that people enter other industries, that is, the need to earn an income. For many women, sex work can be a way to gain access to the financial independence necessary to exit violent and abusive relationships. Where sex work is criminalised or licensed, a woman at risk or experiencing violence may have to choose between the risk of working outside of the law and remaining within a violent relationship. *The Plan* must recognise the complex interplay between sex work stigma and intimate partner and family violence, and take a sex work-affirming position, particularly in the pillars that address early intervention, response and recovery.

## Violence by perpetrators at large or in public spaces

Stigmatised, marginalised and over-policed populations are often viewed as 'easy targets' for violence by the general public, as we do not have equitable access to justice and are not viewed as 'believable' or credible victims. For sex workers, centuries of stigma, criminalisation and vilification have produced a dehumanising effect that can reduce the value of our lives to those who would perpetrate and / or respond to violence against us.<sup>35</sup> For those who would perpetrate violence against sex workers outside of a workplace or family / intimate partner context, there can be a safe presumption that the lack of access to justice and the devaluing of sex worker lives makes us safer victims to pursue. This is confirmed in cases where a sex worker pursues justice and a perpetrator is either not convicted despite substantive evidence,<sup>36</sup> or is given a lesser sentence when found guilty.<sup>37</sup>

A WHO report on *Addressing Violence Against Sex Workers* notes:

*'In most contexts, the antagonistic relationship with police creates a climate of impunity for crimes against sex workers that may lead them to be the targets of violence or of other*

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<sup>35</sup> We point to the case of the Green River Killer's statements that he targeted sex workers because he expected that they would not be reporting missing.

*"I picked prostitutes as my victims ... because they were easy to pick up without being noticed. I knew they would not be reported missing right away and might never be reported missing. I picked prostitutes because I thought I could kill as many of them as I wanted without getting caught"* – Gary Ridgway, the 'Green River Killer'. (M. Smith & J. Mac, *Revolted Prostitutes: The Fight For Sex Workers Rights*, Verso Publishing, 2018, p. 78).

<sup>36</sup> B. Sullivan, 'Rape, Prostitution and Consent', *Australian and New Zealand Journal of Criminology*, vol. 40, no. 2, 2007, p. 127.

<sup>37</sup> As recently as 2016, the *Victorian Sentencing Manual* allowed judges to take 'prostitution' into account in determining the impact of sexual assault during sentencing. Vixen Collective, a peer sex worker organisation and member of Scarlet Alliance, with the support of St Kilda Legal Service effectively advocated for changes to the *Manual*.

*crimes that may turn violent, such as theft. Some perpetrators specifically target sex workers to “punish” them in the name of upholding social morals, or to scapegoat them for societal problems, including HIV. Sex workers may also face violence from individuals in a position of power, e.g. nongovernmental organization (NGO) employers, health-care providers, bankers or landlords.’*

This societal acceptance of and indifference to violence against sex workers is also expressed through popular media representations of sex work where sex workers are seen as ‘undesirable and...disposable victims’ and are often ‘portayed as dead bodies rather than holistic characters’.<sup>38</sup> In a recent study conducted about sex worker experiences of the Australian criminal justice system, participants noted that this cultural view of the ‘disposability’ of sex workers made reporting crime seem ‘pointless’.<sup>39</sup> This attitude towards sex workers as victims of crime is ‘entrenched in the cultural imagination’,<sup>40</sup> and can enable violence perpetrated by those not known to us.

## Organised non-state violence

We turn now to the matter of organised non-state violence against sex workers, and the work of organisations who campaign against sex work, sex workers, and the sex industry - generally with the ambition to ‘rescue’ us from our occupation. This network of NGOs, charities and privately-funded organisations and campaigns forms a multi-billion dollar industry and lobbying force built upon anti-sex work foundations, who speak over and against sex workers and deny us of the agency to speak for ourselves. Rather than supporting sex workers in preventing or addressing violence, they create further harm through the domination of dialogues about sex work and the support of violent state interventions through laws, policies, and enforcement tactics (including criminalising some or all aspects of sex work, raids on workplaces, police entrapment, etc).

The ‘rescue industry’ often conflates sex work with trafficking and exploitation, referring to sex workers as passive victims and refusing to use the terminology with which we self-identify, opting instead for terms like ‘victims of prostitution’, ‘prostituted women’, or simply ‘prostitutes’. As Laura Agustín remarks in her book *Sex at the Margins*,

***By and large, they accept the ‘prostitution’ discourse – and the ‘prostitute’ as victim – as fact, not as social construction. From there, they position themselves as benevolent helpers, in what seems to them to be a natural move.***<sup>41</sup>

Sex workers are, and have always been, clear that we do not want or need to be ‘rescued’. ‘Rights not rescue’ is the resounding cry of sex worker rights mobilisations across the globe. What we want, and indeed what we are asserting here, is that we must be afforded a standard of human rights that will

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<sup>38</sup> Lucy V. Hay, *Writing Diverse Characters For Fiction, TV or Film: An Essential Guide for Authors and Script Writers* (Creative Essentials, 2017) cited in Stardust, Treloar, Cama & Kim, ‘I wouldn’t call the cops if I was being bashed to death’, p. 9.

<sup>39</sup> Stardust, Treloar, Cama & Kim, ‘I wouldn’t call the cops if I was being bashed to death’, p. 9

<sup>40</sup> Ibid.

<sup>41</sup> L.M. Agustín, *Sex at the Margins: Migration, Labour Markets and the Rescue Industry*, ZED Publishing, 2007, p. 6.

enable us to prevent, challenge and seek retribution for the violence we experience, from any and all actors. Our voices, however, are frequently drowned out by a well-resourced industry:

*...[A] huge amount of money is poured into anti-prostitution work done through the prism of anti-trafficking. In 2012, in the United States alone, the collective budget of thirty-six large anti-prostitution anti-trafficking organisations (with many smaller organisations excluded from the calculation) totalled 1.2 billion dollars, while the US federal government budgets a further \$1.2 to \$1.5 billion annually for anti-trafficking efforts. The vast majority of this money is spent on campaigning, as opposed to supporting survivors; in 2014, the United States had only about one thousand beds available for victims of trafficking. (By contrast, in 2013, the collective budget for the sex workers' rights movement for the entire world was 10 million dollars.)<sup>42</sup>*

It is no wonder that this organised group of non-state actors frequently drowns out sex worker voices. This is unacceptable in any aspect of the work of the *National Plan*.

These resources are weaponised in particular against migrant sex workers in a racialised, paternalistic, and often evangelical way. Their work also puts us at greater risk of violence. The Empower Foundation, a Thai sex worker peer organisation, write how this rescue industry – fuelled by sex industry abolitionists – actually increases debts, deportations and vulnerability to trafficking for migrant sex workers. In their article, 'Travel to Build a Better Life', representatives of Empower Foundation write:

*Nowadays there are laws about human trafficking. These laws, consequently, get us arrested. Because of these laws, we are put in jail and sent back to our home town. These laws don't help or respect us. On the other hand it is like a wall so we can't reach our dreams or access our rights.*

*It's good that they want to help us but I've got some questions for those people who think that they rescue us. How would you help us? Do you really help us to reach our dreams? Do you ever care about what happens to us after all?<sup>43</sup>*

The rescue industry's greatest success is its ability to scale its 'solution looking for a problem'. As Augustin writes,

*Migrants working in the informal sector are treated as passive subjects rather than as normal people looking for conventional opportunities, conditions and pleasures, who may prefer to sell sex to their other options. The victim identity imposed on so many in the name of helping them makes helpers themselves disturbingly important figures. Historical research demonstrates how this victimising and the concomitant assumption of importance by middle-class women, which began two centuries ago, was closely linked to their carving out*

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<sup>42</sup> M. Smith & J. Mac, *Revolting Prostitutes: The Fight for Sex Workers' Rights*, Verso Publishing, 2018, pp. 58-9.

<sup>43</sup> Empower Foundation, 'Travel to Build a Better Life' Presented at an anti-trafficking networking day facilitated by Scarlet Alliance, printed in *Provision*, 5, 28.

*of a new employment sphere for themselves through the naming of a project to rescue and control working-class women.*<sup>44</sup>

It is essential that all sectors currently undertaking the work of addressing gendered violence are able to detect and reject the politics that inform the rescue industry and take active steps to un-do the domination of the industry itself and the theoretical framework of its underpinnings. There are currently NGOs operating in this space in Australia. These organisations are not reputable among the sex worker community, as their services are provisional; denounce sex work and leave the industry, or risk the withholding of resources, the judgement of those you have turned to for help, or pressure to provide particular the 'right' answers or attitudes in order to access the support you need.

## Integrating Sex Workers into the Four Pillars of the *National Plan*

Inclusion of sex workers into the *National Plan to End Violence Against Women and Children* must be predicated on the values that are embedded into a decriminalised framework, including sex worker self-determination, equitable access to justice and services, and freedom from state, workplace and interpersonal violence. These values can also inform integration of sex working women into the four pillars of the Plan. Aligning with the value of sex worker self-determination requires that this integration be conducted in collaboration with sex worker stakeholders, as represented by Scarlet Alliance and our member organisations. We provide the following as a starting point, and look forward to ongoing conversations as feedback on the draft Plan is integrated.

### Pillar 1: Prevention

*The Plan* states that prevention is a 'long-term national priority with a focus on generational change' that needs the support of 'all Australians'. Indeed, cultural and structural change is a long-term project, and one with which sex workers are very familiar. In some ways, Australia leads this charge with a continuing trend towards decriminalised models in the jurisdictions, and is currently the country with the most evidence-based jurisdictional sex work legislation in the world. Despite several jurisdictions moving to decriminalised, however, sex workers in Australia continue to experience the violence borne of sex work stigma and criminalisation, particularly in the 5 jurisdictions that retain criminalised or licensed models.

Prevention is work with which sex workers and sex worker peer organisations are already engaged, in no small part because sex workers commonly fall through the gaps of the current violence prevention framework, as is the case with the current draft of the *National Plan*. As stigmatised, criminalised workers who are often faced with the impossible choice between working safely and working legally,

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<sup>44</sup> L.M. Agustin, *Sex at the Margins: Migration, Labour Markets and the Rescue Industry*, ZED Publishing, 2007, p. 8

and whom the law often does not protect, we work collaboratively and expertly to prevent violence from police, partners, family members, clients, and the state. This work is largely un-resourced. There is significant potential to build upon and strengthen this work, if sex workers are carefully integrated into the Plan following the recommendations we provide.

To enable the *prevention* of violence, rather than its perpetration, it is integral that the ‘prevention’ pillar address the following issues.

## 1.1 Dismantling sex work stigma

**Sex work stigma is a significant contributor to the prevalence of violence against sex workers.** Sex work stigma manifests in: the criminalisation, over-regulation and heavy policing of sex workers; the targeting, deportation and detention of migrant sex workers; the public acts of discrimination and vilification against sex workers; and the targeting of sex workers by violent perpetrators who believe they can act with impunity. Addressing and reducing sex work stigma is an integral part of preventing violence against sex workers.

Across Australia, licensing, criminalisation and over-regulation of sex workers contribute to and are informed by the stigma that is levied against sex workers. Sex work stigma can ‘be seen as a driving force behind many policies and regulatory frameworks that govern sex work, including criminalisation, licensing and end-demand policies’.<sup>45</sup> The enforcement of criminalisation and licensing systems, coupled with the gradual extension of police powers, reinforces sex worker stigma. It does so by promoting the idea that the community must be protected from sex workers, rather than viewing us as citizens equally deserving of protection under the law. Stigma against sex workers has been identified as a negative health determinant that affects the mental and physical health of workers,<sup>46</sup> our ability to access non-judgemental health care<sup>47</sup> and our access to basic needs like housing, financial security and legal support.<sup>48</sup>

In 2020, Scarlet Alliance conducted research in partnership with the Centre for Social Research in health that surveyed 647 sex workers in relation to stigma and discrimination. **96% of participants reported experiencing stigma or discrimination related to their sex work** within the last 12 months, including 34% who indicated that this ‘often’ or ‘always’ occurred. In 2015, research by CSRH found that among the general public, 64% self-reported they would behave negatively toward sex workers because of their sex work.<sup>49</sup>

Sex worker stigma compounds differently for sex workers from other marginalised communities who are routinely targeted by police and for sex workers who are parents, use drugs, are young or work as

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<sup>45</sup> Stardust, Treloar, Cama & Kim, ‘I wouldn’t call the cops if I was being bashed to death’, p. 2

<sup>46</sup> C. Treloar et al., ‘Rethinking the Relationship between Sex Work, Mental Health and Stigma: A Qualitative Study of Sex Workers in Australia’ (2021) 268 *Social Science & Medicine* 113468.

<sup>47</sup> Cecilia Benoit et al., ‘Prostitution Stigma and Its Effect on the Working Conditions, Personal Lives, and Health of Sex Workers’ (2018) 55(4–5) *The Journal of Sex Research* 457, 458.

<sup>48</sup> For an in-depth account of examples of discrimination against sex workers see - Scarlet Alliance, ‘Unjust and Counter-Productive’, Report, 1999 <<https://scarletalliance.org.au/library/unjust-counterproductive>>.

<sup>49</sup> Scarlet Alliance, CSRH & UNSW, *Sex Work Stigma Research Collaboration* <[Sex Work Stigma Research Collaboration](#)>.

street based sex workers.<sup>50</sup> For Aboriginal and Torres Strait Islander sex workers, racism further exacerbates sex worker stigma as they already ‘face targeted police interaction and disproportionate rates of incarceration’.<sup>51</sup> Migrant sex workers experience racialised sex worker stigma as well, often based on assumptions that they cannot work independently and thus must be involved in organised crime as victims of trafficking or pimping.

Sex work stigma can also compound depending on what type of sex work we do. Sex workers often refer to this as ‘whorearchy’, in which different aspects of sex work are viewed as more or less valued or ‘respectable’ than others. This impacts attitudes towards violent crimes committed against sex workers, including how they are approached by investigatory teams of law enforcement or by the media. It also plays out in how families and communities respond to violence where the victim / survivor is known to be a sex worker, regardless of the context in which the violence takes place. We see this when a victim of violence’s sex work status is emphasized by the media, or when a sex worker victim of fatal violence is ‘outed’ in the private or public spheres following their death.<sup>52</sup>

### 1.1.a A note on sex work stigma and pornography

The Plan nominates the following ‘Focus Area’ regarding pornography:

*Strengthen positive, equal and respectful relationships between and among women and men, girls and boys, in public and private spheres.*

*Address the role of pornography in contributing to harmful sexual behaviours and reinforcing stereotyped attitudes among children and young people.*

We caution that ‘addressing the role of pornography in contributing to harmful sexual behaviours and reinforcing stereotyped attitudes among children and young people’ can be an exercise in scapegoating and blaming pornography and / or the sex industry for influencing sexual cultures, particularly for young people. This can have a detrimental impact on workers in this part of the industry through a shaming and stigmatising approach that does further damage to cultural attitudes towards us.

Pornography must be regarded as a form of media like other forms of moving and still image generation and understood in the context of patriarchy, capitalism, slut-shaming, whorephobia, and the lack of a comprehensive sex, consent and relationships education curriculum in the Australian school system. Pornography does not exist in a vacuum, and thus should not be singled out from other forms of media. Instead, media literacy education for adults and young people should address pornography in a way that compliments evidence-based, culturally appropriate sex education.

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<sup>50</sup>Stardust, Treloar, Cama & Kim, ‘I wouldn’t call the cops if I was being bashed to death’, p. 2

<sup>51</sup> Ibid.

<sup>52</sup>J.Kim, G. Vanting & C. Cox, ‘Sex workers like Michaela Dunn have the right to feel safe at work like anyone else’, *ABC News*, 16 August 2019, <<https://www.abc.net.au/news/2019-08-16/sex-workers-like-michaela-dunn-should-feel-safe-at-work/11421118>>

Because pornographic images are incredibly diverse, young people must be equipped to respond critically to what they see in a way that does not demonise, shame, or devalue pornography performers (or other sex workers).

Equating pornography with harm is informed by the same principles that equate sex work with harm, and fail to turn adequate attention towards the root causes of gendered harm. This is why we recommend that the draft be amended so that the final bullet point of Focus Area 2 on page 31 reads: **'Encourage literacy around pornography in order to address harmful sexual behaviours and the reinforcement of negative attitudes towards sexuality among children and young people.'**

### 1.1.2 Stigma related to violence

Like other women, sex workers experience the existent stigma surrounding gender-based violence, especially sexual violence. For sex workers, however, existent stigma intersects with and is compounded by sex work stigma and discrimination. The following are examples of common discriminatory stereotypes leveraged against sex workers who are survivors of sexual assault, which we hope will inform the government's understanding about how 'victim blaming' and 'slut shaming' of sex workers operates not only in relation to sex workers, but also filters throughout rape culture. If the actions that flow from the Plan are to change community attitudes around consent, sexual assault and sexual autonomy, sex work stigma needs to be directly addressed.

*Sex workers provide blanket consent and are thus 'unrapeable'*

Sex workers can be seen as 'commonly available to men'<sup>53</sup> and thus in a 'perpetual state of consent'.<sup>54</sup> This stereotype directly effects the perceived 'rapeability' of sex workers and reflects the damaging misunderstanding that a sex worker's body, rather than the negotiated inclusions of their service, may be 'bought' for the length of a booking.<sup>55</sup> This stems from a lack of understanding about the negotiability and diversity of services that sex workers offer and our ability to enact boundaries and to give and withdraw consent. Legal, cultural and social narratives<sup>56</sup> expressed through case law, politics and the media further problematise this perceived 'perpetual state of consent'. For example, current consent and sexual assault law in Queensland can be applied to charge offenders for the non-payment of sex workers. However, due to stigma and the ambiguity around our 'rapeability', these cases of non-payment are often framed as 'fraud' rather than sexual assault.

*Assault is an 'occupational hazard' of sex work*

Sex workers who experience sexual violence can be victim-blamed through the belief that such experiences are an inherent risk associated specifically with sex work. Positioning sexual assault against sex workers as an 'occupational hazard' individualises the crime as particular to the act of sex work, shifting the focus from the perpetrator to the sex working victim. Sexual offences taking place

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<sup>53</sup> B. Sullivan, 'Rape, Prostitution and Consent', p. 127.

<sup>54</sup> Stardust, Treloar, Cama & Kim, 'I wouldn't call the cops if I was being bashed to death', p. 2.

<sup>55</sup> Ibid.

<sup>56</sup> Ibid.

at work is neither endemic nor unique to the sex industry, as is becoming more and more obvious as women across the country mobilise to demand justice for sexual assaults occurring at work and at home.

Like other forms of victim-blaming, this assumption aims to turn one's attention away from the overarching legal landscape that enables and perpetuates sexual violence against sex workers. Perpetrators are empowered directly by the criminalisation and licensing of sex work to enact violence against us. This is because 'prostitution' offences and police powers work in tandem to render 'legal' work inaccessible and unsafe while criminalising safety strategies, giving an upper hand to those who would perpetrate violence against us. Criminalisation makes sex workers vulnerable to violence in part by creating a disincentive for sex workers reporting crime and seeking assistance; in doing so, we may incriminate ourselves. This process of marginalisation, criminalisation and isolation of sex workers created thus creates a working environment that is easier for perpetrators to exploit.

Where sex work is decriminalised, sex workers are free to engage in workplace health and safety measures to protect us from assault, including employing security, working with other sex workers, screening clients, and choosing a working location that feels safe for us.

Sex workers are not inherently more 'at risk' of sexual violence than other workers; it is rather the criminalisation of our safety strategies and degradation of our human rights, as expressed in law, policing and media representations that 'responsibilises' sex workers for experiencing work-related violence.<sup>57</sup>

#### *Sex workers are not 'good' or believable victims*

In recent years, women have named and resisted some of the common strategies used to demonise, discredit and undermine survivors of violence. For example, court proceedings in cases of sexual violence might focus on the victim / survivor's clothing, actions or sexual history to create a sense that they are at fault for the violence, or grill them about minute details to undermine their credibility. Many women have addressed the construction of the 'bad victim' and its impact on access to justice and recovery.

Sex workers experience the same stigma, compounded by sex work stigma that associates our work with violence, desperation, bad personal choices, or other criminalised activities like drug use or gang activity. The legacy of criminalisation also puts sex workers in a position where we are distrusted or suspicious, whether consciously or subconsciously. This can be incredibly distressing for sex workers who experience violence, and is a reason why many sex workers choose not to report it.

### 1.1.3 Stigmatising sex workers as 'victims' of our work

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<sup>57</sup> A. Krüsi ., 'They won't change it back in their heads that we're trash': The intersection of sex work-related stigma and evolving policing strategies', *Sociology of Health & Illness*, vol. 38, no. 7, 2016, p. 1137 cited in Stardust, Treloar, Cama & Kim, 'I wouldn't call the cops if I was being bashed to death', p. 8.

The attitude that sex workers are victims in need of rescue is another form of sex work stigma, primarily repeated by governments, police and sex work-exclusionary radical feminists. The conflation of sex work with sex trafficking, slavery, sexual servitude and other forms of exploitation is a common tactic in perpetuating this stigma. This attitude informs 'interventions' like workplace raids (particularly in the workplaces of migrant sex workers), NGOs that provide services to sex workers on the condition that we leave the industry, faith-based 'rescue' initiatives, and the Nordic model.

These types of 'interventions' on sex work are led by non-sex workers and comprise a multi-million - in some countries multi-*billion* - dollar industry<sup>58</sup>. Sex workers may refer to this as the 'rescue industry' or the 'rescue industrial complex'. The existence of this inter-sectoral 'rescue' industry is premised on an image of the sex worker as a victim of sex work itself, rather than a worker trying to survive the conditions of patriarchal capitalism as safely and effectively as possible. This stigma must be actively challenged by the sectors engaged in implementation of the Plan. This work must be led by sex worker representative organisations, who are best-placed to provide consultation and education on empowerment-model approaches that combat the 'victim' stigma applied to sex workers.

## 1. 2 Anti-discrimination and vilification protections

Sex workers in Australia have long been subjected to discrimination and vilification with devastating impacts on our safety, housing and accommodation, financial stability, mental health and well-being. Because some or all aspects of our work are criminalised in many states and territories, there is minimal protection or recourse. Two jurisdictions that have implemented a decriminalised framework, a third jurisdiction is commencing implementation and the remaining states and territories are moving towards the decriminalisation of sex work. Despite this, sex workers still remain largely unprotected against discrimination and vilification.

The current anti-discrimination frameworks enable, and in some jurisdictions legalise, discrimination against sex workers, with limited opportunities for us to pursue any protections. Challenging discrimination starts with a complaint and then conciliation, which is a dispute resolution process where the complainant (the party who has experienced discrimination) and the respondent (the party who has been discriminatory) negotiate a remedy for the harm caused by the discrimination. If an agreement can be reached, sex worker complainants are often made to sign non-disclosure agreements covering the discrimination and any settlement agreed upon. This means there is little publicly available information about anti-discrimination cases pursued by sex workers that do not progress beyond conciliation. If not resolved at conciliation, there are significant privacy, safety and financial barriers for a sex worker to take the case to tribunal or a higher court.

Discrimination against our community is widespread and persistent, taking place daily at systemic and interpersonal levels for sex workers. Simultaneously, there is a lack of accessibility for sex workers to the current mechanisms for redress. Law reform at federal, state, and territory levels is

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<sup>58</sup> M. Smith & J. Mac, *Revolting Prostitutes: The Fight for Sex Workers' Rights*, Verso Publishing, 2018, p. 58-9.

required for sex workers to access the appropriate legal protections when we are targets of discrimination or vilification.

In order for sex working women to experience the benefits of the implementation of the Plan, we need to be able to expect and receive equitable access to and treatment from the full suite of services that provide support for women experiencing violence. This includes housing and social services, the criminal justice system, and primary prevention. Access to anti-discrimination protections will contribute to the creation of an enabling environment for sex workers seeking services and support when we experience violence. Without it, we are simply not on a level playing field when it comes to surviving and recovering from violence.

### 1.3 Education and training

Dismantling sex work stigma happens on all levels of the culture, from structural to interpersonal. Sex workers and our representative organisations and allies work to demystify and humanise sex work through a wide range of activities from submission-writing, to the provision of practitioner training for service delivery in health, law enforcement, social services, and other sectors, to storytelling to the broader public. Doing this work enables us to present sex work as we experience it, rather than as it is presumed to be by those who've only been exposed to stigmatising stories.

The whole-of-society education required to end violence against women and children must directly address attitudes towards sex workers as a lightning rod for patriarchy, paternalism, 'rescue' politics and misogyny. This is prevention work. Governments must be called upon to engage in active anti-stigma, discrimination and vilification education campaigns directed at the general public as well as public services, media, law enforcement, the judiciary and immigration authorities. Sex worker organisations must be an integral part of designing and delivering these campaigns to ensure that the messaging is best targeted at preventing discrimination in relevant sectors.

### 1.4 Direct amendments required for Pillar 1

**PAGE 30:** Add '**sex workers**' to the final bullet point in 'Focus Area 1', which commits to 'develop, implement and evaluate targeted primary prevention activities designed by, and tailored for, the specific communities they are intended to support'. It is imperative that sex worker peer organisations are resourced to lead the development of primary prevention activities for sex workers. We are already engaged in harm reduction, violence prevention and peer support work for our communities, and inclusion in the *National Plan* and its action plans in this way will enable us to build upon the strengths of this (usually un-funded) work.

**PAGE 31:** Amend the final bullet point of Focus Area 2 to read: '**Encourage literacy around pornography in order to address harmful sexual behaviours and the reinforcement of negative attitudes towards sexuality among children and young people.**'

## Pillar 2: Early Intervention

Early intervention is a key aspect in addressing cycles of gender-based violence. However, intervention services are severely limited by sex work stigma and laws that criminalise and license our work, as well as the discrimination we experience when interacting with police, justice services, health, and domestic and family violence services. **This discrimination hampers our ability to readily access support 'at points in [our] life when violence can escalate'.<sup>59</sup>**

The decriminalisation of sex work and the provision of anti-discrimination protections for sex workers improves our access to early intervention supports and increases our chances of breaking out of cycles of gender-based violence and abuse. **In this section, we address barriers that sex workers face when accessing early intervention services.**

### 2.1 Policing and Justice Services

The *National Plan* asserts that 'policing and justice systems need to be equipped to provide trauma-informed, culturally safe and person-centred responses that prioritise the safety of individuals and families'.<sup>60</sup> While we believe there are alternatives to carceral approaches to family and sexual violence, we acknowledge that some victim / survivors experience police as being able to provide valuable early intervention support for women experiencing gender-based violence. **For sex workers, however, access to this support will always be barred by sex work stigma, criminalisation, licensing and discriminatory police targeting.**

This section explains the violence and discrimination that sex workers experience at the hands of police, illustrating the justice barriers that sex workers face when accessing early intervention and reporting. For policing and justice systems to be 'equipped' to provide adequate support for sex workers experiencing violence, these access to justice barriers must be explicitly recognised. Advocating for decriminalisation is integral in addressing these barriers, as we described above; police simply cannot enforce the criminalisation of sex work and provide protection to sex workers simultaneously. Ignoring the ongoing abuse that sex workers experience at the hands of police, or dismissing it as outside of the scope of reform and action to end violence, will only perpetuate gender-based violence, undermining the intent of Pillar 2.

Police corruption and inaction are common threads within sex industries that have any elements of criminalisation.<sup>61</sup> Criminalisation brings the risks of identification and investigation, which can 'lead to entrapment, harassment, assault, arrest or attempts at bribery.'<sup>62</sup> Police entrapment of sex workers, which involves police posing as clients to catch a sex worker they suspect is working outside

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<sup>59</sup> *Draft National Plan: Pillar 2.*

<sup>60</sup> Ibid.

<sup>61</sup> Stardust, Treloar, Cama & Kim, 'I wouldn't call the cops if I was being bashed to death', p. 6.

<sup>62</sup> Ibid

of the law, 'fosters deep mistrust between the sex worker community and the police, significantly reducing sex workers' access to justice'.<sup>63</sup> Police entrapment also has the effect of creating distrust between sex workers and other support services, as it is plausible that other services are working with the police as part of an entrapment strategy. This inevitably has a ripple effect, limiting our access to justice as well as health, domestic and family violence, financial and housing support services.

Migrant sex workers have compounding barriers associated with concerns about visa cancellation or deportation. Migrant sex workers working under licensing regimes report incidents of police arriving 'at [our] workplace with an unspoken expectation that they would receive free services in return for not reporting [us]'.<sup>64</sup> When police become perpetrators of sexual assault by blackmail, they are clearly no longer a viable source of protection.

Research repeatedly finds such punitive policing targeting sex workers 'to produce greater, rather than less, risk'.<sup>65</sup> Understandably, this culture of corruption and entrapment forms a significant barrier for sex workers seeking early intervention from police on gender-based violence, as it directly conflicts with the police's role as 'civil protectors'. Sex workers who work in criminalised jurisdictions or outside of the law in a licensing framework feel unable to report crimes made against them as they risk consequential legal liability, a permanent record of their sex work on police databases, and potentially making themselves later targets of sex work policing by making themselves known to police. The framing and targeting of sex workers as 'criminals' inevitably makes it difficult for sex workers to be believed as victims of crime. **In a recent study, sex worker participants indicated that seeking police assistance is a 'last resort' and 'pointless'**<sup>66</sup> **due to negative personal and peer experiences.**

A study conducted with Queensland sex workers in 2017<sup>67</sup> asked participants if they would make a complaint to police if they were assaulted at work. Only 46% said that they would, and 50% said they would not. 66% of respondents who said they would not report cited stigma and privacy concerns as key barriers for them, and 38% indicated that they 'mistrusted police, their competence, the legal system and / or anticipated discrimination'<sup>68</sup>. Other sex work literature and research echoes this mistrust of police, including fears that police will charge workers with prostitution offences if they are sexually assaulted while working outside of the law.<sup>69</sup>

As one sex worker writes,

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<sup>63</sup> Scarlet Alliance Submission to Legal Affairs and Community Safety Committee (Queensland), *Inquiry on the Police Powers and Responsibilities and Other Legislation Amendment Bill 2019* (08 October 2019)

<sup>64</sup> *Ibid*, p. 8.

<sup>65</sup> Stardust, Treloar, Cama & Kim, 'I wouldn't call the cops if I was being bashed to death', p. 6.

<sup>66</sup> *Ibid*.

<sup>67</sup> Respect Inc., *Regulating Bodies: An in-depth assessment of the needs of sex workers [sexual service providers] in Queensland's licensed brothels* (Report, June 2017)

<sup>68</sup> *Ibid* 21.

<sup>69</sup> B. Sullivan, 'Rape, Prostitution and Consent'.

*'Historically and globally, police have been the source of continued abuse, rape, violence and harassment of sex workers. They are not our protectors.'*<sup>70</sup>

## 2.2 Health Care Services

Access to trusted healthcare services can be an integral support for those seeking early intervention. As stated by the Plan, 'health service providers need to be supported through, resources, time and education to identify and respond to family, domestic and sexual violence.' As a key community partner in the National BBV and STI Strategies, Scarlet Alliance is very familiar with the importance of well-informed healthcare providers trained to provide appropriate services to our community.

Unfortunately but probably unsurprisingly, sex workers experience widespread stigma and discrimination when disclosing sex work in the process of accessing health care, including in mental, physical and sexual health care settings. This leads to inadequate or inappropriate care, stigmatising interactions and assumptions, and even refusal of the care we need. Medical professionals may fixate on sexual health treatment, even if we are seeking care for other concerns. In mental health care settings, practitioners can make incorrect and damaging assumptions that sex work is the root cause or an exacerbating factor of any mental health issues we experience, compromising quality of care. Some sex workers may be refused service or be encouraged towards unnecessary testing or other unwanted advice, or be given incorrect information by practitioners whose knowledge base is grounded in stigma, rather than evidence.

Sex workers may also fear self-incrimination within criminalised and licensed jurisdictions if we disclose our sex work to a healthcare provider. These barriers are compounded for sex workers living with HIV, who can experience intersectional stigma and marginalisation as well as dual criminalisation. **Within the context of early intervention, sex work stigma can cloud a medical professional's judgement and quality of care, as they may attribute our sex work as the 'problem' rather than identifying domestic, family or sexual violence that may be occurring.**

Research conducted by the Centre for Social Research in Health (CSRH) indicates that 31% of the health professionals involved in the study reported that they would behave negatively toward other people because of their sex work.<sup>71</sup> This is contrasted to research conducted with sex workers in 2020, which found that 91% of 647 participants reported experiencing negative treatment from health workers within the last 12 months, including 24% who indicated this 'often' or 'always' happened.<sup>72</sup>

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<sup>70</sup> MsEloise, 'Because I'm a Whore, 'An Open Letter to Australian Feminists Concerned about Sex Worker Exploitation', *Feminaust: Contemporary Australian Feminism* (Blog Post 20 August 2011) accessed at <<https://feminaeaustralis.wordpress.com/2011/08/20/open-letter-to-australian-feminists-concerned-about-sex-worker-exploitation/>> 16 July 2021.

<sup>71</sup> Scarlet Alliance, CSRH & UNSW, *Sex Work Stigma Research Collaboration* <[Sex Work Stigma Research Collaboration](#)>.

<sup>72</sup> Scarlet Alliance, CSRH, UNSW, *Stigma Indicators Project: Sex Workers, 2021*, <[https://scarletalliance.org.au/library/Stigma\\_Indicators](https://scarletalliance.org.au/library/Stigma_Indicators)>.

## 2.3 Domestic and family violence support services

Like other health and social services, domestic and family violence organisations and services, unless provided with adequate training and supervision in providing support to marginalised women, may struggle to avoid stigmatising speech and action in the course of service provision. Sex workers may also fear discrimination, judgement and unsolicited advice to stop sex working when deciding whether to access these services, or whether to disclose our sex work to practitioners at all. This can be particularly stressful when sex work is relevant to the experience of violence. The fear of criminalisation can also apply here, particularly for women who have had prior contact with the criminal justice or child protection systems. Working to ensure that staff are sex work-literate and able to provide non-stigmatising services can be the difference between an individual seeking services or deciding against it. Sex worker peer organisations are able to liaise with and provide training to these services and improve the safety of the service for sex workers, enabling us to refer to them with confidence.

## 2.4 Direct amendments required for Pillar 2

**PAGE 33:** Amend the fourth bullet point in Focus Area 1 to read ‘Build the data and research base on what drives men to perpetrate violence, including the role of their own lived experience of violence and trauma, **their attitudes toward their victims**, and the impact of use of alcohol and other drugs.’ We know that men who perpetrate violence against sex workers and other marginalised women do so, in part, because they believe that they can do so with impunity, and that capturing this in the research base is important to understanding the forces influencing perpetrators’ decisions to use violence.

**PAGE 34:** Amend the first bullet point in Focus Area 5 to **include sex workers** in its serialised list of groups of diverse women for whom service providers must be capacity-built to support. Scarlet Alliance and our member organisations provide this education and are able to support service providers to offer the most relevant, caring and effective services to members of our community. Sex workers expect to experience discrimination and poor-quality services from the workforce of many of the sectors described in this point.<sup>73</sup> Inclusion here will create a basis for more concrete inclusions in the action plans to build on the work we are already doing in this space.

## Pillar 3: Response

The Plan’s discussion of the ‘response’ pillar aligns well with what we have called for throughout this submission. Integration of the needs of sex workers can fit well within the ‘focus areas’ described, provided that alignment with a decriminalised regulatory framework is explicit.

**PAGE 36:** Add a bullet point to Focus Area 2: ‘Embed understanding of the unique and specific challenges diverse communities face in relation to family, domestic and sexual violence’ to read as

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<sup>73</sup> Z. Stardust, C. Treloar, E. Cama & J. Kim “‘I wouldn’t call the cops if I was being bashed to death’: Sex work, whore stigma and the criminal legal system’, *International Journal for Crime, Justice and Social Democracy*, vol. 10, no. 2, 2021, p. 2.

follows: **‘Acknowledge and address barriers to sex workers seeking intervention, reporting or recovery support, especially those created by the criminalisation and licensing of sex work. Enable sex worker access to support and justice through the full decriminalisation of sex work.’**

### 3.1 Police response to violence against sex workers

When we report violence within a criminalised or licensed setting, we run the risk of the police responding by prosecuting us for ‘prostitution offences’, rather than the perpetrator. Even within decriminalised settings, police responses to sex workers reporting violence are heavily impacted and directed by sex work stigma.

Elena Jeffreys, State Coordinator of Respect Inc, describes police responses to sex workers reporting sexual violence in Queensland as a ‘lottery’, which is dependent on the ‘skills, knowledge and attitude’ of police.<sup>74</sup> Jeffreys further provides that ‘generally, it’s a bad experience and sex workers need to attempt to report the crime several times before identifying a supportive police officer.’<sup>75</sup> Alternatively, a sex worker may be treated so poorly by the police that they decide not to proceed at all.<sup>76</sup> As sex workers, our interactions with others can shift dramatically if we disclose our work. Sex workers have described this shift occurring with police to negative effect:

*“I had to engage with the police in reporting [of a sexual assault] ... as part of reporting it, it became clear to the police that I was a sex worker ... and a lot of things were said to me during that time that were completely unacceptable and I noticed it was just like everything is going along and you’re being treated with respect and then just you know, click your fingers and all of a sudden, everything is very different ... I was really just treated with no dignity, with no humility, with no respect (Focus Group 3).”<sup>77</sup>*

*““Where’s the crime? What is it you want from us?” the police officer asked.... “I said, there has to be a crime, it’s sexual assault. It doesn’t matter that I was getting paid, because even though you’re getting paid, you still have the right to say no.” Despite this, the officer wouldn’t take her statement.” (Independent Escort, Brisbane)<sup>78</sup>*

*“I think my experience with the police that day was actually worse than being assaulted.... There was no compassion, no recognition that I’d obviously gone through trauma.... I didn’t want to go anywhere near the police system again.” (Independent Escort, Brisbane)<sup>79</sup>*

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<sup>74</sup> G. Wolf, ‘No justice for sexual assault victims: Sex workers ‘less than citizens’ (17 January 2019) *Archer Magazine*.

[<https://archermagazine.com.au/2019/01/no-justice-sexual-assault-victims-sex-workers-less-citizens/>](https://archermagazine.com.au/2019/01/no-justice-sexual-assault-victims-sex-workers-less-citizens/).

<sup>75</sup> Ibid.

<sup>76</sup> Scarlet Alliance, Australian Sex Workers Association and Respect Inc., *Sex Work Laws and Workplace Health and Safety Symposium Report* (Report, 14 November 2018) p. 9.

<sup>77</sup> Stardust, Treloar, Cama & Kim, ‘I wouldn’t call the cops if I was being bashed to death’, p. 7.

<sup>78</sup> G. Wolf, ‘No justice for sexual assault victims: Sex workers ‘less than citizens’.

<sup>79</sup> Ibid.

*“When sex workers have persisted until they find a supportive police officer who will take their report, it is often found that they are not the only person targeted by this perpetrator.”<sup>80</sup>*

Sex worker stigma compounds differently for sex workers from other marginalised communities who are routinely targeted by police and for sex workers who are parents, use drugs, are young or work as street based sex workers.<sup>81</sup> For Aboriginal and Torres Strait Islander sex workers, racism further exacerbates sex worker stigma as they already ‘face targeted police interaction and disproportionate rates of incarceration’.<sup>82</sup> Migrant sex workers experience racialised sex worker stigma as well, often based on assumptions that they cannot work independently and thus must be involved in organised crime as victims of trafficking or pimping. This greatly impacts police responses to violence against migrant sex workers. A migrant sex worker explains:

*“The police don’t believe that we have the ability to work independently. They believe we are being controlled and try to get us to admit that someone put in our advertising, or helped us write it, or that someone is answering our phones. They try to get us to tell them who this is. Even when there is no-one.”*

*“The police have the power—we don’t have any. It would be very difficult for an Asian sex worker to explain or convince the police they were not doing anything wrong. The attitude of the police is that they don’t trust us, they don’t like us. When police say to sex workers ‘I’m going to send you home’ it shows their racism, their lack of professionalism and their hatred towards us.”<sup>83</sup>*

In a recent study conducted about the interaction between sex worker stigma and the criminal justice system, participants highlighted various intersectional factors that are ‘protective’ for sex workers when dealing with police: ‘whiteness, class, heterosexuality, and being cisgender, employed outside the sex industry, English-speaking and working in a decriminalised jurisdiction’.<sup>84</sup> The study further notes that for ‘sex workers with multiple stigmatised identities, police engagement remain[s] a severe risk’. Sex worker participants further described ‘varying degrees of dissatisfaction, disappointment and frustration’ about their interactions with police as victims of crime, with only a few reporting positive outcomes<sup>85</sup>. This study effectively highlights that as sex workers we anticipate proactive police action ‘in charging, arresting or reporting’<sup>86</sup> us, whilst also expecting complete police inaction when addressing our experiences of crime.

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<sup>80</sup> Scarlet Alliance, Australian Sex Workers Association and Respect Inc., *Sex Work Laws and Workplace Health and Safety Symposium Report* (Report, 14 November 2018) p. 8.

<sup>81</sup> Stardust, Treloar, Cama & Kim, ‘I wouldn’t call the cops if I was being bashed to death’, p. 2.

<sup>82</sup> Ibid.

<sup>83</sup> Scarlet Alliance, Australian Sex Workers Association and Respect Inc., *Sex Work Laws and Workplace Health and Safety Symposium Report* (Report, 14 November 2018 )p.9.

<sup>84</sup> Stardust, Treloar, Cama & Kim, ‘I wouldn’t call the cops if I was being bashed to death’, p.2.

<sup>85</sup> Ibid.

<sup>86</sup> Ibid.

### 3.2 Improving access to sustainable social housing for sex workers

When accessing housing or accommodation, sex workers can experience difficulties in obtaining rental agreements or housing once our occupation is known, regardless of whether we intend to work from the premises. Sex workers experience eviction from hotels and private rental accommodation, discriminatory treatment by accommodation staff, and discrimination from local councils working either to drive sex workers out of a geographic area or relegate us to unsafe and isolated industrial zones. In a survey conducted about discrimination and housing, the majority of respondents indicated they would 'never put my occupation because I feel sure my application will be rejected.'<sup>87</sup>

Housing instability increases vulnerability to violence, creating gaps that are filled by crisis accommodation and social / affordable housing. This is particularly the case for transgender women, who are often barred from access to emergency housing services for women. Where these services are provided by religious charities or 'rescue' organisations, they can be provided in ways that reinforce subtle but powerful stigmas, are incompatible with the housing needs of sex workers, or are even conditional upon the service user's willingness to leave the sex industry. Community members have shared experiences of having been locked out of crisis or social housing when they go out to do sex work at night due to curfews imposed by housing operators, for example.

Migrant sex workers describe additional barriers to accessing housing services, including lack of in-language support, long waiting lists, anticipation of discrimination from religious organisations because of our work, and having to disclose information that risked our privacy made it challenging to apply for and then receive support. Migrant sex workers also speak to the lack of services available for visa-holders.

*'Migrant sex workers in need of housing or related social benefits are treated as recipients of charity rather than human beings entitled to an acceptable standard of living.'*<sup>88</sup>

### 3.3 Improving legal responses to forms of violence experienced by sex workers

Sex workers expect to experience stigma when interacting with the legal system. This stems from a long and continuing history of criminalisation, stigmatising laws and discriminatory legal case outcomes. This lack of trust that we have in the justice system can often result in opting out of the system entirely to 'avoid re-traumatisation, stigmatisation and discrimination'.<sup>89</sup> Sex workers also have unique privacy and anonymity concerns within legal processes as many of us do not want to connect our legal names with our sex work. Legal responses and processes currently do not have adequate safeguards to protect our privacy or to protect us from discrimination and potentially,

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<sup>87</sup> 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, p. 20, <<http://www.scarletalliance.org.au/library/unjust-counterproductive>>

<sup>88</sup> Scarlet Alliance Migrant Sex Worker Advisory Group, *Challenges of COVID-19 for Migrant Sex Workers in Australia*, Presentation, Scarlet Alliance National Forum 2021.

<sup>89</sup> Z Stardust, Treloar, Cama & Kim, 'I wouldn't call the cops if I was being bashed to death', p. 10.

further violence. Unfortunately, sex work stigma is built into the legal system, especially in criminalised and licensed jurisdictions and without anti-discrimination protections, we often choose not to interact at all. **Decriminalisation is a fundamental part of improving legal responses to violence experienced by sex workers. The *National Plan* must take our access to justice seriously and advocate for reform in the following areas:**

### 3.3.1 Non payment of sex workers

The pervasive stigma levied at sex workers can greatly impact how we are perceived as victim/survivors of sexual assault. Currently, there is widespread misunderstanding about whether the non-payment of sex workers amounts to sexual assault, with police and legal officers often mischaracterising non-payment as ‘fraud’. This severely limits our ability to seek redress when we are sexually assaulted within workplace settings. ***The Plan must recognise the unique barriers, borne from stigma, that we face when it comes to consent law and seeking redress for sexual assault.***

We agree to conduct bookings with clients on the basis of payment, whether that be money or other goods and services. When a client refuses to fulfil this agreement, whether by withdrawing / cancelling payment or by misleading us into believing a payment was made when it was not, our consent is induced through fraudulent misrepresentation and thus was not freely given. This constitutes sexual assault. Respect Inc, our Queensland member organisation, further explain how non-payment amounts to sexual violence:

*In sex work, a key aspect of consent for sexual services is payment for the services negotiated. If payment is not made or withdrawn, whether or not the sex worker is yet aware, consent is also withdrawn. When the payment and therefore consent is breached access to a person’s body and sexual labour is sexual violence.*<sup>90</sup>

**Our ability to seek redress for non-payment and sexual assault is currently limited by the criminalisation of our work and our distrust in police** due to discrimination, police targeting and invasive police practices such as entrapment.

As such, any consent law reform process must recognise within its definition of consent that sex workers do not ‘freely or willingly’ provide consent ‘when payment for sexual services is withdrawn or not given’. Current misunderstanding amongst police and judicial officers as to whether non-payment amounts to sexual assault has led to sex workers being advised to pursue sexual offences as fraud rather than assault. **‘Even sex workers who surmount the significant barriers to reporting rape or sexual assault are being told by police, ‘I don’t see the crime,’ or ‘It is a civil, not a criminal, matter.’**<sup>91</sup>

Clearly, as long as this ‘misunderstanding’ persists, perpetrators are emboldened to sexually assault sex workers knowing that they will likely face minor monetary charges at most. If we expect to be turned away from police because non-payment seems like a ‘civil/contractual matter’, which is an

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<sup>90</sup> Respect Inc. Submission to Legal Affairs and Safety Committee, *Inquiry into Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2020* (12 January 2021)

<sup>91</sup> Transcript of Proceedings, Public Hearing - *Inquiry into Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2020* (Legal Affairs and Safety Committee, 21 January 2021) 24 (Elena Jeffreys)

experience shared by many sex workers who have attempted to seek support from police,<sup>92</sup> we are unlikely to report. **Downgrading sexual assault to ‘fraud’ serves to perpetuate damaging beliefs that we are ‘unrapeable’ and un-believable victims.**

### 3.3.2 Stealthing

Stealthing involves the non-consensual removal, tampering or misuse of condoms, before or during sexual intercourse. Stealthing compromises the conditions of consent and constitutes sexual assault. Stealthing is gradually being criminalised as a form of sexual assault within Australia<sup>93</sup>, which is a positive and necessary progression towards having adequate consent laws. It is important to note again, sexual violence protections will always be undermined by laws which criminalise aspects of our work, because fear of self-incrimination and arrest is a barrier to reporting crimes committed against us at work. Therefore, decriminalisation is key to ensuring that sex workers have access to protections against stealthing and non-payment,

### 3.3.3 Discrimination in legal processes

As mentioned above, sex workers experience discrimination within legal processes. The potential of discrimination within legal processes is exacerbated by the lack of adequate anti-discrimination protections, as mentioned above. **This leaves sex workers with minimal avenues for redress when we feel that we have been discriminate against by judicial officers, legal professionals and opposing litigants.**

Within a family law context, raising sex work experience can be done vexatiously in an effort to frame us as unfit parents. **Such ‘outing’ can have implications for family relationships and custody of our children and places us at risk of having our legal names connected our sex work.** If this information remains on public record (such as through a published judgement) this becomes accessible to other actors that can discriminate against us such as in ‘relations with police, ‘straight’ job applications, and credit card or loan applications’.<sup>94</sup> **This threat can lead to many sex workers attempting to avoid the legal process altogether,** which inevitably allows perpetrators of domestic and family violence to leverage this to their benefit.

*Parties can employ stigma against sex workers to imply the other party is an unfit parent. Litigants can also use outing, or threats of outing, the other party to intimidate or undermine them, or bully them into agreeing to unfair fiscal arrangements concerning the marital home, or child custody arrangements. With sex work being subject to so much stigma and discrimination, sex workers being cross-examined on their occupational activities by the other litigant is another space where abuse through misuse of process may occur.<sup>95</sup>*

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<sup>92</sup> Respect Inc. and Scarlet Alliance Submission to Legal Affairs and Safety Committee, *Inquiry into Human Rights Bill 2018* (26 November 2018).

<sup>93</sup> Such as in ACT.

<sup>94</sup> A. Qudara, ‘Sex workers and sexual assault in Australia: Prevalence, risk and safety’, Report, 2008, <<https://aifs.gov.au/publications/sex-workers-and-sexual-assault-australia>>.

<sup>95</sup> Sex Worker Outreach Project (SWOP) NSW submission to *Review of Family Law System*, 2018, <[https://www.alrc.gov.au/wp-content/uploads/2019/08/family-law-194\\_sex\\_workers\\_outreach\\_project.pdf](https://www.alrc.gov.au/wp-content/uploads/2019/08/family-law-194_sex_workers_outreach_project.pdf)>

*Protracted family court processes are also likely to be more significant for sex workers, as most are self-employed, or employed as sub-contractors, so are not receiving wages or leave entitlements while they are in court.<sup>96</sup>*

*Sex work can be one of the only jobs where, as a single parent, they can choose their hours so they can still shoulder the bulk of the child care, whilst earning enough income. To these women, having this work choice be used abusively in the family law system, is particularly distressing.<sup>97</sup>*

**Sex workers must be able to access the family law system without fear of our sex work determining the outcome of our case.** Accessing justice through legal processes is an essential part of reducing violence against sex workers as it challenges systemic stigmatised assumptions of sex workers, especially sex working parents.

### 3.5 Direct amendments required for Pillar 3

**PAGE 36:** Add a bullet point to Focus Area 2: ‘Embed understanding of the unique and specific challenges diverse communities face in relation to family, domestic and sexual violence’ to read as follows: **‘Acknowledge and address barriers to sex workers seeking intervention, reporting or recovery support, especially those created by the criminalisation and licensing of sex work. Enable sex worker access to support and justice through the full decriminalisation of sex work.’**

**PAGE 37:** Amend the fourth bullet point on this page to ‘Recognise the particular housing challenges faced by women with disability, LGBTIQ+communities, **sex workers** and migrant and refugee women as well as women in remote and regional communities and Aboriginal and Torres Strait Islander women.’

## Pillar 4: Recovery

For sex workers, like other women, recovery from violence can be slow and resource-intensive. We agree with the Plan’s prioritisation of victim / survivor-led, trauma-informed recovery work and its iteration of the importance that this work is able to be readily delivered equitably to diverse communities. For sex workers, the success of this work is largely influenced by the degree to which it is impacted by stigma.

### 4.1 Resourcing individual sex workers to be able to actively recover

As workers, sex workers are largely classed as independent contractors or sole traders. This means that we do not receive leave entitlements like sick pay, family violence leave, or annual leave. For

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<sup>96</sup> Ibid.

<sup>97</sup> Ibid.

those of us who do not have access to savings, shared wealth or income from other work, we may not be able to afford to take time away from work in the early stages of recovery, or at moments when we experience re-traumatisation. This means that we may have no choice but to continue to work in order to afford our living expenses, even where our recovery would be enabled by time away from work. If violence is experienced *at work*, this can be all the more difficult, as we are then required by financial need to re-engage with the context of the violence before we are ready to do so.

While sex workers have always had strong networks of peer support in these instances, and some may find that the provision of that support, or the financial independence that sex work can provide, to be beneficial while recovering from violence, we also urge the importance of sex workers being supported to take time away from work during recovery through the provision of government financial support. There are a number of existing schemes for victims' compensation, one-off payments to support women to leave violent partners, and other matters relating to violence. We advocate for the expansion of these types of financial resources. We also note that, in order for sex workers to be able to equitably access payments like these, we need to have control over any information about our sex working status, and be supported to apply for this type of support in a way that leaves room for our unique financial circumstances.

Sex workers accessing Centrelink commonly complain of being unable to prove loss of income due to the casual and precarious nature of employment in the sex industry. We generally earn cash, do not receive pay slips, and cannot provide income statements. This is especially the case when we are in the midst of a crisis, as was the case in the COVID-19 pandemic, where many sex workers struggled to access government financial support schemes. We also may fear disclosing the source of our income, for fear of connecting our legal identities with sex work, particularly where we have other legal or practical concerns like family law matters or the ability to be employed in other industries, including the public service. Any government data collection that links our sex work with our legal identities is a risk for us, and often a deterrent from seeking the support that we need.

Where financial support for victim-survivors collects information about employment and income, adaptations must be made that accommodate sex workers' needs for privacy and control over disclosure of our sex work.

This also again illustrates the need for the full decriminalisation of sex work, the adoption of anti-discrimination protections, and the de-stigmatisation of sex work. Sex workers should not fear ongoing consequences following the disclosure of sex working history in any context, including in seeking financial support to recover from violence.

## 4.2 Resourcing sex worker peer organisations

For sex workers, our peers are often our first points of contact when we experience violence. In addition to the violence prevention work we do through our peer education and community development work, sex worker peer organisations provide a wide range of supports to members of

our community who have experienced violence, regardless of the context of the violence. This includes the provision of peer support through the process of reporting and making legal or other challenges to perpetrators; referrals to non-stigmatising recovery services where they are available; provision of education and training services to services to improve their service delivery to sex workers; and support our peers to return to sex work or work in other industries, re-engage with other aspects of their lives, and coordinate the ongoing supports they need.

In many circumstances, existing services are simply insufficient for sex worker victim-survivors of violence, which places a greater demand on the resources of sex worker peer organisations to provide these services. A number of measures, pursued in tandem, could address this:

1. Provide resourcing for sex worker peer organisations and our resident peer educators to provide practitioner training for service providers in the violence recovery space. We are the only educators able to provide in-depth education on the provision of de-stigmatising, non-shaming, and sex work-affirming services. Sex workers can have complex needs in recovering from violence, and should be treated in the same way that the Plan treats other diverse groups of women, with targeted approaches informed by sex workers ourselves.
2. Provide resourcing for sex worker peer organisations to increase staffing and training for peer educators and peer mental health service providers to engage in recovery support for peers who have experienced violence. This includes increased resourcing for culturally and linguistically diverse (CALD) peer educators, Aboriginal and Torres Strait Islander peer educators, and trans and gender diverse peer educators, as these members of our community can be disproportionately impacted by state, workplace and interpersonal violence. Sex worker organisations are currently primarily funded to conduct BBV and STI prevention, which means that work in the space of violence is often conducted in an un-funded capacity. Given the unique experiences of sex workers who experience violence, and the dearth of available culturally-appropriate recovery services for sex workers, it is important that we are resourced to be the integral part of recovery that we are.
3. Resource sex-work specific and sex worker-led recovery services that allow victim-survivors with sex working experience a safe space to seek support, knowing that they will not be required to educate or self-advocate regarding any part of their sex working experience.

### 4.3 Sex work-affirming recovery services

We have decades of experiential evidence that many social support services, including those in the gendered violence sector, are often ill-equipped to deliver affirming services to sex workers. This may be due to organisational policy or culture, individual service providers' beliefs about sex work or sex workers, or just a lack of understanding about what it *would* look like to provide holistic and affirming services to us. This is compounded by the presence of a sex work-exclusionary radical feminist presence in the sector, asserting a claim to speak for sex workers. Often, the effect is that they actually speak over us.

Sex work-affirming recovery services are underpinned by an understanding of sex work as work; that all work has benefits and drawbacks, and that sex work is no different; that sex workers deserve

equitable treatment in all aspects of public and private life; that we each have individual experiences of our work and how it intersects with other aspects of our lives; and that negative experiences at work are not automatically a reason to leave a job. Far too often, we are informed of service providers equating sex work with harm, making unsolicited recommendations for us to leave our industry, refusing services or providing poor-quality services because of our sex working status, or making other stigmatic assumptions about us because we are sex workers.

Sex workers surviving and recovering from violence should be able to focus on just that. We should never be in a position of educating or self-advocacy in an interaction purporting to provide recovery services. This is far too often the case, and this is why we advocate to resource active, sex worker-led steps to addressing it.

#### 4.4 Direct amendments required for Pillar 4

**PAGE 38:** Amend the first sentence of the eighth paragraph on this page to read: ‘Some victim-survivors experience compounding traumas, such as from racism, homophobia, **whorephobia**, transphobia, ableism, and intergenerational trauma.’

**PAGE 39:** Amend the last bullet point in Focus Area 2 to read: ‘Support LGBTIQ+ communities **and sex workers** to access to inclusive, and affirming recovery support.’