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The Manager  
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Personal and Retirement Income Division  
The Treasury  
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PARKES ACT 2600  
Email: [NFPReform@treasury.gov.au](mailto:NFPReform@treasury.gov.au)

8<sup>th</sup> December, 2011

Dear Personal and Retirement Income Division,

Thank you for the opportunity to provide a submission on the statutory Definition of a Charity to be applicable across all Commonwealth laws from 1 July 2013.

Scarlet Alliance, the Australian Sex Workers Association, is the peak national body representing sex worker organisations and sex workers and was formed in 1989. The organisation has been a Deductible Gift Recipient Charity since 2001 and a Health Promotion Charity since 2009.

We welcome the introduction of a statutory definition to provide greater certainty and clarity as to what is considered to be charitable. We would like to take this opportunity to respond to four questions posed by your Consultation Paper.

**Does the decision by the New South Wales Administrative Tribunal provide sufficient clarification on the circumstances when a peak body can be a charity or is further clarification required?**

Scarlet Alliance supports further clarification of the fact that peak bodies can be considered charitable organisations. As a peak national body, Scarlet Alliance has a high degree of integration and commonality of purpose with our members, providing educational, mentoring and support services, factors which were determinant in the 2003 decision by the New South Wales Administrative Decisions Tribunal. Through the projects and work of our membership, Scarlet Alliance has close to 100% access to sex industry workplaces in order to deliver health promotion to sex workers in the major cities and many regional areas. Our member organisations and projects have the highest level of contact with sex workers in Australia of any agency, government or non-

government. It is important to us, as a peak body, that our eligibility as a charitable organisation is expressly recognised by statute.

**Are any changes required to the Charities Bill 2003 to clarify the meaning of ‘public’ or ‘sufficient section of the general community’?**

Scarlet Alliance is keen to ensure that any definition of ‘public’ is adequately flexible to incorporate disadvantaged, minority and marginalised groups, including sex workers. It is our belief that limitations on size may miss important impacts that go beyond the size of the group. For example public health outcomes of health promotion work impact on a large percentage of the community and are the result of relatively small communities.

The *Charities Bill 2003* provides that an entity will be for the public benefit if it is aimed at achieving a universal or common good, has practical utility, and is directed to the benefit of the *general community* or to a *sufficient section* of the general community. This cannot be the case if the people to whose benefit it is directed are numerically negligible.

Scarlet Alliance is concerned that this may exclude organisations representing sex workers, who are systemically marginalised and stigmatised. Sex worker communities also include CALD (culturally and linguistically diverse) communities, ATSI (Aboriginal and Torres Strait Islander Communities), MSM (men who have sex with men), PWID (people who inject drugs) and PWD (people with disability). Scarlet Alliance suggests that the legislation expressly include activities directed to the benefit of marginalised populations as charitable, and that any size consideration would need to encompass broader community impacts, for example public health outcomes.

**Are there any issues with the suggested changes to the Charities Bill 2003 as outlined above to allow charities to engage in political activities?**

Scarlet Alliance supports the proposal to enshrine the rights of charities to engage in political activities which attempt to change law or government policy. Scarlet Alliance further submits that political advocacy should not be a disqualifying activity, even if the purpose is more than ‘ancillary or incidental’. Advocacy is a fundamental strategy of health promotion recognised by the Ottawa Charter on Health Promotion 1986. The Charter recognises that political, economic, social and cultural factors can all affect health. Advocacy aims to make these conditions favourable to health promotion.

Advocating for the public policy that supports creation of ‘enabling environment’ for health promotion impacting on the health, safety and welfare of sex workers has been important in ensuring Australia’s effective response to HIV continues. The role of informing governments and the health sector, both in Australia and internationally has been important to achieve continued public health outcomes and low rates of HIV and STIs amongst sex workers. Political advocacy continues to be key to ensuring the continued effective community response to HIV, STIs and

Blood Borne Viruses, and its importance is recognised by the Commonwealth Department of Health and Ageing's National Strategies on HIV and STIs. Scarlet Alliance represents sex workers on a number of Commonwealth committees and ministerial advisory mechanisms.

**Is any further clarification required in the definition on the types of legal entity which can be used to operate a charity?**

Scarlet Alliance is concerned by the suggestion that 'supporting illegal activities' could be a disqualifying activity and how this may be interpreted. Many marginalised communities are criminalised in Australia. Many kinds of sex work are criminalised in different states and territories. Providing services to sex workers in states and territories or sectors where sex work is criminalised has been an important aspect of Australia's response to HIV and the subsequent public health outcomes. A fundamental strategy for health promotion recognised by the Ottawa Charter is to create enabling environments to reduce differences in current health status by ensuring equal opportunities and resources to enable all people to achieve their fullest health potential. Ensuring that sex workers can access support services, information, outreach and peer education, no matter what part of the industry they work in, whether their work is decriminalised, licensed or criminalised, is crucial for sex worker self-determination, autonomy and health. The decriminalisation of sex work is understood as best practice by Australia's National HIV and STI Strategies, and by UN Secretary General Ban Ki Moon, UNAIDS and UNFPA (UN Population Fund).

If you would like further information on these recommendations please do not hesitate to contact us.

Sincerely,



Janelle Fawkes  
Chief Executive Officer