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The Secretary
Standing committee on justice and community safety
Legislative assembly for the Australian Capital Territory
GPO Box 1020, Canberra, ACT 2601

9 March 2011

Dear Sir or Madam,

**CATWA submission in response to the Standing Committee on Justice and Community Safety review
of the operation of the *Prostitution Act 1992***

Please find enclosed our response to each of the terms of reference of the Standing Committee on Justice and Community Safety.

Should you require any further information or wish to discuss our recommendations, a representative from our organisation would be most happy to answer any queries or concerns that you might have.

Warm regards,

Sheila Jeffreys
On behalf of the Coalition Against Trafficking in Women Australia



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CATWA, the Coalition Against Trafficking in Women Australia, is part of the international Coalition Against Trafficking in Women (CATW). CATW has category II consultative status with the Economic and Social Council of the United Nations. CATWA works nationally and internationally against the trafficking in women and children, and in support of Article 6 of the Convention for the Elimination of Discrimination Against Women, which calls for the prohibition of the exploitation of the prostitution of others.

Coalition Against Trafficking in Women Australia

www.catwa.org.au

(1) the form and operation of the Act;

CATWA believes that the current scheme of legalised prostitution in the ACT runs counter to international best practice policy on prostitution. Legalising parts of the sex industry was an approach adopted by Germany, the Netherlands, and the states of Victoria and Queensland in the 1990s. The approach is now acknowledged as a regulatory failure, both in academic studies (Sullivan, 2007), and in audits by governments.¹ The Victorian, German, and Dutch governments are now having to repeatedly modify this approach policy because of problems stemming from the widespread proliferation of both legal and illegal prostitution businesses.²

The only sex industry regulatory model that is compatible with international law,³ and has been empirically shown to reduce prostitution as a harmful practice of violence against women,⁴ is the **'Nordic model'**,⁵ which is currently in operation in Sweden, South Korea, Norway, and Iceland. The model is defined by three things:

1. Criminalisation of buyers of prostituted people, and people who organise the prostitution of others.
2. Decriminalisation of prostituted people as victims of crime, and the establishment of services and facilities to assist them.
3. Public education as to prostitution as a human rights violation.

We urge the ACT government to reconsider its current legislation that legalises parts of the sex industry. Prostitution is a practice that is fundamentally incompatible with a gender equal society. Policy solutions like legalisation and decriminalisation are failed options that were introduced at a time when empirical and theoretical evidence of the social harm of prostitution did not circulate as plentifully. Now that the ACT government has access to this information, it is well placed to become a leader in Australia and the world with regard to best-practice policy on prostitution. Prostitution is a problem that requires strong leadership by governments in taking steps to suppress the sex industry as a harmful commercial sector akin to the tobacco industry. We urge the ACT government to rise to this challenge.

(2) the regulation, enforcement and monitoring of commercially operated brothels;

The death of 17-year-old Janine Cameron in a Canberra brothel in 2008 shows in tragic terms the consequences of legalising businesses that fundamentally harm the wellbeing of women and girls.⁶ The prostitution of underage girls through legal brothels is not an uncommon practice of the sex industry in Australia; a 14-year-old girl was found in a legal Melbourne brothel, Pickwood Lodge, in 2010.⁷ Women from abroad are also trafficked through legal brothels in Australia. As long as the sex industry enjoys legal status in Australia, these practices of trafficking and child prostitution will continue to pervade society. No amount of 'regulation' will drive these

¹ 'Dutch to raise minimum age for prostitutes to 21,' 15 April 2010 at <http://www.kyivpost.com/news/world/detail/64064/> (accessed 6 February 2010); Crime and Misconduct Commission (2004). *Regulating Prostitution. An Evaluation of the Prostitution Act 1999 (QLD)*. Crime and Misconduct Commission, Brisbane; 'Germany to Punish Customers of Forced Prostitutes,' 17 May 2008 at <http://www.dw-world.de/dw/article/0,,3343136,00.html?maca=en-rss-en-all-1573-rdf> (accessed 6 February 2010); Daalder, A.L. (2007). *Prostitution in the Netherlands since the lifting of the brothel ban*. WODC (Weenschappelijk Onderzoek en Documentatiecentrum), Den Haag, Netherlands.

² According to Australian Adult Entertainment Industry (AAEI) Victoria's legal brothels are currently outnumbered by an estimated 3 to 1 by illegal brothels (AAEI, 2007). As such, it has been estimated that there are 93 legal brothels and 400 illegal ones (Jeffreys, 2009:189).

³ The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Convention against Transnational Organised Crime urges the strengthening of domestic laws against trafficking and international cooperation to end the crime (United Nations, 2000 Clause 5:6).

⁴ Farley, Melissa (ed) (2003). *Prostitution, Trafficking, and Traumatic Stress*. Binghamton, New York: Haworth Maltreatment and Trauma Press; Farley, Melissa. 'Prostitution and the invisibility of harm,' *Women & Therapy*, Vol. 26 No. 3/4, 2003, pp. 247-280.

⁵ Ekberg, Gunilla. 'The Swedish law that prohibits the purchase of sexual services,' *Violence Against Women*, Vol. 10, No. 10, 2004, pp. 1187-1218.

⁶ 'Death of innocence', 1 November 2008.

⁷ http://www.bigpondnews.com/articles/National-regional/2010/07/21/Brothel_owner_employed_schoolgirl_488322.html

practices from an industry that derives its profits from the sexual degradation and exploitation of society's most vulnerable people. Research shows that people used in prostitution suffer rates of post-traumatic stress disorder equal to that of war veterans.⁸

Government licensing of brothels entails the collection of licensing fees from sex industry operators. This is an inadvisable activity for government, given how the money is earned. Brothel operators are primarily engaged in pimping out women for prostitution to men who then sexually penetrate them in various ways for personal gratification. It is solidly established in the sociological, medical, and psychological literature that women in prostitution are likely to have experienced some of the following: sexual assault as children, disadvantaged socio-economic and ethnic backgrounds, interrupted education. It is established in the literature that women undergo great physical and psychological harm as a result of being used in prostitution, and consequently they experience much higher rates of mental health problems and drug addictions than the general population.⁹ The ACT government risks abrogating its responsibility to protect the most vulnerable members of its society if it continues to support the activities of brothel operators/pimps by licensing them.

(3) identifying regulatory options, including the desirability of requiring commercially operated brothels to maintain records of workers and relevant proof of age, to ensure that all sex workers are over the age of 18 years;

Prostitution harms all people who are used for the purpose of someone else's sexual gratification, whether or not they are over the age of eighteen. The harm of prostitution does not subside when the people involved in it reach a certain age. This is because:

- Prostituted people must have sex with strangers on a daily basis. This often requires prostituted people to anaesthetise parts of their body. Women are forced to numb their vaginas with xylocaine in order to endure being repeatedly sexually used.¹⁰
- Research on prostitution tells us that women have to dissociate emotionally to survive the violation of prostitution (Hoigard and Finstad, 1992, O'Neill, 2001). The payment in prostitution makes the violation seem acceptable, but, as a survivor of prostitution writes, 'prostitution is rape that is paid for' (Giobbe, 1991).
- Unlike mainstream adult occupations, prostitution cannot be seen as a free employment choice. Prostituted girls and boys enter below the legal working age as a result of: sexual abuse, homelessness, drug dependence, and poverty (Davies and Feldman, 1999).
- Prostitution arises from unequal social status. Women's so-called choice is constructed out of women's subordination, therefore we need to understand that girls and women do not make free choices to enter prostitution regardless of age (Jeffreys, 1997).

Recommendation:

Placing the responsibility on brothels to police the age of prostituted girls is not sufficient to prevent child sexual exploitation. The ACT should, at a minimum, adopt legislation that severely penalises the buyers of underage girls, whether in brothel, escort or street prostitution.

(4) the adequacy of, and compliance with, occupational health and safety requirements for sex workers;

Whilst in other businesses the idea of being able to enforce health and safety guidelines might make sense, in relation to prostitution it is nonsensical. Prostituted women suffer unwanted pregnancies on a regular basis and serious health consequences arising from sexually transmitted diseases, such as pelvic inflammatory disease, that destroy fertility. Research in Victoria shows that 40 per cent of men who buy women do not use condoms. Even when condoms are used, they can create friction, pain and allergy reactions in women. Prostitution must be the only 'ordinary job' in which workers are advised to watch for whether the customer has a knife and in which the

⁸ Farley, Melissa (ed) (2003). *Prostitution, Trafficking, and Traumatic Stress*. Binghamton, New York: Haworth Maltreatment and Trauma Press.

⁹ Farley, Melissa (ed) (2003). *Prostitution, Trafficking, and Traumatic Stress*. Binghamton, New York: Haworth Maltreatment and Trauma Press.

¹⁰ See 'Safety tips for escort workers,' at <http://www.sexworker.org.au/uploads/documents/SafetyTipsforEscortWorkers.pdf> (accessed 6 February 2011)

threat of sexual violence is a routine hazard (Farley, 1998; Parriott, 1994). No health and safety legislation can cover the hazards of prostitution. The risks that women face through being prostituted are so great as to make any scheme that promises to 'reduce' these harms meaningless. OHS literature developed by Australian 'sex worker' organisations lists rape, unwanted pregnancies, physical violence, post-traumatic stress as inevitable health risks.¹¹ This does not change because prostitution becomes legal.

Recommendation:

At a minimum the existence of such severe harms indicates that states that legalise this form of abuse must provide exit programmes, housing, educational programmes, retraining opportunities, specialised counselling and drug and alcohol programmes.

(5) any links with criminal activity;

Though legalising prostitution was aimed at reducing organised crime, in fact it has strengthened its grip. In reality it extends the business opportunities for organised crime, and reduces police oversight of the industry.

Legalisation does not discourage crime groups from involvement in prostitution because of the considerable profits they can make from this industry. Crime groups are involved in the trafficking of women in particular and this aspect of the prostitution industry is causing the governments of the Netherlands and Germany to rethink their prostitution policies as these problems become more acute. The United Nations Organization on Drugs and Crime (UNODC) database in 2006 showed that the Netherlands and Germany are in the top ten countries that score very highly as destination countries. Owners of legal brothels set up associations to defend their interests and have the resources to bring pressure to bear on governments. They seek to limit competition by getting states to act against the illegal sector, seen as escaping the constraints and expenses that legal brothels are subject to, and by drawing independent operators into the brothels where they can make a profit for the sex industrialists. The escort sector can be seen as unfair competition if it does not take place out of legal brothels or agencies. This sector relies on trafficking in women from abroad to operate with a low price schedule. A brothel in Kalgoorlie was put up for sale, according to the owner, because, 'prostitution was being taken over by Asians, who were under-cutting her prices' (Spagnolo, 2008). She explains that 'There used to be 30 per cent private operators in WA and 80 per cent of the girls worked in the houses. . . . Now, 40 per cent work as private operators and about 60 per cent work in houses. They are coming from Korea, Thailand and China' (Spagnolo, 2008).

Legalising prostitution places a burden on police to identify illegal brothels in an environment where citizens cannot tell the difference between legal and illegal brothels, and therefore cannot report them.¹² In the ACT, the illegal sex industry proliferates in the form of escort prostitution providers with no shop fronts. Unlike the ACT, the Queensland government has not legalised escort prostitution providers (only brothels), but a Queensland Crime and Misconduct Commission report in 2004 identified 'outcall or escort services' as making up 75 per cent of the industry. According to the CMC report, women in this sector are exposed to 'increased risk of abuse and poorer sexual health compared with their legal counterparts' (CMC 2004, xiii). In both Victoria and Queensland since legalisation, the growth of the illegal industry has outstripped the legal industry. Individual criminals, small-scale criminals as well as larger organised crime groups run the illegal industry and they are involved in the legal industry, too, which offers them considerable advantages. In Victoria, police checks on brothel owners in the legal sector take place but crime figures own brothels through front organisations (Moor 2007). In the Netherlands, a new law was introduced in 2006 in response to the concern about organised crime involvement in the legal industry, which introduced probity checks. In response, one-third of windows prostitution was closed down (Daalder 2007, 19).

Criminal conduct does not confine itself to the illegal part of the sex industry. It will always permeate a fundamentally exploitative industry in which the 'commodity' being sold is human beings. The only conviction case for sex trafficking in Victoria was against the operators of a *legal* brothel.¹³ A child prostitution charge was

¹¹ RhED, n.d. 'Safety Tips for Escort Workers.' www.sexworker.org.au/uploads/documents/Safety_Tips_for_Escort_Workers.pdf.

¹² Kotnik, E, Czmoniewicz-Kippel, M, Hoban, E, 2007, 'Human Trafficking in Australia: The challenge of responding to suspicious activities', *Australian Journal of Social Issues*, vol. 42, no. 3, pp. 369-86.

¹³ Maltzahn, Kathleen. (2008). *Trafficked*. Sydney, New South Wales, University of New South Wales Press.

brought in 2009 against the operators of the Pickwood Lodge, which is also a *legal* brothel in Melbourne.¹⁴ Victoria has the largest number of children in prostitution for any state in Australia (ECPAT, 1998). Children of 10 to 15 years old have been made drug dependent in a legal brothel, Sasha's, in Melbourne. Hundreds of trafficked women who have to service 500 men before any payment, are touted around legal brothels and sold for AUD15,000 or more (*The Age*, 9 May 1999). The pimping of vulnerable people and juveniles is an activity of husbands and boyfriends, not just 'criminals'. Repealing legislation that prohibits pimping and living off the earnings means that men will be able to coerce female partners into prostitution by various means, and predatory young men posing as 'boyfriends' will be able to prey on young women and pimp them as part of 'stables'. The forms of coercion involved in pimping are hard to prove but immensely effective and therefore unlikely to be covered by this legislation. Pimps turn out women into prostitution through a variety of techniques that can include not only violence but also dependency and indebtedness (Barry, 1995).

Until recently, the overwhelming majority of trafficked women into Australia came from Thailand, but are now being replaced by Chinese and Korean women (Fergus, 2005). Legalised prostitution does nothing to address the problem of trafficking into the legal part of the sex industry. The extent to which the trafficking of foreign women is integral to the operation of Australia's legal sex industry is made explicit in the Guidelines of the Queensland Prostitution Licensing Authority, which has published a list of terms and phrases that have been approved for use in the advertising of prostitution. Approved terms and phrases include Asian, Greek, Spanish, slave, submissive, bust size, donkey, '18 year old, busty, brunette', 'mysterious Oriental temptress', 'Asian, pretty, friendly', 'Asian delight', 'all Aussie babe', 'charcoal black chicky babe' and 'sexy Japanese, friendly and attractive'. The legalisation of prostitution presents an opportunity for sex industry businessmen and advocates to lobby government to legalise sex trafficking as well.

(6) the extent to which unlicensed operators exist within the ACT; and

International research shows that wherever prostitution is legalised the illegal industry proliferates and overshadows the legalised sector. It is difficult to ascertain the extent of the illegal industry in any legalised context because of the lack of research and police attention.

Recommendation:

More police investigations of the illegal industry and research to ascertain the extent of the illegal industry in the ACT. We urge that no new legislative measures be introduced before there is a more accurate estimate of this problem.

(7) any other relevant matter.

A major business of the sex industry is escort prostitution, and the legalisation of escort prostitution businesses in the ACT makes any 'licensing' of sex business operators essentially meaningless, given the ability of escort prostitution businesses to operate largely free of government regulation, because they operate largely through web-based channels, rather than from physical locations. The sex industry in the ACT is keen to have restrictions lifted on the one-person 'sole-operator' restriction for prostitution businesses operating outside industrialised areas and remove registration requirements for one-person 'sole-operator' prostitution businesses. The lifting of these restrictions serves the profit interests of the industry in that a big growth market for the sex industry is escort prostitution. Escort or 'outcall' prostitution currently contributes around half the industry's earnings. Escort prostitution is profitable because it runs with few overheads, falls under the radar of most government regulation, and operates flexibly over large geographical areas and in response to movements in male populations (e.g., toward mining areas). If restrictions are lifted on 'sole-operators', the industry will be able to tap into the population of poor and vulnerable women (often living with small children) who are currently bought for prostitution through rented suburban flats. Large-scale escort prostitution businesses can recruit these women into their networks by offering them 'drivers' and free mobile phones. This will allow escort business operators

¹⁴ 'Brothel owner employed schoolgirl,' July 21, 2010 http://www.bigpondnews.com/articles/National-Regional/2010/07/21/Brothel_owner_employed_schoolgirl_488322.html (accessed 6 February 2011).

to expand the number of women they have on their books, cater to a geographically expanded male population, and recoup overheads and licensing costs incurred in running legal and 'legitimate' brothel businesses. Lifting of restrictions on 'sole operators' is therefore an important task of the industry, and one critically tied to its ongoing profitability. Escort prostitution presents an ideal business opportunity for operators who will not or cannot become licensed, and while escort prostitution is legal in the ACT, unlicensed operators will continue to flourish in the territory.

Recommendations:

1/ CATWA recommends that the Nordic model of penalising the buyers and decriminalising the women should be adopted in the ACT as the most effective way of addressing the harms of prostitution and trafficking.

2/ Enforcement and monitoring of the sex industry should not be the responsibility of local councils. This should be a police matter because of the serious harms involved, and a body should be set up to deal with this which treats the issue with sufficient gravity.

3/ Placing the responsibility on brothels to police the age of prostituted girls is not sufficient to prevent child sexual exploitation. The ACT should, at a minimum, adopt legislation that severely penalises the buyers of underage girls, whether in brothel, escort or street prostitution.

4/ At a minimum the existence of such severe harms indicates that states that legalise this form of abuse must provide exit programmes, housing, educational programmes, retraining opportunities, specialised counselling and drug and alcohol programmes.

5/ The ACT government should understand organised crime involvement in the industry as a matter relevant to the AFP and therefore there should be coordination of the state police and the AFP on this issue.

6/ More police investigations of the illegal industry and research to ascertain the extent of the illegal industry in the ACT. We urge that no new legislative measures be introduced before there is a more accurate estimate of this problem.

The only effective legislative measure the ACT could take in relation to the sex industry would be to establish exit programs for victims of prostitution. However, there is evidence that exit programs tend not to be established in jurisdictions that legalise prostitution. In Victoria, for example, funding was guaranteed for exit programs from licensing revenue under the *Prostitution Control Act*. However, no exit programs eventuated despite a model proposed set up by the Prostitutes Collective Victoria with the Women's Trust and increasing financial returns to the government. This was the same story in Queensland after prostitution was legalised in that state (CMC, 2005).¹⁵ Even if exit programs were to be incorporated into the proposed legislation, the provision will apply only to a small section of the sex industry in WA. Inevitably the state will experience a boom in the black market sex industry after legalisation. In Victoria at present, around 80 per cent of the industry operates outside the law (illegal brothel/escort prostitution and street prostitution) (Sullivan, 2007). Any advantage that legalisation can offer in reducing the threat of this violence would only be available to a small minority of women in the industry, since most women in Australia, in Nevada, in the Netherlands, and Germany are prostituted in illegal sectors from the brothel to escort, strip club, and street prostitution (Wallman, 2001). These harms may be alleviated to some extent in brothel systems, whether or not these are legalised, simply because the male buyers cannot be so anonymous and may be more circumspect about the violence they inflict. They are not eliminated. Thus, some legalised brothels install panic buttons for women to press when in fear of being assaulted, though women may not be able to reach the buttons, or at least not before the assault takes place. At the large, legalised Daily Planet brothel in Melbourne, for instance, a bouncer has described how, if the button is pressed, he will rush up to the room and break down the locked door behind which a naked woman is likely to be being attacked (Everything But the Girls, 1998).

Contact

¹⁵ Crime and Misconduct Commission (2006, October). *Regulating Outcall Prostitution. Should legal outcall prostitution services be extended to licensed brothels and independent escort agencies?* Queensland: Crime and Misconduct Commission.

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