

6 February 2011

To the Honourable Charles Christian Porter, Attorney General of the Western Australian State Government

CATWA Submission in response to proposed sex industry law reform in Western Australia

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.

CATWA believes the proposed changes to sex industry legislation in WA run 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 the 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 supported in international law,³ and has been empirically shown to reduce prostitution as a harmful practice of violence against women,⁴ is the 'Swedish 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 the human rights violation of prostitution.

We urge the Western Australian government to reconsider its decision to legalise 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 WA 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 WA government to rise to this challenge.

We submit the following six responses to specific changes proposed by your government. We would be happy to supply any research you require on this issue, or meet with you to discuss our views further.

Yours sincerely

Caroline Norma, on behalf of CATWA

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.

1. Licensing of brothel operators, managers and prostitutes by the Director of the Department of Racing, Gaming and Liquor.

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 suffered sexual assault as children, come from disadvantaged socio-economic backgrounds, have a mental illness or mental impairment, and develop drug addictions.⁶ It is also established in this literature that women undergo great physical and psychological harm as a result of being used in prostitution.⁷ The West Australian government risks abrogating its responsibility to protect the most vulnerable members of its society if it supports the activities of brothel operators/pimps by licensing them.

The government will legitimise prostitution as a normal business activity if it brings the sex industry into the same regulatory scheme as the racing and gaming industries. Pimps will gain social acceptance as legitimate business owners, and their activities (i.e., selling women for sexual consumption) will be seen as contributing to the profits of a new economic sector. The WA economy will begin to rely on the sex industry for income generation. This will occur in spite of the fact that prostitution is not like any other business because:

- No other business requires women to have sex with strangers on a daily basis. Nor does any other business require workers to anaesthetise parts of their body. In prostitution, women are forced to numb their vaginas with xylocaine in order to endure being repeatedly sexually used.⁸
- All research on prostitution tells us that all women have to dissociate emotionally to survive the violation (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).
- In other businesses, employees have not been seasoned to endure the work through childhood sexual abuse, as women in prostitution have (Silbert and Pines, 1981; Farley, 1998).
- 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. Serious health consequences arising from sexually transmitted diseases, such as pelvic inflammatory disease, destroy fertility. Research in Victoria shows that 40 per cent of men who buy women do not use condoms (MacFarlane Burnett Centre, 1998). Condoms themselves can create friction, pain and allergy for 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 threat of death or violence is a routine hazard (Farley, 1998; Parriott, 1994). No health and safety legislation can cover the hazards of prostitution.
- Unlike other 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 (Jeffreys, 1997). Women are not in a position to choose to be prostitutes.
- Calling prostituted women 'contractors' or casuals, favours sex business operators as they say they have no responsibility to OHS which becomes the individual's responsibility.

2. All forms of prostitution will be banned from residential areas and police will be given expanded powers to shut down illegal brothels.

The police can be awarded expanded powers to shut down illegal brothels in the absence of a legalised prostitution regime. Legalising prostitution places an additional burden on police in identifying illegal brothels in an environment where citizens cannot tell the difference between legal and illegal brothels, and therefore cannot report them.⁹ Regardless, the illegal sex industry will mostly proliferate as escort prostitution providers with no shop fronts. Like the WA proposal, 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). Legalising prostitution will do nothing to address this major illegal harm of the sex industry. In both Victoria and Queensland since legalisation, the growth of the illegal industry has outstripped the legal industry. Individual

⁶ Farley, Melissa (ed) (2003). *Prostitution, Trafficking, and Traumatic Stress*. Binghamton, New York: Haworth Maltreatment and Trauma Press.

⁷ Christine Stark and Rebecca Whisnant (eds), *Not for sale: feminists resisting prostitution and pornography* (North Melbourne: Spinifex, 2004).

⁸ See 'Safety tips for escort workers,' at <http://www.sexworker.org.au/uploads/documents/SafetyTipsforEscortWorkers.pdf> (accessed 6 February 2011)

⁹ 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.

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.¹⁰ A child prostitution charge was brought in 2009 against the operators of the Pickwood Lodge, which is also a *legal* brothel in Melbourne.¹¹ 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).

3. Prohibition of any form of prostitution in residential zones, expands police powers to deal with unlawful prostitution, controls advertising and includes measures to reduce risks to persons engaged in prostitution.

The risks that women face through being prostituted are so great as to make any proposal to 'reduce' these harms them meaningless. Prostitution itself a violent and abusive practice that cannot be made safe. Condom use is not guaranteed. OHS literature developed by Australian 'sex worker' organisations list rape, unwanted pregnancies, physical violence, post-traumatic stress etc. as inevitable health risks.¹² This does not change because prostitution becomes legal. At best it could be hoped that some of the harms of prostitution may be lessened. The Victoria experience suggests that with legitimising prostitution as work it becomes more difficult to distinguish between what is violence and what is work because such abuse is just seen as part of the job that women are supposed to be able to negotiate. The violence will remain hidden and not publicly discussed because women will be seen to have chosen this type of 'work'. The inherent danger with a harm minimisation approach is that prostituted people are forced to accept health risks that are unacceptable or indeed a crime in other workplaces. Women in prostitution will be forced to endure the physical and psychological trauma that comes with being prostituted, but without any recourse to government health services or programs that recognise this harm. Legalising prostitution means that government agencies no longer see this harm, and focus on women's health in an extremely limited way in relation to STIs.

The only effective risk reduction measure the WA 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).¹³ 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).

4. Persons with substantial criminal histories would be prevented from obtaining a licence and there would be expansive provisions to prevent the involvement of juveniles.

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

¹⁰ Maltzahn, Kathleen. (2008). *Trafficked*. Sydney, New South Wales, University of New South Wales Press.

¹¹ '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).

¹² RhED, n.d. 'Safety Tips for Escort Workers.' www.sexworker.org.au/uploads/documents/Safety_Tips_for_Escort_Workers.pdf.

¹³ 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.

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).

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).

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. This has happened recently in Australia. Elena Jeffreys, Executive Director of the 'sex worker'-rights group Scarlet Alliance, publicly proposed the introduction of 'sex work visas' at the 2008 Australia 2020 Summit. Jeffreys suggested that introducing a visa system will 'pull the rug out from under the trafficking nexus' by making redundant the 'third party or "agent"'.¹⁴ Scarlet Alliance has proposed both the introduction of a new 'sex work' temporary working visa, as well as the inclusion of prostitution as a 'skilled occupation' within the skilled migrant visa, to fill what the Women's Electoral Lobby refers to as a 'labour shortage' in the Australian sex industry.¹⁵

¹⁴ Elena Jeffreys, 'Truth and visas will set Asian sex workers free,' 4 April 2008 at <http://www.scarletalliance.org.au/library/slavery-briefingpaper> (accessed 6 February 2011).

¹⁵ Eva Cox, Women's Electoral Lobby [document on file with CATWA]