



**CATWA SUBMISSION TO THE SELECT COMMITTEE ON THE STATUTES
AMENDMENT (DECRIMINALISATION OF SEX WORK) BILL 2015**

LEGISLATIVE COUNCIL OF SOUTH AUSTRALIA

OCTOBER 2015

Coalition Against Trafficking in Women Australia

www.catwa.org.au

Who Are We?

The Coalition Against Trafficking in Women Australia (CATWA) is the Australian branch of CATW International, a Non-Governmental Organisation that has Category II consultative status with the United Nations Economic and Social Council. It works locally and internationally to end all forms of sexual exploitation of women, especially in relation to issues of prostitution and trafficking in women.

The Coalition Against Trafficking in Women Australia is a feminist organisation that advocates for the decriminalisation of all prostituted persons, but the continued criminalisation of trafficking, pimping and sex buying, also known as the Nordic Model. We believe, based on the best available evidence from international research, that this approach is the only legislative option that successfully reduces the harms of the sex industry and addresses them within the broader context of violence against women and gender equality.

Key Recommendations

- We recommend that prostituted persons be decriminalised but that pimping and sex buying continue to be prohibited.
- We recommend that section 25A of the Summary Offenses Act (1953) be retained.
- We recommend against the full decriminalisation of the sex industry.
- We recommend that social services be designed to assist prostituted persons wishing to exit the sex industry.
- We therefore recommend that partial decriminalisation – in the form of the Nordic Model – be introduced in South Australia, instead of full decriminalisation.

Key Issues with the Statutes Amendment (Decriminalisation of Sex Work) Bill 2015

The Coalition Against Trafficking in Women Australia opposes the Statutes Amendment (Decriminalisation of Sex Work) Bill 2015. The Bill will result in de facto decriminalisation of the sex industry to an extent not trialled anywhere in the world. It will rescind all forms of state oversight in regard to the sex industry and, in this sense, the proposal is extreme.

We agree that persons in prostitution must be decriminalised as a matter of urgency. Legislative systems which criminalise prostituted persons victimise those who are already vulnerable and exposed to the harms of the sex industry. Prostituted persons must feel they are able to approach law enforcement and social services without fear of arrest or prosecution.

This Bill, however, lumps the decriminalisation of prostituted persons in with the decriminalisation of all forms of the sex industry, including pimping. This is especially evident in the proposal to remove section 25A of the Summary Offenses Act (1953) which relates to the procurement of prostitution. This would include the removal of the criminalisation of procurement in circumstances where a person 'approaches another person with a view to persuading the other person to accept employment or engagement as a prostitute' (25A, 2c). The removal of 25A would therefore allow for pimping and coercion into prostitution to be legal.

- We recommend that section 25A of the Summary Offenses Act (1953) be retained.

The Failures of Decriminalisation and Legalisation

Rather than achieving greater equality and safety for prostituted persons, as claimed by some sex industry advocates, this Bill – in removing certain provisions – will do the opposite. The decriminalisation and legalisation of prostitution elsewhere in the world has been shown to grow the industry overall, leading to greater exploitation and increased trafficking inflows (Cho et al., 2013).

Legalisation

Australia has often been at the forefront of changes in prostitution policy, with Victoria's legalised model of brothel prostitution forming the basis for legalisation strategies subsequently adopted in Germany and the Netherlands (Jeffreys, 2009). In the last decade, however, there has been increasing criticism of legalisation – and now decriminalisation – as failed social experiments (e.g. Sullivan, 2007).

Research on the US State of Nevada (Farley, 2007), for example, shows that legalisation has led to serious social harms and that legalisation does not alleviate the problems it was set up to counter, such as violence against women in the sex industry and the involvement of organised crime. These conclusions are supported by government reports from Germany (Federal Ministry of Family Affairs, 2007) and the Netherlands (Daalder, 2007) that also detail the failure of legalised approaches.

Decriminalisation

Closer to home, the recent inquiry into the regulation of brothels in New South Wales has also highlighted the failures of decriminalisation. The Australian Federal Police (AFP) and the NSW police both sent representatives to testify as to the abuses occurring in the sex industry there. New South Wales Deputy Police Commissioner Nick Kaldas stated that the existence of 'next to no regulation' was allowing criminal activity in the industry, including sexual servitude and forced drug-taking (Raper, 2015). At the same time, the AFP's Commander Glen McEwan noted that trafficking, in particular of Asian women into Sydney brothels, was an on-going problem of which the police have only been able to track a 'fraction' (Duff, 2015).

The decriminalisation of the sex industry has also caused problems in New Zealand (NZ). Despite some sex industry supporters suggesting that the NZ model should be emulated, the reality is that street prostitution increased dramatically, especially in Auckland,

following decriminalisation (Berg, 2014) and the NZ government's own report (NZMoJ, 2008) shows that the outcome of the legislation has been mostly ineffective or detrimental. The report shows that the majority of prostituted persons 'felt that the law could do little about violence that occurred' (p. 46) and that decriminalisation made no difference in terms of the on-going threat of violence perpetrated by sex buyers (p. 57). The report also notes that very few prostituted persons report any incidents of violence against them to authorities (p. 122).

- We recommend against the full decriminalisation of sex industry.

The Nordic Model

The Coalition Against Trafficking in Women Australia advocates for the Nordic Model of prostitution policy and legislation. The Nordic Model offers an alternative to full decriminalisation; it is an innovative approach to prostitution policy where the *selling* of sexual services is *decriminalised* but the *buying* of sexual services is *penalised*. The fundamental innovation of the Nordic Model is that it targets *demand*. This focus on demand is an important departure from much existing research and policy which has focused on the 'supply side' of the sex industry. As there is now an 'emerging consensus' that policies addressing only the supply side of the industry are 'insufficient and ultimately ineffective' (Yen, 2008: 655), there has been growing international interest in ensuring that sex buyers do not avoid accountability.

The concept

The concept of decriminalising prostituted persons, but maintaining the criminalisation of sex buying and pimping, originated in Sweden. This was formalised in 1998 with the introduction of the Law that Prohibits the Purchase of Sexual Services, which was part of a raft of other measures and legislative provisions (the *Kvinnofrid*, or Women's Sanctuary) to 'counteract violence against women' (SMoL, 2013: n.p.). This legislation came into effect in Sweden on the 1st of January 1999 and also included a range of measures to assist women still in prostitution.

These include comprehensive exit programs and access to NGOs providing assistance in terms of health, housing, job seeking and re-training (SMoIGE, 2009). There are also preventative measures in place to help identify and assist those at risk of entering prostitution (Ekberg & Wahlberg, 2011). In addition, the official review of the law recommended that those who are used in prostitution should be allowed to receive compensation through the Crime Victim Compensation and Support Authority (Ekberg & Wahlberg, 2011).

The Coalition Against Trafficking in Women Australia strongly rejects the assertions made by the Hon. J.M.A. Lensink, in the second reading of the Statutes Amendment (Decriminalisation of Sex Work) Bill, that the Nordic Model has anything to do with religion. The original Swedish legislation was clearly informed by feminist and secularist principles about the importance of the state's role in ending violence against women. The suggestion that this approach to prostitution has anything to do with the 'religious right' shows a disturbing amount of either unfamiliarity with, or misinformation about, the Nordic Model among those supporting the Bill.

The outcomes

It has now been more than a decade since Sweden introduced the Law that Prohibits the Purchase of Sexual Services. A wide range of evidence, including government reviews, police reports and surveys of sex buyers, suggests the law has been very effective in reducing the markets for prostitution and sex trafficking. According to a variety of Swedish NGOs and government agencies, street prostitution 'virtually disappeared' in major cities after the introduction of the ban on the purchase of 'sexual services' (Waltman, 2011: 459). Other forms of prostitution are also thought to have declined. In the mid-1990s, for example, the Swedish Prostitution Inquiry estimated that there were around 2500-3000 women in prostitution in Sweden. A study undertaken by researchers at the Nordic Institute for Women's Studies and Gender (NIKK) suggests this number had fallen to around 650 people by 2008 (Swedish Institute, 2010; Waltman, 2011).

Claims that the law has reduced the market for prostitution are strengthened by research carried out in neighbouring Nordic countries. For instance, the number of people in prostitution in Sweden in 2008 was estimated at around 650, while in neighbouring Denmark, where prostitution is legalised, the number was put at around 5500 (Holmström & Skilbrei, cited in Waltman, 2011). This means the prostitution population is approximately 15 times larger, *per capita*, in Denmark than in Sweden. Furthermore, when prostitution was still legal in nearby Norway, it had a prostitution population about eight times greater, *per capita*, than that in Sweden (Waltman, 2011).

The success of the laws introduced in Sweden has resulted in a number of neighbouring countries – Norway, Iceland and Finland – creating similar legislation (Tyler et al., 2013). It is this spread that has led to the original Swedish legislation being referred to as the Nordic Model. The Model has since been adopted in Canada and Northern Ireland (Murphy, 2014; Tyler et al., 2013). Variations on the Nordic Model exist in the United Kingdom and South Korea, and laws to enact the Nordic Model are currently passing through the legislature of France (Associated Press, 2015). There are proposals for the Nordic Model to be introduced in Israel and Ireland (Tyler et al., 2013). The European Parliament has also endorsed the Nordic Model as the best way forward for prostitution policy (European Parliament, 2014).

Given the well documented failures of legalisation and full decriminalisation elsewhere, it is time for Australian states and territories to consider the benefits of the Nordic Model as an alternative to the traditional policy approaches. Only the Nordic Model has been found to help limit the size of the sex industry and reduce exploitation while still protecting the human rights of prostituted persons and addressing issues of violence against women and gender equality.

- We recommend that partial decriminalisation, in the form of the Nordic Model, be introduced in South Australia, instead of full decriminalisation.
- We recommend that social services be designed to assist prostituted persons wishing to exit the sex industry, as per the original Swedish legislation.

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