



CATWA Submission to the Draft General Recommendation on Trafficking of Women and Girls in the Context of Global Migration

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Who we are

The Coalition Against Trafficking in Women Australia (CATWA) was formed in Melbourne in 1994 and is the Australian branch of CATW International. CATWA is a Non-Governmental Organisation that has Category II consultative status with the United Nations Economic and Social Council. CATWA works locally and internationally to end all forms of sexual exploitation of women, especially in relation to issues of prostitution and trafficking in women.

About this submission

This submission from the Coalition Against Trafficking in Women focuses on the area of our organisation's expertise: the trafficking of women for the purposes of sexual exploitation. While there are other forms of trafficking, women are disproportionately targeted by traffickers, making up around two thirds of all reported victims of all forms of trafficking (UNODC, 2011), and sexual exploitation is the most commonly identified form of trafficking in persons (UNODC, 2018). This is especially important in the Australian context because Australia has been consistently identified as 'primarily a destination country for women and girls subjected to sex trafficking', including in the most recent Trafficking in Persons Report from the US Department of State (US Dept. of State, 2018).

Key recommendations

- i. That the Nordic Model of prostitution policy – the decriminalisation of prostituted persons and the criminalisation of traffickers, pimps and sex buyers – be recognised as the most effective sex industry legislation to prevent trafficking.
- ii. That funding be made available for exit programs (and other forms of social and economic support) for all trafficked women and women wanting to leave the sex industry.
- iii. That more robust measures be taken to support women found to be trafficked to Australia for marriage, and that trafficked persons in these instances be understood primarily as victims of crime rather than as illegal migrants.
- iv. That, in line with the US State Department Trafficking in Persons Report 2018, the Australian government should consider establishing a national compensation scheme for trafficking victims and that funding/support for trafficked persons should be de-linked from their participation in the criminal justice process.
That demand for sexual services be recognised as fuelling sex trafficking and, as such, be discouraged in line with both the Palermo Protocol, and the most recent US State Department's Trafficking in Persons Report.

1. Prevalence of human trafficking in Australia, including in ‘migrant’ and culturally and linguistically diverse communities

We know that Australia continues to be a destination country for women trafficked into the sex industry (US Dept. of State, 2018), but there is currently no reliable data on the number of persons trafficked into Australia. Human trafficking is a difficult area of research and, given its illegal nature, little is known about the precise extent of such practices although they are thought to be widespread (UNODC, 2011, 2018). The Dutch National Rapporteur Against Trafficking in Human Beings, for example, has estimated that only five per cent of all trafficking victims ever come to the attention of the authorities (Putt, 2007). Trafficking for the purposes of sexual exploitation can present an even greater research challenge, as women are often very reluctant to come forward for a variety of reasons, including extreme trauma (Farley et al., 2004). As such, the very limited number of criminal cases brought for sex trafficking related offences in Australia, and globally, should be seen as merely the tip of the iceberg.

Although the exact scale of sex trafficking to Australia is difficult to ascertain, it is clear that the domestic sex industry targets Asian women for sex trafficking and procurement into prostitution. A 2016 study of the online advertising of Melbourne-based prostitution businesses, for example, found 41 per cent promoted predominantly Asian women (Street and Norma 2016). A 2012 report to the New South Wales Ministry of Health also determined that more than 50 per cent of survey respondents in approved brothels in metropolitan Sydney were of ‘Asian’ or ‘other non-English speaking background’, and nearly 45 per cent of these respondents were categorised as speaking only ‘poor’ or ‘fair’ English (Donovan et al., 2012). These circumstances suggest that vulnerable populations of women are targeted by the sex industry, raising concerns around debt-bondage, consent and knowledge of their rights under Australian law.

For further information on the trafficking of Asian women through work, holiday and student visas and for information on women trafficked for marriage see section (3) of this submission.

2. Practical measures and policies that would address human trafficking (recommendations i and ii)

The single most important legislative reform to combat trafficking of women to Australia for sexual exploitation is the implementation of what has become known as the ‘Nordic Model’. The Nordic Model constitutes asymmetric decriminalisation: it directly addresses demand for prostitution and trafficking by criminalising sex buyers and third parties who profit from prostitution, while simultaneously supporting the victims/survivors of prostitution and trafficking. For further information, see Tyler et al. (2017).

The Nordic Model, which has been adopted in Sweden, Norway, Iceland, Northern Ireland, Ireland, Canada, France and Israel, and is being considered in a number of other countries (including Scotland, Lithuania, Colombia and the Philippines) is a legislative approach which

recognises that prostitution is a form of violence against women and, more broadly, undermines women's equality.

The Nordic Model functions by decriminalising prostituted persons but prohibiting pimping, brothel owning and the purchase of sex. Evidence, particularly from Sweden – where the Nordic Model originated and was first implemented in 1999 – shows that it successfully reduces the market for prostitution and decreases trafficking inflows (Tyler et al., 2017). Numerous women's groups and prostitution survivors' organisations around the world also endorse the Model.¹ CATWA therefore advocates that all penalties should apply to pimps, brothel owners and buyers of prostituted women, and that no penalties should be associated with prostituted persons. When the buyers of prostitution risk punishment, demand is decreased and the profitability of local prostitution markets is undermined. Without these markets, the trafficking of persons for prostitution can no longer be facilitated in the local context. See Cho et al. (2013) for a comprehensive analysis of this.

The Nordic Model is also the only legislative approach to prostitution that fits with the principal international initiative aimed at dealing with trafficking for the purposes of prostitution: the United Nations (UN) Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, also known as the Palermo Protocol. This Protocol is related to the UN Convention against Transnational Organised Crime. The Palermo Protocol makes clear that fundamental to addressing the issue of trafficking for the purposes of prostitution is ending the demand that fuels the traffic in women. This occurs in Article 9, Clause 5, which requires state parties to:

[A]dopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multicultural cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

The approach taken in the Protocol – to focus on primary prevention and demand – has been found to be one of the most effective means of preventing and countering trafficking in women for sexual exploitation. The legalisation of prostitution, in comparison, has been shown to increase trafficking inflows (Cho et al., 2013).

One of the most challenging issues in addressing sex trafficking to Australia is the inconsistent approach to the demand for prostitution taken in different states. It is difficult to enact an effective national strategy regarding the traffic in women when a number of states foster large sex industries that encourage demand for prostituted persons. The current state-level support for the sex industry is not compatible with the requirements of the Palermo Protocol and best practice models for reducing sex trafficking.

Of all the intergovernmental and international strategies and initiatives available, the Nordic Model is the most effective strategy for countering the demand for prostitution. It is victim-friendly, incorporates education-based change and, most importantly, research shows that

¹ Including: The European Women's Lobby, Equality Now, SPACE International, Survivors for Solutions, the Institute for Feminism and Human Rights, and Eaves Charity for Women. Further organisations can be found here: <https://theconversation.com/does-decriminalising-pimping-further-womens-rights-46083>

it works (Waltman, 2011). In addition, the adoption of the Nordic Model would send a strong message that the sexual exploitation of women is unacceptable in Australia.

In recent years, there has been international movement towards a “modern slavery” approach to human trafficking. While CATWA welcomes renewed government interest in addressing the human rights abuse of trafficking, it remains unclear whether the Modern Slavery Act in the UK, for example, and the approach taken within it, are effective and the best way forward. In particular, the UK legislation has been criticised for a lack of enforceability, especially around transparency and reporting of supply chains requirements (Farrell, 2016). There have also been criticisms from human rights groups, that the legislation – largely a consolidation of existing laws – is framed primarily through a focus on border protection and illegal immigration, rather than on victim support mechanisms (Anti-Slavery International, 2015). The introduction of an anti-slavery commissioner has been welcomed, but with questions about impartiality and independence (Farrell, 2016). In 2018, the Australian government introduced a Modern Slavery Act. While CATWA is supportive of such legislation, the reporting obligations of businesses only apply to those with a consolidated revenue of more than AUD100,000. This would mean that most, if not all, sex industry establishments would be exempt from reporting.

3. The extent to which human trafficking is facilitated by migration visas (including marriage, partner, student and work visas) (recommendations iii and iv)

Marriage and partner visas

Evidence from the last five years strongly indicates that the Australian marriage visa program is being used in some cases to traffic women into Australia for the purposes of forced or servile marriage (Lyneham & Richards, 2014; Simmons & Burn, 2013). In particular, the Prospective Marriage Visa subclass has been identified as one context in which such abuse occurs. Media reports from 2011 highlighted figures released from the Department of Immigration which showed that hundreds of women under 18 years old had been brought to Australia by much older men, using the Prospective Marriage Visa system (Lauder, 2011). These figures included instances where teenagers were forced to marry men double or triple their age, under abusive and coercive circumstances (CATWA, 2012).

While, in 2012, some changes were made after the Commonwealth Inquiry (Legal and Constitutional Affairs References Committee) on the Prospective Marriage visa program, CATWA maintains that these have been minimal and are insufficient to adequately protect women and girls trafficked into Australia for forced or servile marriage. In particular, it is concerning that the Department of Immigration and Border Protection’s primary concern remains to identify cases of fraud rather than to protect the human rights of women subject to abusive relationships.

As Simmons and Burn (2013), along with Lyneham and Richards (2014), explain, one of the key issues is that these visas are used in a variety of fraudulent ways. When these visas have been used in order to traffic women for the purposes of servitude (sexual, labour-based, reproductive or – as is most common – a combination of these) the fraud must be treated in

a substantially different manner, and the women involved understood primarily as victims of trafficking rather than as illegal migrants.

Student and work visas

There is substantial evidence that trafficking and exploitation of women in the Australian sex industry is being facilitated by the use of tourist, student and working-holiday visas (Rowe, 2011). This evidence suggests that women are mostly trafficked from South East Asia. A 2015 Australian Institute of Criminology report states that 'reports based on immigration data suggest that many [people in prostitution] have initially entered Australia on tourist (e.g. Working Holiday and Work and Holiday Visas) and student visas' (Renshaw & Kim, 2015: ix), and a 2009 National Audit Office report suggests that '[t]raffickers facilitate the women's entry into Australia by providing funds, airfares and visas' (ANAO, 2009: 11).

A 2010 Victorian inquiry into people trafficking for sex work similarly noted in its final report that 'it is not unusual for traffickers to arrange documentation such as student, visitor/tourist or working holiday visas on the basis of incorrect, forged or otherwise fraudulent applications in the source country' (Drugs and Crime Prevention Committee, 2010: 40). In addition, a 2009 report, commissioned by Consumer Affairs Victoria, found that 'the majority of licensee and enforcement and regulatory respondents details knowledge of practices whereby groups of Asian workers [sic], primarily from Korea, China and Thailand, were working in and being provided to licensed brothels by "brokers" or agents' (Pickering et al., 2009: 43); in other words, pimps and traffickers. The report goes on to state that 'this data emerged from interviews with licensees who indicated that they had been offered groups of workers [sic] by brokers or agents who approached them' (Pickering et al., 2009: 43). This suggests the practice is likely to be widespread.

4. The effectiveness of relevant Commonwealth legislation and policies (recommendation v)

While the National Action Plan to Combat Human Trafficking and Slavery 2015-19 (Commonwealth of Australia, 2014) has been a welcome addition, it fails to recognise the demand for sexual services as a key cause of the trafficking of women to Australia (it does, however, recognise demand for organs as fuelling the trade in illegal organ harvesting, see: 2.4 'causes').

Trafficking and slavery offences are dealt with in Sections 270 and 271 of the Commonwealth Criminal Code. In 2013, amendments were made to the sections in the code dealing with slavery. Previously, sexual slavery and servitude, in the context of trafficking, were recognised as a special type of slavery, with their own definition and section. The 2013 amendments remove this, so sexual slavery and servitude are subsumed under the general heading of servitude and slavery which covers such matters as labour and organ trafficking. CATWA is concerned that this change masks the effect of sexual slavery on the women who are trafficked for this purpose.

Attempts to combat trafficking with Commonwealth legislation and polices are also undermined by state legislation which, in a number of instances (such as brothel legalisation in Victoria, and full decriminalisation of prostitution in New South Wales), fosters demand for sexual exploitation through prostitution.

The effectiveness of Commonwealth legislation and policy regarding trafficking is consistently undermined by state laws that foster the demand for prostitution. It is not surprising that the US State Department's Trafficking in Persons Report for 2018 finds that Australia is doing little to address this issue, the report recommends that the Australian government 'increase efforts to reduce the demand for commercial sex'. The demand for commercial sex is an area that Australian governments have long failed to address. This is reflected in the Australian government's most recent (8th) periodic report on progress towards the Convention for the Elimination of all forms of Discrimination Against Women (CEDAW). The CEDAW committee was concerned with the Australian government's failure to address demand in both practice and in the report, stating its concern that 'the lack of harmonisation of state and territory legislation on women in prostitution impedes their access to healthcare, support and legal services, and employment' and that Australia 'has not taken measures to address the demand for prostitution, to prevent women and girls from entering prostitution and support those who wish to exit prostitution' (CEDAW, 2018: 10). These failures contradict Australia's purported support for CEDAW.

As noted above, research shows that the legalisation of sex buying increases trafficking inflows, and that the Palermo Protocol (approvingly quoted in the 'National Action Plan') requires that states adopt measures which discourage the demand that fosters all forms of exploitation. The Commonwealth approach to trafficking, and the state-based approach to prostitution legislation, are therefore often in contradiction.

We recommend that demand for sexual services be recognised as fuelling sex trafficking and, as such, be discouraged in line with both the Palermo Protocol, and the most recent US State Department's Trafficking in Persons Report 2018. Demand for sexual services must therefore be explicitly addressed in all policy attempts to combat trafficking and state laws regarding prostitution must be consistent with these attempts. The legislative approach that best fits these needs is the Nordic Model, as described above in section (2), which decriminalises all prostituted persons and provides support to them to transition out of the industry, but discourages demand for sexual exploitation by prohibiting pimping and sex buying.

Given that addressing demand has been identified as central to combatting trafficking in persons, we also contest policies and approaches which promote 'ethical choices' made by the buyers of prostituted persons as a key solution to trafficking. In the sex industry in particular, research shows that sex buyers are not motivated by ethical concerns or harm minimisation efforts; in fact, the data suggest that harm and control can often be part of the expected/desired service, and that the targeting of racialised and migrant women is common (Jovanovski & Tyler 2018; Street & Norma, 2016; Tyler & Jovanovski, 2018). On this basis, we reject assertions that education of male buyers can play a significant role in addressing trafficking.

We also note with concern that the Trafficking in Persons Report 2018 (US State Dept., 2018) shows that there are still only small numbers of trafficking prosecutions and only one sex trafficking conviction in the last reporting period. In addition to this the Australian government 'limited some victims' access to services based on participation in law enforcement investigations' (US State Dept., 2018). It has been reported by a frontline service organisation in Australia that women who have been officially identified as sex trafficking victims have been exited from the national compensation scheme for victims of human trafficking, the Support for Trafficking People Program (STPP), because they are unable or unwilling to participate in criminal justice proceedings against their traffickers (Project Respect 2017). There are myriad reasons why victim/survivors of sex trafficking may be unable or unwilling to participate in the criminal justice process, such as significant trauma, fear of reprisals from traffickers, and cultural and linguistic barriers, amongst others. We recommend that in line with the US State Department Trafficking in Persons Report 2018, funding and support for trafficked persons should be de-linked from their participation in the criminal justice process.

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