



CATWA Submission to the Victorian Review into Decriminalisation Of Sex Work

July 2020

About the Coalition Against Trafficking in Women Australia

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.

Coalition Against Trafficking in Women Australia
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The topics covered in this submission are based on 1) The areas of focus for the Victorian review team, as distributed prior to CATWA’s consultation session; and 2) Areas of expertise and priority for CATWA.

Key recommendations

- i. That no matter what model of sex industry regulation is implemented in Victoria, funding be made available for exit programs (and other forms of comprehensive and appropriate social and economic support) for all trafficked women and women wanting to leave the sex industry.
- ii. That the government consider the disjunctures between a fully decriminalised sex industry and its broader gender equality strategy.
- iii. That demand for sexual services be recognised as fuelling sex trafficking and, as such, be discouraged in line with international anti-trafficking initiatives such as the Palermo Protocol and CEDAW.
- iv. 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.
- v. That the government make a more comprehensive effort to address and take seriously the physical and sexual violence experienced by women in the sex industry.
- vi. That the government seek to further consult with survivors of the sex industry who have experience working in fully decriminalised settings and are critical of the ability of decriminalisation to address health and safety concerns, and gender inequality more broadly.

1. Exit services

There are many valid reasons why people wish to exit the sex industry. Aside from the violence and exploitation that occurs, other reasons for exiting include health problems, discrimination, age and financial hardship. For example, according to the Scarlet Alliance, “[s]ex workers don’t get sick pay and holiday pay, and many have no superannuation or savings” (Scarlet Alliance 2020: n.p.). In relation to the COVID-19 pandemic, they argue that lockdown restrictions have “directly impacted on sex workers’ ability to maintain housing, buy food and basic items, support their dependents, and access healthcare and prescriptions” (Scarlet Alliance 2020: n.p.). However, there are many barriers to exiting the industry, such as homelessness, drug and alcohol addiction, and violence and discrimination, which mean leaving the sex industry is not like other ‘career change’ experiences.

Those wishing to transition out of the industry require specialist and robust support services that meet their unique needs. Exit services are an essential part of any model of prostitution legislation or regulation, and are a key pillar of the Nordic Model (see below). Funding should be made available for exit programs and other forms of comprehensive and appropriate social and economic support for all trafficked women, as well as any women who wish to leave the sex industry. This support should include integrated case management and service access, should be strengths-based and promote meaningful activity and alternative employment options.

2. The Nordic Model

CATWA is concerned that decriminalisation was chosen as the model of prostitution regulation without proper consideration of other models, such as the Nordic Model. Full decriminalisation only exists in three jurisdictions in the world: NSW, NZ and very recently the NT, whereas the Nordic Model is being increasingly adopted as progressive policy all over the world. Jurisdictions with variations of the Nordic Model include 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).

The Nordic Model is a form of 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 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 survivor organisations around the world also endorse the Model.¹ CATWA advocates that all penalties

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>

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).

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). The Palermo Protocol is related to the UN Convention against Transnational Organised Crime. It 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).

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 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 Victoria.

3. Workplace safety and wellbeing

Prostitution has been legal in Victoria for over 35 years. Several measures that aim to improve workplace safety and wellbeing are in force, such as legislation that relates to OH&S, public health and wellbeing, employment, discrimination and harassment, as well as sex industry specific legislation the *Sex Work Act 1994* and the *Sex Work Regulations 2016*. All of these measures, however, have been inadequate in the promotion of workplace safety and wellbeing for workers in the legal sex industry.

The sex industry is gendered, the vast majority of people in prostitution are women and those who buy sex are mostly men. ‘Workers’ are often discussed in the abstract, however, this group consists of mostly women and we urge the government to acknowledge this fact. Women in prostitution experience extreme forms of violence and suffer immediate and long-term negative effects on their health and wellbeing as a result. Prostitution causes grave physical and psychological harm to women involved who experience repeated sexual and physical violence (Farley et al. 2003). Alarming, research on male buyers of prostitution shows that men actively seek to violate and enact violence on women in prostitution (Tyler and Jovanovski 2018).

Women who have been trafficked into prostitution face additional forms of violence and exploitation.

It is not clear how the proposed model of decriminalisation will provide additional worker protections against male violence, as compared to the current model of legalisation. So far, no legislation, including decriminalisation, has been able to adequately prevent violence against women in the sex industry in Australia. For example, after the tragic murder of a woman in Sydney's decriminalised sex industry last year, a fellow worker commented, saying "violence and murder is part of our job" (Graham 2019: n.p.). Clearly, decriminalisation has failed to promote workplace safety and wellbeing if people are being murdered at work.

Survivors of prostitution are increasingly speaking out against decriminalisation. Survivor voices should be prioritised in this discussion because survivors have unique lived experience of systems of prostitution. Below is the testimony of a survivor of prostitution who worked in New Zealand before and after full decriminalisation was implemented:

When New Zealand passed full decriminalisation, things changed in unexpected ways and I came to understand that the myths of legal protection, autonomy, increased choice and greater community acceptance were unfounded. We didn't have the legal protections we expected because we sat in a grey area between employee and independent contractor. On paper, we were independent contractors but this was only true in terms of not receiving an hourly wage, sick pay, holiday pay, superannuation or any other employee benefits. We were not considered employees despite brothel owners, escort agency owners and other third party profiteers deciding our starting hours, finishing hours, amount of shifts per/week, pay rates and attire including shoes, hair styles, nail polish and makeup. On top of this the brothels began to charge us to work there and fine us if we didn't live up to 'employee' expectations. Unlike every other independent contractor, we were denied the right to work at multiple businesses. Pay rates decreased. Fees and fines increased. Shift hours were up to seventeen per/night. Shifts had three times as many women as were feasible to make a decent income. Competition grew fierce and safe sex practices became a thing of the past. The myth of health being better was proved false in less than 6 months of the law reform. Women were kissing and risking herpes, doing oral sex without condoms with the risk of throat warts, doing rougher and riskier practices just to get the jobs. I did doubles with many women and saw these things happening first hand. I dealt with punters' changing expectations. I experienced the long hours, nightclub level music, painful heels and increased competition. I had no choice but to fight against this model ever spreading to another country. (Sabrinna Valisce, SPACE International).

Survivors consistently speak about their experience of legalisation and decriminalisation making their situation worse. Decriminalisation empowers sex buyers, pimps and brothel owners/managers but not the worker. An example of this can be found in the Northern Territory, which passed decriminalisation legislation last year that allows sex buyers to sue for 'breach of contract' if a woman retracts consent for a sex act (Stevens 2019). Decriminalisation leaves women more exposed to a laissez-faire prostitution market that does not protect the worker and means women can be prosecuted for refusing sex acts.

4. Discrimination and stigma against women in the sex industry

Decriminalisation and/or legalisation of the industry are often promoted on the basis that they will reduce social stigma or discrimination against those who sell sex (e.g. Stardust 2017). Through this reasoning, it is argued that stigma and discrimination

will be reduced by decriminalising or legalising the sex industry, as the normalisation and treatment of prostitution as a job like any other will eliminate negative connotations with the industry. However, this has not happened for women in the sex industry anywhere in the world, regardless of the legislative model (Moran and Farley 2019).

Theory and research demonstrate that this is because stigma in the sex industry is gendered; it is only attached to those who are prostituted, who are mostly women, and is rarely attached to the men who buy sex, or brothel owners/managers (Barry 1995; Coy et al. 2019; Moran and Farley 2019). Prostituted women are stigmatised because they are seen as an object for sexual use; therefore, stigma is the result of the broader cultural devaluation of women. This is reflected in studies addressing male sex buyer attitudes, including in legalised and decriminalised systems. These show the discriminatory attitudes of men who purchase sex, including their complete dehumanisation of women in the industry and admissions of sexual violence (e.g. Tyler and Jovanovski 2018). If stigma were the primary cause of harms against women in the sex industry, and decriminalisation were a pathway to alleviating stigma and discrimination and the associated harms, men who choose to purchase sex in decriminalised and legalised systems—thereby endorsing the industry as a legitimate sector—would not participate in such forms of abuse.

Moreover, as Moran and Farley (2019) point out, while addressing the very real prejudices against women in the industry is important, a focus on stigma exclusively distracts from the myriad other harms they experience. These include sexual harassment, physical and sexual abuse, and coercion and manipulation by sex buyers, ‘brothel managers’ and others.

The sex industry is a symptom of broader gender inequality; women face the brunt of violence and exploitation in the industry by the hands of men, yet women are the ones who are stigmatised. The way to address stigma is therefore to address the demand for prostitution. Addressing demand in this way works in concert with broader gender equality goals, and questions men’s right to use women in prostitution.

Given the Andrews government’s welcome focus on questions of gender inequality and violence against women, promoting an industry founded on sexual objectification would seem at odds with this broader gender equality agenda. For example, the Victorian Gender Equality strategy notes that: “Young people are concerned about the damaging impact of stereotypes, the problem of sexual objectification—including its effects on body image and self-confidence—and about sexual violence, victim-blaming and sexting” (Department of Premier and Cabinet 2016: 21). Decriminalising the sex industry, which is founded on (and cannot be decoupled from) sexual objectification and is rife with sexual violence, does not appear to be in concert with broader concerns around objectification and violence against women.

5. Public health and the sex industry

Introducing a fully decriminalised system of prostitution is at odds with several public health and health promotion measures that are currently being adopted both in Australia and internationally. A gender-transformative approach to addressing health inequities is increasingly being seen as best practice in the area of women’s health.

This growing movement within health promotion aims to look at the way that norms, stereotypes and relations between men and women impact the health and wellbeing of women (Greaves and Poole 2017). Norms cultivated in the sex industry that position women as being required to be sexually available to men would be widely discouraged under this model. Rather, a gender-transformative approach understands the normalisation of the sex industry as a conducive context to violence against women and various women's health issues, rather than accepting the industry as inevitable.

Decriminalising sex buyers and managers does not address systemic violence against women and the sexual objectification and harassment of women both in and out of the workplace (SPACE International 2020; Norma and Tankard Reist 2016). If anything, based on some studies looking at the perspectives of sex buyers, what we see is a flagrant disregard of women's health and wellbeing through attempts, for example, to make women perform fellatio without a condom, and repeated objectification of women and the denial of their personhood, including references to women working in the industry as 'holes' to be penetrated (Tyler and Jovanovski 2018). These sentiments have been found in systems where full decriminalisation of the industry has been implemented. These male behaviours do nothing to decrease the stigma against women in the sex industry, or challenge the unsafe practices that women are pressured to acquiesce to in their 'jobs'. The burden of maintaining their physical and mental safety under these conditions should not be placed on individual women.

If you examine the Australian Human Rights Commission's (2020) materials on sexual harassment, it is unclear how a system of full decriminalisation is compatible with a workplace free from sexual harassment. It is unclear how a system of full decriminalisation would adequately address and acknowledge the harms that are being done to women in the sex industry at the hands of male sex buyers and managers. When sexual objectification is a pre-requisite to your employment, you start off on an unequal footing (Norma and Tankard Reist 2016). Addressing the rights of women is further complicated under any regulatory system where the sex industry falls under the remit of consumer affairs, and male sex buyers as seen as customers who pay for a seemingly disembodied service. To adequately address the public health challenges related to the sex industry, as well as the violence and discrimination experienced by women in the industry, it is important to look beyond the rhetoric of service and consider the women behind that service, while applying a gender-transformative perspective.

6. Compliance, enforcement and illegal brothels

The current system of Victorian sex industry regulation is highly ineffective. The legalised sex industry is plagued with charges of sex and drug trafficking, child exploitation, violence, money laundering and organised crime (McKenzie et al. 2019; McPhee 2019; Rep 2018; Thompson 2018). Despite an array of applicable legislation and regulations that are supposed to make the industry safe, in practice the sex industry lacks proper regulation and oversight.

Although the sex industry is recognised as a high-risk industry, WorkSafe only made eight brothel visits in 2018, and only one in 2017², out of 90 licensed brothels operating in Victoria. Similarly, a New Zealand government review of the decriminalised system noted that there were no provisions for regular brothel inspections under the Act.³ It is not clear how decriminalisation of Victoria's sex industry will strengthen oversight where legalisation has failed.

An obvious example of the failure of prostitution regulation is illegal brothels. In Melbourne, it is estimated that illegal or unlicensed brothels outnumber licensed brothels by five times, with women in illegal brothels at greater risk of exploitation, trafficking and abuse. That means there are around 500 illegal brothels compared to 90 legal brothels (Sodsai 2019). Under legalisation there are clear obligations for enforcement and regulation, yet these are blatantly ignored. It is not clear how decriminalisation will improve this.

7. Trafficking and sex industry regulation

While trafficking is regulated at the federal level, 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 (TIP) Report for 2019 finds that Australia is doing little to address this issue. In particular, the report notes that the Australian government "did not make efforts to reduce the demand for commercial sex acts within Australia" (United States Department of State 2019: 77). It is unclear how fully decriminalising the sex industry in Victoria in order to treat prostitution as 'a job like any other' will assist in reducing demand. The TIP Report also notes that in Australia, trafficking for sexual exploitation is highly gendered, with traffickers "primarily exploit[ing] women and girls in sex trafficking" (United States Department of State 2019: 77). This exploitation includes "a small number of children, primarily teenage Australian and foreign girls, in sex trafficking within the country", and some women and girls trafficked from overseas are held "in captivity, subject[ed] ... to physical and sexual violence and intimidation, manipulate[d] ... through illegal drugs, and force[d] ... to pay off unexpected or inflated debts" (United States Department of State 2019: 77). Given international evidence demonstrated higher rates of trafficking inflows into countries with decriminalised or legalised systems (Cho et al. 2013), it is likely that the full decriminalisation of the sex industry in Victoria will only intensify the forms of exploitation identified in the TIP Report.

Australia's failure to address the demand for commercial sex has long been identified in the periodic reports on Australia's progress towards meeting the goals of the Convention for the Elimination of all forms of Discrimination Against Women (CEDAW). In 2018, the CEDAW committee was concerned with the Australian government's failure to address demand in both practice and in its periodic 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

² <https://sexworklawreformvictoria.org.au/regulatory-bodies/worksafe-victoria/>

³ <http://prostitutescollective.net/wp-content/uploads/2016/10/report-of-the-nz-prostitution-law-committee-2008.pdf>

those who wish to exit prostitution” (Committee on the Elimination of Discrimination Against Women 2018: 10). These failures contradict Australia’s purported support for CEDAW.

We recommend that demand for sexual services be recognised as in contravention of Australia’s obligations under CEDAW and 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 2019. 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.

8. Sex industry advertising

One of the main purposes of advertising is to create a demand for a product. Advertising by the sex industry, which helps to fuel a demand for sexual services, puts the industry at odds with Australia’s obligations under international conventions. As noted just above, Australia is constantly reprimanded by the UN CEDAW committee for not meeting its requirements to address the demand for prostitution.

Research has found advertising by the sex industry to be both extremely racist and to reinforce gender stereotypes (Street and Norma 2016). This kind of advertising undermines gender equity and anti-discrimination policies in Victoria.

For example, the Sex Work Regulations of 2016 made changes to allow discriminatory language in advertisements for the legal sex industry, which demonstrates the extent to which the industry relies on sexualised racism in order to function. Advertising women by reference to their race is clearly against the spirit of the Racial Discrimination Act (1975). It is unclear why we make an exception for this kind of racism for one particular industry, and highlights just one of the ways prostitution is not a job like any other.

To emphasise this point, we have seen in the wake of the ongoing Black Lives Matter protests around the world, the dating app Grindr has removed its ethnicity filter (Hern 2020). Yet sex industry advertising is often premised on, either implicitly or explicitly, racist understandings and stereotypes of the women being prostituted. The 2016 removal of the ban on making reference to the race, colour or ethnic origin of a person selling sex in Victoria therefore seems especially out of step with progressive racial politics at this time. As such, the review team must reconsider this aspect of sex industry advertising regulations.

9. Sex as a ‘human right’

Recently, there has been an increasing focus within debates about the sex industry on the notion—either explicit or implicit—that sex is a human right (e.g. Grant 2012). Reason Party Leader Fiona Patten, who is heading this targeted review, was quoted as

describing sex in these terms earlier this year (quoted in Yu 2020). There are certainly important rights related to sexuality, such as the right to be free from discrimination against forms of sexuality that do not cause harm—so, for example, a right to the expression of same-sex attraction. However, the concept that access to sex beyond masturbation (so sex with one or more other people) is a human right is very concerning. Importantly, it seems to imply that an individual should have a right to sexual access to another, and appears to make no distinction regarding access to potentially harmful forms of sexuality. Moreover, the rhetoric of sex as a human right would seem to obfuscate the complex relationships between sexuality, gender and power. If the proposed decriminalised model is based on a theory of sex as a human right, we would urge the review team to consider women’s right to be free from sexual harm and to use this lens to assess any new regulatory model that may be introduced within Victoria.

10. Non-consensual sex work

CATWA would like to express our deep concern that the term “non-consensual sex work” is being used in this review. Language such as this sanitises abuse and hides the victim; many have correctly pointed out that this language is grossly inadequate and deeply offensive to victims/survivors (Topping 2015; Rights4Girls 2020). It is not clear exactly what is meant by “non-consensual sex work”. If the review means to talk about rape, child sexual exploitation, or sex trafficking we request that the review use the proper terminology and individually address these serious and distinct forms of violence. It is completely unacceptable for a review into the sex industry, an industry rife with sexual exploitation and violence, to fail to use correct terminology.

11. Consulting with survivors

CATWA is aware of several survivor groups who made requests to take part in verbal consultations with the Victorian review team, but were excluded. These include NorMAC, Wahine Toa Rising, SPACE and PEACE. These organisations are run by women with direct experience working in the sex industry, including in decriminalised models such as New Zealand, which is the model the review team has indicated it may seek to replicate (Victorian Government 2020). CATWA is not a survivor-led organisation, although we are committed to amplifying survivor voices in our work. We believe it is highly problematic that survivor organisations were refused a place in this consultation.

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