

SUBMISSION TO THE QUEENSLAND LAW
REFORM COMMISSION SEX WORK INDUSTRY
REVIEW

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Coalition Against Trafficking in Women Australia

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Who Are We?

The Coalition Against Trafficking in Women Australia (CATWA) is the Australian branch of [CATW International](#), a Non Governmental Organization having Category II consultative status with the United Nations Economic and Social Council. We work [locally and internationally](#) to end all forms of sexual exploitation of women, especially the violence of prostitution, trafficking and pornography.

[CATWA was formed in Melbourne in 1994](#) and is a secular and feminist organisation.

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1. Key Recommendations

- We recommend that prostituted persons be decriminalised, but that pimping and sex buying are prohibited.
- We recommend against the full decriminalisation of the sex industry.
- We recommend that no matter what model of sex industry regulation is implemented in Queensland, 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.
- We therefore recommend that partial decriminalisation—in the form of the Nordic/Equality Model—be introduced in Queensland, instead of full decriminalisation.
- We recommend that the government consider the disjunctures between a fully decriminalised sex industry, and moves towards greater gender equality and an end to violence against women.

2. Key Matters Related to the Sex Work Industry Review

The *Coalition Against Trafficking in Women Australia* (CATWA) opposes the full decriminalisation of the sex industry. We are also concerned that the Consultation Paper prepared by the Queensland Law Reform Commission titled ‘A framework for a decriminalised sex work industry in Queensland’ contains significant misconceptions regarding full decriminalisation of the sex industry.

Full decriminalisation of the sex industry will rescind various forms of state oversight in regard to the industry. The sex industry is based in large part on the objectification of women¹, is populated by people driven by financial insecurity, is a key site of sex trafficking in Australia (Tyler et al., 2017). It is unclear how *reducing* government oversight will address these ingrained issues with the industry.

CATWA agrees 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.

The Consultation Paper for this review, however, conflates the decriminalisation of prostituted persons in with the decriminalisation of all forms of the sex industry. The Terms of Reference for this review rightfully centre safety and human rights. Below, however, we unpack how full decriminalisation fails to achieve the goals of a safe and respectful sex industry; indeed, we argue that safety and respect are unachievable in an industry based on the sale of sexual access to people’s bodies. Instead, CATWA advocates for partial decriminalisation—an approach that is gaining ground amongst progressive governments internationally.

- We recommend that prostituted persons be decriminalised, but that pimping and sex buying are prohibited.

¹ The Law Reform Commission’s own figures report that 81.6% of people selling sex in the Queensland sex industry are women, while 10.4% identify as trans or gender diverse.

3. The Failures of Decriminalisation and Legalisation

Rather than achieving greater equality and safety for prostituted persons, as claimed by some sex industry advocates, full decriminalisation—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 longstanding legalised model of brothel prostitution² 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; Tyler et al., 2017).

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, government inquiries into the regulation of brothels in New South Wales have also highlighted the failures of decriminalisation. In 2015, the Australian Federal Police (AFP) and the NSW police both sent representatives to the NSW Senate Inquiry to testify as to the abuses occurring in the sex industry there. Then New South Wales Deputy Police Commissioner Nick Kaldas stated that the existence of 'next to no regulation' in NSW allowed 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 dramatically increased, especially in Auckland, following decriminalisation (Berg, 2014). 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

² Victoria has recently instituted a fully decriminalized system. However, the Victorian model introduced in the 1980s was for many years the blueprint for legalised models globally.



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.

4. The Nordic/Equality Model

The *Coalition Against Trafficking in Women Australia* advocates for the Nordic/Equality Model of prostitution policy and legislation. The Nordic/Equality 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/Equality 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. We note that the Queensland Law Reform Commission has not considered this model of sex industry regulation in its Consultation Paper, despite the Nordic/Equality Model having been adopted across many European and Nordic countries, as well as parts of Asia and North America.

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 outcomes

It has now been more than twenty years 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/Equality 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., 2017). It is this spread that has led to the original Swedish legislation being referred to as the Nordic Model. Although more recently, as the law has increasingly been adopted internationally, it has come to be known as the Equality Model, due to its focus on tackling social inequality and violence against women. The Model has since been adopted in various countries around the world, including Norway, Israel, Canada, Iceland, Northern Ireland, Ireland and France (Murphy, 2014; Tyler et al., 2017), as well as variations of the law in the United Kingdom and South Korea. The Nordic/Equality Model is recognised by international and multilateral bodies, such as the European Parliament, 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/Equality Model as an alternative to the traditional policy approaches. Only the Nordic/Equality 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/Equality Model, be introduced in Queensland, instead of full decriminalisation.
- We recommend that no matter what model of sex industry regulation is implemented in Queensland, 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. This reflects the social justice commitments of the original Swedish legislation, and also dovetails with the QLRC’s own statement that ‘no one should have to rely on sex work to survive’ (QLRC 2022, p. 30).

5. The Sex Industry, Violence Against Women and Gender Equality

In 2021, Australia began a serious reckoning with questions of gender equality and violence against women, especially as concerns objectification and sexual violence in the workplace.

The sex industry is rife with objectifying and degrading attitudes towards women, and is also a significant site of violence against women, including sexual violence. Research, backed by accounts from frontline and outreach services, shows that prostitution causes grave physical and psychological harm to women involved (Farley et al. 2003). Women in the industry experience repeated sexual and physical violence. Indeed, evidence demonstrates that male buyers actively seek harmful sexual practices in the sex industry, with men actively seeking to violate and enact violence on women in prostitution (Project Respect 2017; 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. 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 in 2019, 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 and this is seen as 'part of the job'.

In her powerful speech to the "March for Justice" rally in Canberra in March, anti-violence advocate and rape victim/survivor Brittany Higgins called out victim-blaming rhetoric. She decried the proliferation of "advice" on how to avoid sexual violence that is 'aimed solely at modifying the behaviour of victims and does nothing to address the actions of perpetrators' (ABC News 2021: n.p.). Yet health and safety advice to those working in the sex industry frequently demonstrates that the onus is on prostituted persons, not buyers, to ensure their own safety. The risk still inherent in the decriminalised sex trade is underscored by advice offered in the New Zealand Prostitutes Collective document *Stepping Forward*. When 'dealing with violent clients', the document advises: 'make as much noise as possible to attract attention. Try calling FIRE, a passerby will probably pay more attention. If you wear a whistle around your neck, blow it in his ear'. Similarly, health advice to women in the industry across various jurisdictions often warns against, for example, over-using numbing agents on the genital region, as this may mask more serious injury (Get Escorts 2017; RhED n.d.).

Advice such as that in the examples above demonstrates that sexual violence is an expectation within the legalised and decriminalised sex industry in various Australian jurisdictions and New Zealand. When the sector itself advocates that the way to address sexual violence is by 'modify[ing] the behaviour of victims', it is patently clear that the sex industry is incompatible with broader moves toward gender equality. Decriminalisation promotes women and girls as objects to be purchased, fuels men's entitlement and contributes to societal misogyny. A society that enables this is not "safe" for any woman.

- We recommend that the government consider the disjunctures between a fully decriminalised sex industry, and moves towards greater gender equality and an end to violence against women.

6. The Sex Industry and Public Health

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 (Hein et al. 2016).

Decriminalising sex buyers and managers fails to 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 in decriminalised systems is a flagrant disregard of women's health and wellbeing through attempts, for example, to make women perform fellatio without a condom (Tyler and Jovanovski 2018). Studies have shown the repeated objectification of women in the sex industry 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. When sexual objectification is a prerequisite to your employment, you start off on an unequal footing (Norma and Tankard Reist 2016). 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.

More specifically, the Terms of Reference for this review ask respondents to consider circumstances 'where there has been a promise by a person of payment of money in exchange for a sexual act performed by a sex worker where that payment is not forthcoming'. The *Coalition Against Trafficking in Women Australia* notes that this

scenario constitutes sexual assault, or even rape. If consent to a sex act is contingent on payment and payment is not made, this is sex without consent. We strongly encourage the QLRC to consider that any legislative amendment to deal with these circumstances take into account the public health concerns—including trauma—that may arise from situations of assault and rape and legislate accordingly. CATWA also notes that an industry where failure to pay results in sexual assault or rape is not an industry that is safe for women. Given the commitment of the QLRC’s review framework to human rights and equality, we encourage the QLRC to consider these facts in their assessment of whether the full decriminalisation of the sex industry is compatible with gender equality and women’s safety.

7. Trafficking and our International Obligations

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 Queensland 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 Queensland will only intensify the forms of exploitation identified in the TIP Report. It is also notable—and concerning—that the QLRC’s Consultation Paper seems to suggest that trafficking for sexual exploitation into Australia is not of concern, despite sound international evidence to the contrary.

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 UN 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 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 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/Equality Model (as described in Section 4, above), 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. Survivor Testimonies

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 in 2019 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. This forces women in the industry to choose between running the risk of being sued, or "consenting" to unwanted sex (or



what is in effect, rape). This set of circumstances demonstrates that prostitution is not a “job like any other”. In an Australia where we are striving towards gender inequality and the abolition of sexual violence, a fully decriminalised sex industry has no place.

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