



Targeted Review of Divisions 270 and 271 of the Criminal Code Act 1995 (Cth)

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Coalition Against Trafficking in Women Australia

www.catwa.org.au

Who we are

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. We are a volunteer organisation receiving no funding. We are guided by the leadership of survivors of the sex trade. We work 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 CATWA focuses on the area of our organisation's expertise: the trafficking of women for the purposes of sexual exploitation, which occurs primarily in Australia's sex industry. 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, 2021), and sexual exploitation is the most commonly identified form of trafficking in persons (UNODC, 2021). This is especially important in the Australian context, as Australia is 'primarily a destination country for women and girls subjected to sex trafficking' (US Dept. of State, 2015). Australian legal scholars have noted that 'the great majority of known victims of trafficking in persons in Australia are women' trafficked to the sex industry for sexual exploitation (Wise and Schloenhardt 2014, 253).

Key recommendations

- Trafficking (primarily of women) for sexual exploitation be recognised as a key area of concern regarding modern slavery in Australia.
- The demand for the purchase of sexual services in Australia's commercial sex industry be recognised as the primary driver of trafficking in women, and thus measures to reduce demand be taken in order to prevent trafficking for sexual exploitation.
- The increasing acceptance of 'sex work' in Australia via the adoption of full decriminalisation be recognised as impeding the identification of victims of human trafficking.
- Australia's commercial sex industry is the primary destination for women and girls trafficked to Australia for sexual exploitation, thus the commercial sex industry should be placed under increased scrutiny that aims to prevent exploitation from occurring.
- The 'Nordic' or 'Equality' Model approach to the sex industry (asymmetric decriminalisation) be adopted in Australia and recognised as the international best practice for preventing trafficking for sexual exploitation.

Background

In October last year, a global human trafficking syndicate was exposed for running 'a national illegal sex racket moving exploited foreign women around the country like "cattle"' ([McKenzie, Ballinger and Tozer, 2022](#)). It has been reported that the AFP uncovered evidence suggesting dozens of women from South Korea had been imported to Australia over many years. Inspector James Cheshire involved in the investigation commented:

'When you speak to the individuals being trafficked, the distress they're in, the lack of control, the lack of knowledge, and just the exploitation that goes on in the sex industry, it's pretty horrific' ([McKenzie, 2022](#)).

Women trafficked into Australia's sex industry experience grave abuses of their human rights, exploitation and degradation. Unfortunately, this recent expose is not new. Trafficking of women into Australia's sex industry has been happening for decades, in both licensed and unlicensed brothels (Kotnik, Czymoniewicz-Klippel and Hoban 2007; Wise and Schloenhardt 2014). Evidence indicates that most human trafficking victims are from 'southeast Asian nations or the Republic of Korea' (Schloenhardt, Beirne and Corsbie 2009, 228). Indeed, Australia's geographical position in the Asia-Pacific region, as well as its 'high and continuing demand for Asian sex workers' makes Australia especially 'attractive to human traffickers' (Kotnik, Czymoniewicz-Klippel and Hoban 2007, 371).

The overrepresentation of culturally and linguistically diverse (CALD) women, particularly from Southeast Asian nations, in Australia's sex industry is reflected in the National Plan to End Violence against Women and Children 2022–2032. The Plan not only identifies the trafficking in women and girls as a significant form of gender-based violence in Australia, but also that it disproportionately impacts women and girls from culturally, ethnically, religiously and linguistically diverse communities and migrant and refugee women (National Plan 2022, p.36).

Human trafficking is a global phenomenon that affects virtually every country. It is the second largest and the fastest growing criminal industry in the world, estimated to generate profits of US\$150 billion dollars each year (ILO 2017). According to the International Labour Organization (ILO), 'women and girls represent 99 per cent of victims of forced labour in the commercial sex industry' (ILO 2017, 10). The vast majority of women and girls are trafficked for sexual exploitation (OMCTIP 2020). This is why CATWA continues to highlight that the sex industry is a key area for trafficking into Australia. Again, we recommend specific measures to address the demand for commercial sex that fuels sex trafficking and sexual exploitation in this country.

Trafficking in Australia

Australia remains a destination country for women trafficked into the sex industry (US Dept. of State, 2021). While there are no definitive data on the number of persons trafficked into Australia (Flynn et al, 2014), it is believed to be significant with some estimating up to 2,000 victims of trafficking into the commercial sex industry in Australia each year (SBS 2012). Given its illegal nature, human trafficking is a difficult area of research and the precise extent of such practices can be difficult to ascertain, although they are understood to be widespread (UNODC, 2011, 2014).

Australia's prosecution rates of human trafficking remain shamefully low and do not reflect the true scale of trafficking in Australia drawing international criticism from both the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the United States Trafficking in Persons (TIP) Report. Low rates of detection – coupled with Australia's low rates of official trafficking prosecutions – has led government trafficking statistics to report low estimates of the scale of trafficking in Australia (Wise and Schloenhardt 2014). Indeed, a report on human trafficking and slavery from the Australian Institute of Criminology indicated that 'there are approximately four undetected victims for every victim detected' (Lyneham, Dowling, and Bricknell 2019, 1). Although it is acknowledged that official statistics are merely the 'tip of the iceberg' (Wise and Schloenhardt 2014, 256), low official estimates feed common misconceptions that trafficking is rare in Australia.

Trafficking for the purposes of sexual exploitation often carries acute harms for victims, with the violation of forced labour compounded by repeated rape/sexual assault and associated high levels of psychological distress, trauma and physical harm (Farley, 2003; Project Respect 2022). Furthermore, it is clear that the domestic Australian sex industry targets Asian women for sex trafficking and procurement into systems of prostitution. A study of the online advertising of

Melbourne-based prostitution businesses found 41 per cent promoting predominantly Asian women (Street & Norma, 2016). A 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 a lack of support for victims to exit the sex industry.

'Sex work' ideology impedes the identification of victims of human trafficking

Australian legal scholars Andreas Schloenhardt and Hannah Bowcock found that: 'Whilst both the Trafficking in Persons Protocol and Australia's domestic provisions under divs 270 and 271 of the Criminal Code explicitly provide that consent is neither a necessary factor to establish the offence, nor a defence to a charge, the issue of consent continues to be raised and discussed in the case law' (2015, p. 625). The article reviews several cases of human trafficking in Australia where discussion of consent hinders the ability of the courts to identify victims of trafficking as victims. The authors argue that: 'One of the major challenges facing prosecutors of trafficking in persons offences is that victims of trafficking frequently do not conform to the popular portrayal of a victim of crime' (p. 627). For example, due to 'popular stereotypes and prejudices' victims who have consented to any stage of their trafficking or exploitation are not recognised as victims but rather are seen as 'shrewd business women' - this particular framing also has racial elements as most sex trafficking victims are from Southeast Asia. The authors argue for 'the need to move away from the consenting or non-consenting dichotomy' (p. 597). The focus on consent in court cases, as well as the stereotype of the 'shrewd business woman', reflect dominant conceptions of 'sex work' as almost always consensual and lucrative.

Although Schloenhardt and Bowcock's observations relate specifically to the treatment of human trafficking cases in the courts, the idea that consent is relevant is found throughout academia and non-government organisation reports. For example, a direct service NGO report from 2019 found that many women working in illicit massage parlours in Sydney (where commercial sex has been decriminalised since 1995) were unable to refuse clients, worked extended hours including 24hr shifts, were on temporary working holiday and student visas, were moved between brothels by management, had low levels of English language, and lived onsite at the brothel - which are recognised as **indicators of human trafficking by Australian authorities** - however the authors of the report concluded that there were no signs of human trafficking because most women 'have consented to come to Australia' (Davidson et al. 2019, p. 10).

Similarly, an academic study by Selvey et al. from 2018 reports similar conditions in Western Australia, including women not being able to refuse clients, having to work when they did not want to, and not being able to leave the brothel. Alarming, the article does not once mention the terms 'human trafficking' or 'exploitation', but instead frames these experiences as poor working conditions and 'bad clients.'

The above are examples of potential victims of human trafficking not being recognised in the first instance because they are seen as consenting 'sex workers.' Arguably, Australia's legal treatment of prostitution as 'sex work' through measures such as wholesale decriminalisation of the industry - and the accompanying ideology of sex as work - directly impacts the ability of people from all areas, including authorities, academics and direct service providers to identify victims of human trafficking. Even when victims are formally identified and cases do make it to court, barriers to identifying victims as victims remain due to the continued importance placed on consent (Schloenhardt and Bowcock 2015).

International criticism of Australia's approach to human trafficking

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), to which Australia is a party, has continued to criticise Australia's failure to meet its obligations under Article 6:

'States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women'

CATWA has tracked comments regarding Article 6 from the initial report submitted in 1986 through to the most recent report, the 8th, submitted in 2016. CEDAW's concluding remarks from the most recent round published in 2018, relate to 'trafficking and exploitation of prostitution', and expresses several concerns including:

Section 31:

(a) The lack of a gender perspective in the reports issued by the Interdepartmental Committee on Human Trafficking and Slavery;

(e) Prevailing attitudes among members of the judiciary and law enforcement officials regarding victims of trafficking as offenders and migrants with irregular migration status, rather than as victims, which constitutes an obstacle to reporting and to the early identification and referral of victims of trafficking to the appropriate social and legal services;

(f) The low prosecution rate in trafficking cases;

Section 33 also states:

The Committee is concerned that the lack of harmonization of state and territory legislation on women in prostitution impedes their access to health care, support and legal services and employment. It is also concerned that the State party has not taken measures to address the demand for prostitution, in order to prevent women and girls from entering prostitution and support those who wish to exit prostitution.

Australia's reply to CEDAW's list of issues states: 'As Australia does not consider that legalised sex work is exploitation of prostitution unless circumstances arise where sex workers *do not consent* to engage in sex work or are minors, data for exploitation of prostitution is included in human trafficking data. Between 2004 and 30 June 2017, the Australian Federal Police specialist investigative teams received 841 referrals relating to human trafficking, slavery and slavery-related offences, including forced marriage.'

This means that because 'sex work' is seen as just another type of wage labour, awareness and definitions of sex trafficking as a distinct form of trafficking and exploitation have become less pronounced - there has been a move towards "modern slavery" and human trafficking in general, that means although it is recognised that human trafficking occurs in Australia's sex industry, the sex industry is seen as just one industry where trafficking happens, instead of a distinctly gendered and particularly sexually violent phenomenon that is inseparable from the sex industry. Human trafficking and the commercial sex industry are inextricably linked, the commercial sex industry is the primary destination for women and girls trafficked to Australia.

Trafficking in Persons (TIP) Report

CEDAW's concerns are also reflected in the most recent TIP report that states: 'The [Australian] government also did not adequately screen vulnerable groups traffickers may target, including domestic workers, international students, and migrant workers, which at times may have resulted in the government's detention or deportation of unidentified victims.'

The sex work perspective means that women in the sex industry, even those found to be working under exploitative conditions or in the illegal sector, which includes a significant proportion of women on student visas and so called ‘migrant sex workers’, are treated as willing agents – or ‘shrewd businesswomen’ (Schloenhardt and Bowcock 2015) – which leads to punitive action against the women rather than acknowledging the potential for victim status.

Australia’s commercial sex industry should be placed under increased scrutiny

Trafficking for sexual exploitation is a key area of trafficking to Australia. Therefore, the sex industry, and the practices of businesses therein, should come under particular scrutiny in any future legislative and policy approaches. There have been numerous media reports of trafficking, debt bondage and sexual slavery into Australia, including in legal brothels in states where the sex industry is legal and regulated (e.g. Bucci et al. 2015; Duff, 2015; McKenzie & Beck, 2011; SBS, 2012; Uibu, K. 2015). The ongoing issues of organised crime and trafficking into the sex industry in Sydney were also raised by both the New South Wales Police and the Australian Federal Police during the 2015 inquiry into brothel regulation in New South Wales (Henskens et al., 2015).

The sex industry is disproportionately affected by human trafficking (ICHTS, 2016). The known risk of modern slavery and human trafficking for sexual exploitation in this industry as well as the scale and profitability of the sex industry in Australia means that sex industry businesses should face particular scrutiny. At a minimum all sex industry businesses should be required to report on modern slavery risks in their operations and supply chains, regardless of annual turnover. This requirement may help to foster greater levels of awareness of trafficking within the sex industry among brothel owners, managers and sex buyers. It is clear there is a lack of understanding of the prevalence and nature of human trafficking and modern slavery in Australia’s sex industry.

In 2013, a woman from China was found hidden in a wall cavity in a Melbourne brothel (Bucci et al. 2015). No criminal charges were laid on the brothel owner because he was deemed not responsible for hiring the woman or checking her visa status, despite the fact he had built the wall cavity. Although the brothel owner was fined for breach of the brothel license, he was able to keep his license and continue operating the brothel. After serving as many as 185 clients in her two months at the brothel, the unnamed woman was voluntarily deported without any support (Bucci et al. 2015). This case demonstrates not only a lack of understanding of human trafficking and modern slavery but also a lack of responsibility on brothel owners and managers to combat modern slavery risks in their operations and supply chains. A requirement for sex industry businesses to report would be a first step in the fight against modern slavery.

Full decriminalisation of commercial sex fails to hinder trafficking and exploitation

While sex worker rights groups continue to advocate for the full decriminalisation of the sex industry on the basis it will reduce harm and increase sex worker safety – this is yet to be seen. Full decriminalisation has been in place in NSW since 1995 and New Zealand since 2003 – a significant amount of time to see changes from the legislation – yet the problems of trafficking, modern slavery and sexual exploitation continue seemingly unimpeded. Examples of the recent alleged rape of a sex worker by a NSW member of Parliament (Smith and Cormack 2021), and the horrific murder of Sydney-based sex worker Michaela Dunn in 2019 (Cormack, Chrysanthos and Rawsthorne 2019), as well as the use of NSW sex industry venues in a national trafficking racket demonstrate that unacceptable levels of violence and harm persist with full decriminalisation (McKenzie, Ballinger and Tozer, 2022).

International best practice for preventing the trafficking in women and children for sexual exploitation is the ‘Nordic’ or ‘Equality’ Model. The Nordic/Equality Model constitutes a system

of asymmetric decriminalisation of the sex industry: it directly addresses demand for trafficking and sexual exploitation by criminalising sex buyers and third parties who profit from prostitution, while simultaneously decriminalising and providing material support to the victims/survivors of trafficking and prostitution (Tyler et al., 2017; Waltman, 2011). The Nordic/Equality Model originated in Sweden, where it was introduced in 1999, and has been adopted (with some level of variation) in Norway, Iceland, Northern Ireland, Ireland, Canada, France, and Israel, and is being considered in a number of other jurisdictions including Scotland, Lithuania, Colombia and the Philippines. The Nordic/Equality Model has been endorsed as best practice for tackling trafficking and gender inequality by the European Parliament (2014). Furthermore, the Council of Europe (2014) has declared the Swedish legislation to have had 'proven positive results in terms of reducing demand for trafficking' and has called on all member states to discourage, including through criminalisation, the purchase of sexual services as a way of addressing modern slavery in Europe.

In order to prevent modern slavery in the sex industry in Australia, more needs to be done to address the demand for commercial sexual services. International research has shown that, in countries where the purchase of sexual services is legalised – and, therefore, increasingly socially tolerated – demand outstrips supply and women are trafficked into the growing and lucrative markets for prostitution to meet demand (Cho et al., 2013). Full decriminalisation of the sex industry encourages demand by normalising the sex trade as legitimate work or 'service'. Presumably, this has a positive impact on sex industry business profits, however, encouraging demand fosters the expansion of the commercial sex industry into which increasing numbers of women are funnelled to meet rising demand.

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. The Nordic/Equality Model is also an important way in which Australian can better meet its obligations under 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 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 states 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 Coalition Against Trafficking in Women Australia has also submitted to previous trafficking inquiries that the Australian government should establish an ongoing compensation scheme for victims of trafficking that is de-linked from their participation in criminal justice proceedings.

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