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17 March 2011

The Secretary  
Standing committee on justice and community safety  
Legislative assembly for the Australian Capital Territory  
GPO Box 1020, Canberra, ACT 2601



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Dear Sir or Madam,

**CATWA submission in response to the Standing Committee on Justice and Community Safety review of the operation of the *Prostitution Act 1992***

Please find enclosed our response to each of the terms of reference of the Standing Committee on Justice and Community Safety.

Should you require any further information or wish to discuss our recommendations, a representative from our organisation would be most happy to answer any queries or concerns that you might have.

Warm regards,

Caroline Norma  
On behalf of the Coalition Against Trafficking in Women Australia

  
<http://catwa.org.au/>



CATWA submission in response to the Standing Committee on Justice and Community Safety review of the operation of the *Prostitution Act 1992*

March 2011

*CATWA, the Coalition Against Trafficking in Women Australia, is part of the international Coalition Against Trafficking in Women (CATW). CATW has category II consultative status with the Economic and Social Council of the United Nations. CATWA works nationally and internationally against the trafficking in women and children, and in support of Article 6 of the Convention for the Elimination of Discrimination Against Women, which calls for the prohibition of the exploitation of the prostitution of others.*

Coalition Against Trafficking in Women Australia  
<http://catwa.org.au/>

## **(1) the form and operation of the Act;**

CATWA believes that the current scheme of legalised prostitution in the ACT runs counter to international best practice policy on prostitution. Legalising parts of the sex industry was an approach adopted by Germany, the Netherlands, and the states of Victoria and Queensland in the 1990s. The approach is now acknowledged as a regulatory failure, both in academic studies,<sup>1</sup> and in audits by governments.<sup>2</sup> The Victorian, German, and Dutch governments are now having to repeatedly modify this approach policy because of problems stemming from the widespread proliferation of both legal and illegal prostitution businesses.<sup>3</sup>

The only sex industry regulatory model that is compatible with international law,<sup>4</sup> and has been empirically shown to reduce prostitution as a harmful practice of violence against women,<sup>5</sup> is the '**Nordic model**',<sup>6</sup> which is currently in operation in varying forms in Sweden, South Korea, Norway, and Iceland. The model is defined by three things:

1. Criminalisation of buyers of prostituted people, and people who organise the prostitution of others.
2. Decriminalisation of prostituted people as victims of crime, and the establishment of services and facilities to assist them.
3. Public education as to prostitution as a human rights violation.

We urge the ACT government to reconsider its current legislation that legalises parts of the sex industry. Prostitution is a practice that is fundamentally incompatible with a gender equal society. Policy solutions like legalisation and decriminalisation are failed options that were introduced at a time when empirical and theoretical evidence of the social harm of prostitution did not circulate as plentifully. Now that the ACT government has access to this information, it is well placed to become a leader in Australia and the world with regard to best-practice policy on prostitution. Prostitution is a problem that requires strong leadership by governments in taking steps to suppress the sex industry as a harmful commercial sector akin to the tobacco industry. We urge the ACT government to rise to this challenge.

***Recommendation 1:** the ACT government should adopt the Nordic model of penalising the buyers and decriminalising the women in prostitution as the most effective way of addressing the harms of prostitution and trafficking.*

## **(2) the regulation, enforcement and monitoring of commercially operated brothels;**

The death of 17-year-old Janine Cameron in a Canberra brothel in 2008 shows in tragic terms the consequences of legalising businesses that fundamentally harm the wellbeing of women and girls.<sup>7</sup> The prostitution of underage girls through legal brothels is not an uncommon practice of the sex industry in Australia; for example, a 14-year-old girl was found in a legal Melbourne brothel, Pickwood Lodge, in

<sup>1</sup> Sullivan, Mary. 2007. *Making Sex Work: The failed experiment of legalized prostitution in Australia*. Melbourne: Spinifex.

<sup>2</sup> Daalder, A.L. 2007. *Prostitution in the Netherlands since the Lifting of the Brothel Ban*. WODC (Weenschappelijk Onderzoek en Documentatiecentrum). Den Haag, Netherlands: Boom Juridische uitgevers, WODC; Crime and Misconduct Commission (2004). *Regulating Prostitution. An Evaluation of the Prostitution Act 1999 (QLD)*; 'Germany to Punish Customers of Forced Prostitutes,' 17 May 2008 at <http://www.dw-world.de/dw/article/0,,3343136,00.html?maca=en-rss-en-all-1573-rdf> (accessed 6 February 2010).

<sup>3</sup> According to the Australian Adult Entertainment Industry (AAEI) Victoria's legal brothels are currently outnumbered by an estimated 3 to 1 by illegal brothels (AAEI, 2007). As such, it has been estimated that there are 93 legal brothels and 400 illegal ones (Jeffreys, 2009:189).

<sup>4</sup> The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Convention against Transnational Organised Crime urges the strengthening of domestic laws against trafficking and international cooperation to end the crime (United Nations, 2000 Clause 5:6).

<sup>5</sup> Farley, Melissa (ed) (2003). *Prostitution, Trafficking, and Traumatic Stress*. Binghamton, New York: Haworth Maltreatment and Trauma Press; Farley, Melissa. 'Prostitution and the invisibility of harm,' *Women & Therapy*, Vol. 26 No. 3/4, 2003, pp. 247-280.

<sup>6</sup> Ekberg, Gunilla. 'The Swedish law that prohibits the purchase of sexual services,' *Violence Against Women*, Vol. 10, No. 10, 2004, pp. 1187-1218.

<sup>7</sup> 'Death of innocence', *Canberra Times*, 1 November 2008.

2010.<sup>8</sup> As long as the sex industry enjoys legal status in Australia, child prostitution will continue to be an activity that some operators will pursue for profit. No amount of 'regulation' will drive these practices from an industry that derives its profits from the sexual degradation and exploitation of society's most vulnerable people. Research shows that people used in prostitution suffer rates of post-traumatic stress disorder equal to that of war veterans.<sup>9</sup>

Government licensing of brothels entails the collection of licensing fees from sex industry operators. This is an inadvisable activity for government, given how the money is earned. Brothel operators are primarily engaged in pimping out women for prostitution to men who then sexually penetrate them in various ways for personal gratification. It is solidly established in the sociological, medical, and psychological literature that women in prostitution are likely to have experienced some of the following: sexual assault as children, disadvantaged socio-economic and ethnic backgrounds, and interrupted education. It is also established in the literature that women undergo great physical and psychological harm as a result of being used in prostitution, and consequently they experience much higher rates of mental health problems and drug addictions than the general population.<sup>10</sup> The ACT government risks abrogating its responsibility to protect the most vulnerable members of its community if it continues to support the activities of brothel operators/pimps by licensing them.

***Recommendation 2:*** *The enforcement and monitoring of the sex industry should not be the responsibility of local councils. This should be a police matter because of the serious harms involved, and a government body should be set up to deal with this which treats the issue with sufficient gravity.*

**(3) identifying regulatory options, including the desirability of requiring commercially operated brothels to maintain records of workers and relevant proof of age, to ensure that all sex workers are over the age of 18 years;**

Prostitution harms all people who are used for the purpose of someone else's sexual gratification, whether or not they are over the age of eighteen. The harm of prostitution does not subside when the people involved in it reach a certain age. This is because:

- Prostituted people must have sex with strangers on a daily basis. This often requires prostituted people to anaesthetise parts of their body. Women are forced to numb their vaginas with xylocaine in order to endure being repeatedly sexually used.<sup>11</sup>
- Research on prostitution tells us that women have to dissociate emotionally to survive the violation of prostitution.<sup>12</sup> The payment in prostitution makes the violation seem acceptable, but, as a survivor of prostitution writes, 'prostitution is rape that is paid for'.<sup>13</sup>
- Unlike mainstream adult occupations, prostitution cannot be seen as a free employment choice. Prostituted girls and boys enter below the legal working age as a result of: sexual abuse, homelessness, drug dependence, and poverty.<sup>14</sup>
- Prostitution arises from unequal social status. Women's so-called choice is constructed out of women's subordination, therefore we need to understand that girls and women do not make free choices to enter prostitution, regardless of age.<sup>15</sup>

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<sup>8</sup> 21 July 2010, 'Brothel owner employed schoolgirl,' at [http://www.bigpondnews.com/articles/National-regional/2010/07/21/Brothel\\_owner\\_employed\\_schoolgirl\\_488322.html](http://www.bigpondnews.com/articles/National-regional/2010/07/21/Brothel_owner_employed_schoolgirl_488322.html) (accessed 17 March 2011)

<sup>9</sup> Farley, Melissa (ed) (2003). *Prostitution, Trafficking, and Traumatic Stress*. Binghamton, New York: Haworth Maltreatment and Trauma Press.

<sup>10</sup> *ibid*

<sup>11</sup> See 'Safety tips for escort workers,' at

<http://www.sexworker.org.au/uploads/documents/SafetyTipsforEscortWorkers.pdf> (accessed 6 February 2011)

<sup>12</sup> Hoigard, C. and Finstad, L. (1992) *Backstreets: Prostitution, Money, and Love*. University Park: Pennsylvania State University Press.

<sup>13</sup> Evelina Giobbe 'Prostitution: buying the right to rape' (1991)

<sup>14</sup> Davies, Kim, and Lorraine Evans. 2004. "Skirting Danger and Sharing Connections: Internet Postings by British Escorts." Paper presented at the annual meeting of the American Sociological Association, August 14, 2004. [http://www.allacademic.com/meta/p109495\\_index.html](http://www.allacademic.com/meta/p109495_index.html).

<sup>15</sup> Jeffreys, Sheila. 1997/2008. *The Idea of Prostitution*. Melbourne: Spinifex Press.

**Recommendation 3:** *Placing the responsibility on brothels to police the age of prostituted girls is not sufficient to prevent child sexual exploitation. The ACT should, at a minimum, adopt legislation that severely penalises the buyers of underage girls, whether in brothel, escort or street prostitution.*

**(4) the adequacy of, and compliance with, occupational health and safety requirements for sex workers;**

Whilst in other businesses the idea of being able to enforce health and safety guidelines might make sense, in relation to prostitution it is nonsensical. Prostituted women suffer unwanted pregnancies on a regular basis and serious health consequences arising from sexually transmitted diseases, such as pelvic inflammatory disease, that destroy fertility. Prostitution must be the only 'ordinary job' in which workers are advised to watch for whether the customer has a knife and in which the threat of sexual violence is a routine hazard.<sup>16</sup> No health and safety legislation can cover the hazards of prostitution. The risks that women face through being prostituted are so great as to make any scheme that promises to 'reduce' these harms meaningless. OHS literature developed by Australian 'sex worker' organisations lists rape, unwanted pregnancies, physical violence, post-traumatic stress as inevitable health risks.<sup>17</sup> This does not change because prostitution becomes legal.

**Recommendation 4:** *At a minimum the existence of such severe harms indicates that governments that legalise this form of abuse must provide exit programmes, housing, educational programmes, retraining opportunities, specialised counselling and drug and alcohol programmes.*

**(5) any links with criminal activity;**

Though legalising prostitution was aimed at reducing organised crime, in fact it has strengthened its grip. In reality it extends business opportunities for organised crime, and reduces police oversight of the industry. The extent of corruption that surrounds Victoria's legalised sex industry was exposed in a number of newspaper reports in 2011, and included the information that the City of Yarra's senior enforcement officer had to resign in December 2010 after being interviewed by police investigating allegations that he received bribes over a five-year period from two illegal brothel operators.<sup>18</sup> In the same year, a police inquiry targeting multimillion-dollar prostitution rackets and human trafficking in Melbourne's inner north uncovered up to 24 illegal brothels operated by two crime syndicates. The Age newspaper reported that Chinese organised crime syndicates were running multimillion-dollar prostitution rackets across Melbourne by bribing officials. It was reported that the syndicates were linked to human trafficking and arrange for dozens of Asian women to travel from interstate and overseas - often on student visas - to work in brothels.<sup>19</sup>

Legalisation does not discourage crime groups from involvement in prostitution because of the considerable profits they can make from this industry. Crime groups are involved in the trafficking of women in particular and this aspect of the prostitution industry is causing the governments of the Netherlands and Germany to rethink their prostitution policies as these problems become more acute. The United Nations Organization on Drugs and Crime (UNODC) database in 2006 showed that the Netherlands and Germany are in the top ten countries that score very highly as destination countries. Owners of legal brothels set up associations to defend their interests and have the resources to bring pressure to bear on governments. They seek to limit competition by getting states to act against the illegal sector, seen as escaping the constraints and expenses that legal brothels are subject to. The escort sector can be seen as unfair competition if it does not take place out of legal brothels or agencies. This sector relies on trafficking in women from abroad to operate with a low price schedule.<sup>20</sup>

<sup>16</sup> See 'Safety tips for escort workers,' at <http://www.sexworker.org.au/uploads/documents/SafetyTipsforEscortWorkers.pdf> (accessed 6 February 2011)

<sup>17</sup> *ibid*

<sup>18</sup> 6 March 2011, 'Victoria official who took bribes backs brothel crackdown,' at <http://www.theage.com.au/victoria/official-who-took-bribes-backs-brothel-crackdown-20110306-1bjm1.html> (accessed 17 March 2011)

<sup>19</sup> 4 March 2011, 'The secret world of Melbourne's sex trade,' <http://www.theage.com.au/victoria/the-secret-world-of-melbournes-sex-trade-20110304-1bi88.html> (accessed 17 March 2011)

<sup>20</sup> See Sheila Jeffreys, "Brothels without Walls": the Escort Sector as a Problem for the Legalization of Prostitution. *Social politics*, 2010 vol:17 iss:2 pg:210 -234.

Criminal conduct does not confine itself to the illegal part of the sex industry. It will always permeate a fundamentally exploitative industry in which the 'commodity' being sold is human beings. The only conviction case for sex trafficking in Victoria was against the operators of a *legal* brothel.<sup>21</sup> The pimping of vulnerable people and juveniles is an activity of husbands and boyfriends, not just 'criminals'. Repealing legislation that prohibits pimping and living off the earnings means that men will be able to coerce female partners into prostitution by various means, and predatory young men posing as 'boyfriends' will be able to prey on young women and pimp them as part of 'stables'. The forms of coercion involved in pimping are hard to prove but immensely effective and therefore unlikely to be covered by this legislation. Pimps turn out women into prostitution through a variety of techniques that can include not only violence but also dependency and indebtedness.<sup>22</sup>

Until recently, the overwhelming majority of trafficked women into Australia came from Thailand, but are now being replaced by Chinese and Korean women.<sup>23</sup> Legalised prostitution does nothing to address the problem of trafficking into the legal part of the sex industry. The extent to which the trafficking of foreign women is integral to the operation of Australia's legal sex industry is made explicit in the Guidelines of the Queensland Prostitution Licensing Authority, which has published a list of terms and phrases that have been approved for use in the advertising of prostitution. Approved terms and phrases include Asian, Greek, Spanish, slave, submissive, bust size, donkey, '18 year old, busty, brunette', 'mysterious Oriental temptress', 'Asian, pretty, friendly', 'Asian delight', 'all Aussie babe', 'charcoal black chicky babe' and 'sexy Japanese, friendly and attractive'.<sup>24</sup> The legalisation of prostitution presents an opportunity for sex industry businessmen and advocates to lobby government to legalise sex trafficking as well.

**Recommendation 5:** *The ACT government should understand organised crime involvement in the industry as a matter relevant to the AFP and therefore there should be coordination of the territory police and the AFP on this issue.*

#### **(6) the extent to which unlicensed operators exist within the ACT**

International research shows that wherever prostitution is legalised the illegal industry proliferates and overshadows the legalised sector. It is difficult to ascertain the extent of the illegal industry in any legalised context because of the lack of research and police attention. Legalising prostitution places a burden on police to identify illegal brothels in an environment where citizens cannot tell the difference between legal and illegal brothels, and therefore cannot report them.<sup>25</sup> In the ACT, the illegal sex industry proliferates in the form of escort prostitution providers with no shop fronts. Unlike the ACT, the Queensland government has not legalised escort prostitution providers (only brothels), but a Queensland Crime and Misconduct Commission report in 2004 identified 'outcall or escort services' as making up 75 per cent of the industry. According to the CMC report, women in this sector are exposed to 'increased risk of abuse and poorer sexual health compared with their legal counterparts'.<sup>26</sup> In both Victoria and Queensland since legalisation, the growth of the illegal industry has outstripped the legal industry. Individual criminals, small-scale criminals as well as larger organised crime groups run the illegal industry and they are involved in the legal industry, too, which offers them considerable advantages. In Victoria, police checks on brothel owners in the legal sector take place but crime figures own brothels through front organisations.<sup>27</sup> In the Netherlands, a new law was introduced in 2006 in response to the concern about organised crime involvement in the legal industry, which introduced probity checks. In response, one-third of window/brothel prostitution was closed down.<sup>28</sup>

<sup>21</sup> Maltzahn, Kathleen. (2008). *Trafficked*. Sydney, New South Wales, University of New South Wales Press.

<sup>22</sup> Barry, Kathleen. 1995. *The Prostitution of Sexuality*. New York: NYU Press.

<sup>23</sup> Lara Fergus, *Trafficking in women for sexual exploitation* Melbourne: Australian Institute of Family Studies, 2005.

<sup>24</sup> Prostitution Licensing Authority (PLA). n.d. Sole Operator Advertising Policy. Brisbane, Australia: Prostitution Licensing Authority. [www.pla.qld.gov.au/advertising/soleOperator.htm](http://www.pla.qld.gov.au/advertising/soleOperator.htm).

<sup>25</sup> Kotnik, E, Czmoniewicz-Kippel, M, Hoban, E, 2007, 'Human Trafficking in Australia: The challenge of responding to suspicious activities', *Australian Journal of Social Issues*, vol. 42, no. 3, pp. 369-86.

<sup>26</sup> Crime and Misconduct Commission (CMC). 2004. *Regulating Prostitution. An Evaluation of the Prostitution Act 1999 (QLD)*. Brisbane: Crime and Misconduct Commission. p. xiii.

<sup>27</sup> Moor, Keith. 2007. "Business Washed Drug Cash." *Herald Sun*, April 30.

<sup>28</sup> Daalder, A.L. 2007. *Prostitution in the Netherlands since the Lifting of the Brothel Ban*. WODC (Weenschappelijk Onderzoek en Documentatiecentrum). Den Haag, Netherlands: Boom Juridische uitgevers, WODC, p. 19.

***Recommendation 6:*** *More police investigations of the illegal industry and research to ascertain the extent of the illegal industry in the ACT. We urge that no new legislative measures be introduced before there is a more accurate estimate of this problem.*

**(7) any other relevant matter.**

The only effective legislative measure the ACT could take in relation to the sex industry would be to establish exit programs for victims of prostitution. However, there is evidence that exit programs tend not to be established in jurisdictions that legalise prostitution. In Victoria, for example, funding was guaranteed for exit programs from licensing revenue under the *Prostitution Control Act*. However, no exit programs eventuated despite a model proposed set up by the Prostitutes Collective Victoria with the Women's Trust and increasing financial returns to the government. This was the same story in Queensland after prostitution was legalised in that state.<sup>29</sup>

***Recommendation 7:*** *The ACT government fund women's organisations to establish exit and retraining programs for victims of prostitution in the territory.*

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<sup>29</sup> Crime and Misconduct Commission (2006, October). Regulating Outcall Prostitution. Should legal outcall prostitution services be extended to licensed brothels and independent escort agencies? Queensland: Crime and Misconduct Commission.