

collective

Collective Shout
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Dr Brian Lloyd
Committee Secretary
Standing Committee on Justice and Community Safety
Legislative Assembly for the Australian Capital Territory
GPO Box 1020, Canberra, ACT 2601



	A.C.T. LEGISLATIVE ASSEMBLY COMMITTEE OFFICE
SUBMISSION NUMBER	43
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Re: Collective Shout submission in response to the Standing Committee on Justice and Community Safety review of the operation of the *Prostitution Act 1992*.

Dear Dr Lloyd,

Please find attached Collective Shout's submission to the review of the operations of the Prostitution Act being conducted by your Committee.

Collective Shout is a grassroots campaigns movement concerned about the objectification of women and sexualisation of girls in the media, advertising and popular culture. We mobilise and equip individuals and groups to target corporations, advertisers, marketers and media which objectify women and sexualise girls to sell products and services. We are also active against the sexual exploitation of women more broadly, through the inter-linked industries of prostitution, trafficking and pornography. In our view prostitution is the ultimate outworking of the mainstreaming of sexual objectification of women and girls. It entrenches a view that it is acceptable to buy, sell, rent and trade in their bodies and impedes global efforts to improve the status of women in general.

Should you require any further information, please do not hesitate to contact myself or my colleague Melinda Tankard Reist. We would be pleased to elaborate further on our written submission at any future hearings.

Yours sincerely

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31 March 2011



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

March 2011

Collective Shout
www.collectiveshout.org

(1) The form and operation of the Act;

During the 1990s sections of the sex industry were legalised in the Netherlands, Germany, and, in Australia, in the states of Victoria and Queensland. While a model of harm minimisation has been shown to be effective in some fields such as substance dependency, there is sufficient evidence now to demonstrate that a harm minimisation approach is inherently flawed when it comes to regulating the sex industry. This failure has been recognised by both academic studies¹ and reports published by governments.²

The inherent nature of sex work runs against the notion of a gender equal society. The idea that human bodies - mostly those of women and children – can be bought, sold, and rented in the flesh trade requires them to be treated as objects, in effect as sexual aids. Many prostituted women report having experienced childhood sexual abuse, physical abuse, domestic violence, substance dependency, sexual assault, interrupted education, and/or mental health problems.³ The harm minimization model – or legalisation of prostitution services – essentially allows for the exploitation of society's most vulnerable peoples. It is time to recognize that "the world's oldest profession" is actually "the world's oldest oppression."

One of the key goals of the harm minimisation model was to reduce the number of sexually trafficked victims. In fact the reverse has occurred. Former mayor of Amsterdam, Job Cohen, stated in 2007 at a press conference that *"the legalization of prostitution did not bring about what many had hoped... we are still faced with distressing situations in which women are being exploited. It is high time for a thorough evaluation of the Prostitution Act... we have seen in the last years that trafficking in women is becoming more, so in this respect the legalizing of prostitution didn't work out."*⁴ Where prostitution has been legalised, crime gangs have proliferated – leading to a significant increase in sexually trafficked victims and illegal brothels.⁵

The failures of legalised prostitution in Victoria have been thoroughly documented by Mary Lucille Sullivan in *Making Sex Work: A failed experiment with legalised prostitution* (Spinifex Press 2007).⁶ All the claim made about how legalisation would solve so many problems connected with prostitution such as drugs, crime and violence against women, failed to materialise. What did materialise was millions of dollars in profits for the state and the Australian sex industry. The social normalisation of prostitution that has occurred through

¹ Sullivan, Mary. 2007. *Making Sex Work: A failed experiment of legalised prostitution*. Melbourne: Spinifex.

² 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).

³ Malarek, Victor. 2009. *The Johns: Sex for sale and the men who buy it*. Ontario: Key Porter.

⁴ Ibid.

⁵ Ibid.

⁶ Sullivan, Mary. 2007. *Making Sex Work: The failed experiment of legalized prostitution in Australia*. Melbourne: Spinifex.

Victoria's legalisation has benefited the sex industry business people to a great extent. The industry now runs yearly trade shows ('Sexpo') in most Australian states, it promotes itself through both outdoor and press advertising, and brothel owners are treated by government as if they were carrying out socially legitimate commerce. Collective Shout questions the social legitimacy of business activities that derive their profit from individual women being used for the sexual gratification of men with money.

The harm minimisation model contravenes international best practice on prostitution. The only sex industry regulatory model that is consistent with international law is the Nordic model.⁷ This model has been demonstrated to reduce violence against prostituted women⁸ and has been adopted in Sweden, Iceland, South Korea, and Norway. There are three key aspects to this model:

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

We urge the ACT government to re-evaluate its current legislation which legalises parts of the sex industry. The evidence is clear that legalisation and decriminalisation have failed in achieving the key aims they were set out to achieve. The prostitution of women is inherently at odds with a gender equal society. This inquiry presents a great opportunity for the ACT government to become a world leader in regards to best-practice policy on prostitution.

Recommendation 1: that the ACT government adopt the Nordic model of penalising the buyers and decriminalising prostituted women, moving towards a 'harm elimination' model.

(2) The regulation, enforcement and monitoring of commercially operated brothels;

Currently the government licensing of brothels requires the collection of licensing fees from sex industry operators. This is highly unethical, given the nature in which that money is obtained. Pimps essentially exploit the most vulnerable human beings in our society – women from highly disadvantageous backgrounds – and require them to be used as masturbatory aids for others' sexual gratification. It is well established that many prostituted women come from backgrounds that have been most disadvantaged, and the further exploitation of these women in the sex industry then subjects them to significantly higher rates of drug addiction, mental and physical abuse, and mental and physical health

⁷ The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Convention against Transnational Organised Crime argues that the domestic laws against trafficking be strengthened and for the international corporation to end the crime (United Nations, 2000 Clause 5:6).

⁸ Farley, Melissa. 2003. Prostitution and the invisibility of harm. *Women & Therapy*, Vol. 26 No. 4, pp. 247-280.

problems.⁹ To accept licensing fees from money that has been obtained in such an unethical and harmful manner renders the ACT government both complicit and compromised.

The regulation, enforcement and monitoring of commercially operated brothels is clearly not working, given the death of 17-year-old Janine Cameron in a Canberra brothel in 2008¹⁰ and a 14-year old girl found in a 'legal' Melbourne brothel in 2010.¹¹ In jurisdictions where prostitution is legalised, crime gangs have been shown to proliferate and force under-aged and/or sexually trafficked victims to work in legal brothels.

Recommendation 2: *The enforcement and monitoring of the sex industry should not be a responsibility of local councils. It is imperative that these be treated as police matters as they involve serious crimes against humanity. A specialised governmental body should be set up to deal with these matters.*

(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;

There is overwhelming evidence to show that being over 18 does not vaccinate a woman against the harms of the sex industry. One study found prostituted women to have PTSD symptoms at similar levels to war veterans.¹² Significant links to other mental and physical health problems have been documented, including substance dependency, violence, sexual assault, trauma, dissociation, and other mental health conditions.¹³ Ensuring that all prostituted women are over the age of 18 is missing the point. Another study found that 89 percent of prostituted women wanted to leave the prostitution industry but were forced to stay as they could not see any other options for survival.¹⁴ While the prostitution and pimping of underage girls should attract severe criminal sentences, the government should be aware that the sex industry is also heavily populated by adult women who are looking for a way out, and who would greatly benefit from programs and services that give them options to leave pimps, brothel owners, and coercive 'boyfriends'. These women have often entered the sex industry as underage victims, and their 'choice' to stay in the industry is heavily constrained by this fact, and their dependency on coercive men, drugs, and distorted ideas about their personal self worth.

⁹ Malarek, Victor. 2009. *The Johns: Sex for sale and the men who buy it*. Ontario: Key Porter.

¹⁰ 'Death of Innocence,' *Canberra Times*, 1 November 2008.

¹¹ 21 July 2010, 'Brothel owner employed schoolgirl,' at http://www.bigpondnews.com/articles/National-regional/2010/07/21/Brothel_owner_employed_schoolgirl_488322.html (accessed 29 March 2011)

¹² Farley, Melissa (ed). 2003. *Prostitution, Trafficking, and Traumatic Stress*. Binghamton, New York: Haworth Maltreatment and Trauma Press.

¹³ Giobbe, Evelina. 1991. *Prostitution: buying the right to rape*; 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; Jeffreys, Sheila. 1997/2008. *The Idea of Prostitution*. Melbourne: Spinifex Press; Malarek, Victor. 2009. *The Johns: Sex for sale and the men who buy it*. Ontario: Key Porter.

¹⁴ Farley, M., Cotton, A., Lynne, J., Zumbeck, S., Spiwak, F., Reyes, M.E., Alvarez, D. Sezgin, U. 2003. *Journal of Trauma Practice* 2 (3/4): 33-74.

Child prostitution has significantly increased in countries where prostitution has been legalised. Despite Victoria being Australia's first state to legalise prostitution, ECPAT (End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes now known as ChildWise) examined information from 471 governmental and non-governmental agencies working with children in Australia. They found that more than 3,100 Australian children aged 12-18 had sold sex to survive and Victoria had the highest number in the nation at 1,200.¹⁵

Recommendation 3: *The buyers of prostitution should be penalised while prostituted people are decriminalised, given the inherently harmful nature of prostitution. However, if this approach is not adopted, then it must be recognised that the current system does not ensure all people in prostitution are over the age of 18. This is because the onus is on the brothels to check the age of prostituted girls. This is an ineffective approach which enables the sexual exploitation of children. The ACT government should severely penalise the buyers of underage girls across all areas of prostitution.*

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

The notion that occupational health and safety requirements can be adequately applied to sex workers is absurd. The very nature of sex work carries inherent risks that cannot be eliminated simply by adding panic buttons in rooms or by making condoms available for use. Some of the advice given to sex workers to protect themselves from harm have included:

"Plan an escape line before any job, before every job!"

"Don't wear chains or jewellery you can be strangled with."

"If a client has gone past your limits, you need to be able to bring him back without causing too many issues such as him losing his momentum (or hard on)."

"Don't relax after the job's done – that can be the time he'll assault you. Relax after he's gone!"¹⁶

The onus is on the prostituted woman to ensure her own safety. It is not uncommon for pimps to pressure or force the prostituted woman to agree to not use a condom, as men have been known to pay more to "bare-back."¹⁷ If a prostituted woman wants a buyer to use a condom and he does not want to, the onus is on her to negotiate the usage of one:

"Putting on a condom with your mouth is useful if the client does not want to use them. This can eroticize condoms."¹⁸

¹⁵ Malarek, Victor. 2009. *The Johns: Sex for sale and the men who buy it*. Ontario: Key Porter.

¹⁶ Ibid.

¹⁷ Brown, Louise. 2000/2001/2005. *Sex Slaves: The trafficking of women in Asia*. London: Virago Press.

¹⁸ Occupational health and safety "tips" developed by state governments and sex-worker-rights organizations around Australia in Victor Malarek's 2009 book *The Johns: Sex for sale and the men who buy it*. Ontario: Key Porter. Another sex-worker-rights organization, the

Prostituted women are also highly vulnerable to rape, as the onus is on the prostituted woman to stop a john from engaging in acts she refuses to consent to (eg anal). The consequences of a john proceeding seem minimal, given the difficulty in 'proving' rape had occurred and the high risk nature of having sexual relations with multiple buyers – who are complete strangers.

The inherent nature of using a person's body as a sexual object to 'get off' has been shown to put them at risk of developing a myriad of mental, physical and emotional health problems. For example, in December 2007, the Dutch government published a report titled *Prostitution in the Netherlands since the Lifting of the Brothel Ban on Oct. 1, 2000*. After interviewing 354 prostituted women, researchers found that their "emotional wellbeing ... has declined between 2001 and 2006 with regard to all measured aspects... the extent of the distress has become higher, and the use of sedatives has increased." Other mental health problems are well documented, including Post-Traumatic Stress Disorder, dissociative disorders, depression.¹⁹

Health risks are also significant, given that condoms do not protect against all Sexually Transmitted Diseases (STDs). Some advice given to prostituted women have included:

*"Get your eye level down to their genitals so that you can have a good look. Just opening the fly of his pants is not good enough. It's best to have his pants right off so that you can look at the balls, between his legs, and anal area."*²⁰

*"Part the pubic hair and look for crabs and their eggs. Pull gently along the hair with your fingernails and look for lice or anything that moves."*²¹

Using a person's body as an object that can be rented, bought and sold in the flesh trade is a practice of modern-day slavery. The legalisation of prostitution also goes against the very notion of gender equality - as the objectification of women's bodies has a dehumanising effect. Dehumanising any group of peoples enables violence to be inflicted upon them, such as we have witnessed with racism, religious persecution, violence against homosexuals and ill-treatment of minority groups.

Recommendation 4: *The ACT government should adopt the Nordic model in recognition that health and safety are nonsensical in the context of victims of prostitution. However in the event that the government continues to legitimize this form of abuse, at a minimum the government must provide exit and retraining programmes, housing, specialised counselling, and drugs and alcohol programmes.*

Scarlet Alliance, encourages prostituted women to scoop all the semen out from the inside in the event that a condom breaks or rips off, and "to avoid scratching the lining of the vagina with the fingernails."

¹⁹ Malarek, Victor. *The Johns: Sex for sale and the men who buy it*. Ontario: Key Porter.

²⁰ Ibid.

²¹ Ibid.

(5) Any links with criminal activity;

One of the key aims of legalising prostitution was to diminish organized crime, however it is clear that in fact the opposite has occurred. Organised crime gangs have flourished in countries where legalisation of prostitution has occurred. In fact the governments of the Netherlands and Germany are currently re-evaluating their approach to regulating prostitution as the problems of sexual trafficking have significantly worsened. The legalisation of prostitution has led to less police surveillance over the industry, enabling criminal activity. In recent years over 24 illegal brothels were discovered to be operating after a police inquiry in human trafficking in Melbourne,²² while a senior enforcement officer was shown to have accepted bribes allowing two illegal brothel operators to keep operating.²³ Sexually trafficked victims have been known to be forced to work under student²⁴ or tourist visas, and the buyers of prostitution services unable to tell the difference between illegal and legal brothels.²⁵

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;

It is currently difficult to ascertain the extent to which unlicensed operators exist within the ACT, due to the lack of research and police investigation. However international research and research in Victoria demonstrates that wherever prostitution is legalised, the illegal industry significantly increases due to the profits that can be made in the legal sector. Mary Sullivan in 2007 conducted empirical research that showed Victoria's legalised sex industry to dwarf the illegal industry by a ratio of four to one.²⁶ In other words, legalising prostitution establishes a legitimate 'front' for the operations of an industry that profits most handsomely from the prostitution of people who are extremely vulnerable. The younger, more isolated, more acquiescent and less language proficient a person is, the more money can be made out of their prostitution. The sex industry, operating mostly behind a legalised façade, has enjoyed

²² 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 29 March 2011)

²³ 6 March 2011, 'Victoria official who took bribes backs brothel crackdown,' at <http://www.theage.com.au/vicotira/official-who-took-bribes-backs-brothel-crackdown-20110306-1bjm1.html> (accessed 29 March 2011)

²⁴ 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 29 March 2011)

²⁵ 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.

²⁶ Sullivan, Mary. 2007. Making Sex Work: A failed experiment of legalised prostitution. Melbourne: Spinifex.

ballooning profits in Victoria since legalisation (see IBISWorld, 2009). This has occurred because the government has delivered the industry an operating environment in which the legitimacy of its activities is not generally questioned, and the illegality of certain businesses is difficult to ascertain and understand in an environment in which government endorses prostitution. Illegal brothels are not constrained by the restrictions and policies that licensed brothels must follow, for example limited trading hours, taxes, working permit restrictions, age restrictions, room controls etc.²⁷ which may explain why, in both Victoria and Queensland, the illegal industry has outgrown the legal industry since legalisation was adopted. The illegal industry clearly offers advantages yet put prostituted women at significantly increased risk of harm.

Recommendation 6: *More police investigation 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 more accurate estimate of this problem.*

(7) Any other relevant matter.

It is imperative that 'exit' programmes be established to help prostituted victims. Currently not one exit programme exists in the ACT, and it seems exit programmes are not implemented wherever prostitution is legalised.²⁸ Some ideas as to how prevention and exit programmes may be implemented can be found at http://www.stop.or.kr/stoppps/act_on_protection.pdf. Korea, for example, legislated to enable the prevention and exit from prostitution. Local governments and public schools are required to conduct education campaigns on the issue, and establish boarding schools for teenage girls to exit the industry and receive education.

Recommendation 7: *The government provide substantial funding to women's organisations to implement 'exit' and retraining programmes to assist victims of prostitution in the ACT.*

²⁷ Malarek, Victor. 2009. *The Johns: Sex for sale and the men who buy it*. Ontario: Key Porter.

²⁸ 21 March 2011, 'Review into prostitution must benefit women not business', at <http://www.abc.net.au/unleashed/45278.html> (accessed 31 March 2011)