

# **INQUIRY INTO TEMPORARY MIGRATION IN AUSTRALIA**

March 2020

Project Respect Submission

## **Acknowledgments**

Project Respect would like to acknowledge Alicia Filev and Rachel Reilly as the authors of this submission. We would also like to acknowledge our Women's Advisory Group, the women we work with and the women we meet during outreach to licensed brothels who have provided critical insight into the issue of exploitation and human trafficking in Australia.

## **About Project Respect**

Project Respect is a intersectional feminist organisation, which provides support for women in the sex industry and women trafficked, primarily women who are unable to access the government funded support program. We outreach to licensed brothels across the Greater Melbourne Region to meet with women, and provide information about their rights and where they can access support.

Our vision is a world where women are free from trafficking, sexual exploitation, violence, and harm. Our primary mission is to support women in the sex industry and women trafficked and advocate for the structural change needed to end all forms of sexual exploitation. We provide a platform to elevate and amplify the voices of, while also being informed and guided by, women with past and present lived experience.

## **Executive Summary**

For the purpose of this submission, Project Respect will pay particular attention to the impact of wage theft, breaches of workplace rights and conditions, modern slavery and human trafficking on temporary migrants in the sex industry, as well as women trafficked for the purposes of sexual exploitation within Australia.

There has been little research conducted on the experiences of migrant sex workers within Australia. This is despite recognition that migrant sex workers are particularly vulnerable to exploitation and human trafficking. Women on temporary visas who experience violence face specific barriers to seeking support including fear of deportation, loss of custody of their children, lack of social networks, understanding of their rights and English language skills.

## **A note on gendered terminology**

There are differences in the experiences of men and women who migrate to Australia. Both nationally, as well as globally, it is recognised that women experience gendered forms of violence, and that they are predominantly trafficked for sexual exploitation and forced marriage. Project Respect submits to this inquiry the particular vulnerabilities, trauma and complex needs of women (this includes all women who identify as women) engaging in the sex industry and who have been trafficked for the purposes of sexual exploitation.

## Recommendations

1. The Australian Government recognises the sex industry as a high-risk industry for exploitation of migrant workers.
2. The Australian Government expand the Commonwealth Criminal Code definition of domestic trafficking to be in line with international obligations.
3. That the Australian Government commit resources to building the capacity of all Department of Home Affairs employees to raise awareness of the experiences of migrant women engaging in the sex industry including those experiencing exploitation and modern slavery.
4. That the Australian Government increases the reflection period provided to survivors referred to the Support for Trafficked People Program from 45 days to 6 months to provide the foundational support for survivors to recover from the exploitation they have experienced, which is likely to increase their ability to assist in criminal proceedings.
5. That the Australian Government delink access to the Support for Trafficked People Program from compliance with criminal investigations to enable victims/survivors to receive the support necessary to recover from their experience.
6. The Australian Government extend the ability to refer potential victims to the Support for Trafficked People Program and the Bridging F visas beyond the Australian Federal Police to other approved entities, such as the Department of Immigration and Border Protection, Australian Border Force, approved NGOs, state and territory police, the proposed modern slavery hotline operators and the Fair Work Ombudsman.
7. That the Australian Government implements a National Compensation Scheme for survivors of modern slavery.
8. That the Australian Government does not remove migrant survivors of modern slavery or wage theft from the country before they have received owed wages or compensation.
9. That the sex industry is included as a regulated industry under the Fair Work Ombudsman
  - a. That “sham contracting” within the sex industry is identified within the Fair Work Ombudsman’s Compliance & Enforcement Priorities
10. That the Australian Government reduce the threshold of reporting entities under the Modern Slavery Act 2019 from \$100 million to \$25 million, and ensure high risk industries such as the sex industry have mandatory reporting, regardless of their gross revenue.
11. That the government introduce a defence of coercion to ensure women who are forced to provide illegal sexual services or sexual services in an illegal setting are not criminalised.
12. That the Australian Government recognise the sex industry and women engaging within the industry as a priority setting within the National Plan to Reduce Violence Against Women and their Children and all related Action Plans

## 1. Background

### a. A profile of the sex industry in Australia

The sex industry in Australia is regulated at a state and territory level, and there is a patchwork of different regulation across the country from decriminalisation, regulation and full criminalisation. The industry has both formal spaces such as brothels and escorting and informal (illegal) spaces such as street based, massage parlours and provision of sexual services from private spaces such as apartments and motels.

Data on people involved in the sex industry is very difficult to obtain, due to the stigma, discrimination and criminality of the industry. Research which is available generally focuses on the licensed/regulated space. However, from the limited data available, and based on our own data from our 20 year history of outreaching to licensed brothels in Victoria, we observe that the sex industry is comprised of a majority migrant workforce population.

More than 60% of women Project Respect met during outreach to licensed brothels in the 2018/2019 year were from multicultural or migrant backgrounds. In the 2018-2019 financial year, 23% of women met where from Chinese backgrounds, 10% from Thai backgrounds and 17% from Korean backgrounds. This data is supported by a survey undertaken by the Australian Institute of Criminology in 2015 which surveyed 592 respondents who classified themselves as working in the sex industry. 70% (n=412) of respondents were classified as migrants, with 44% indicating they were born in Thailand, 26% in China and 9% in South Korea. However, we have observed an increase of women from Chinese backgrounds in the past few years, with an increase from 10% in 2017-2018 to 23% in 2018-2019.

### b. A profile of modern slavery in Australia

Research suggests connections exist between migration and criminal forms of exploitation such as human trafficking, forced labour and modern slavery. The Walk Free Foundation currently estimates there are approximately 15,000 people in slavery within Australia.<sup>1</sup> However, it is widely acknowledged that the hidden nature of slavery means there is limited data on the prevalence of slavery in Australia. Adding to this invisibility is the method of data collection, which only captures cases where consent has been provided for the survivor to be referred to the Australian Federal Police (AFP), further underrepresenting the number of people who have experiences of slavery in Australia. A 2019 Report from the Australian Institute of Criminology (AIC Report) indicated that for every 1 person detected, 4 remain undetected.<sup>2</sup>

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<sup>1</sup> The Walk Free Foundation, <https://www.globalslaveryindex.org/2018/findings/country-studies/australia/>

<sup>2</sup> Australian Institute of Criminology (AIC), *Estimating the dark figure of human trafficking and slavery victimisation in Australia*, February 2019

The Australian Red Cross is funded to deliver the government funded Support for Trafficked People Program (the Program). In 2019, the ARC released 10 years of data for the Program. These data indicated 30% of referrals from the AFP to the Program were for sexual exploitation in the commercial setting and 10% were cases referred for labour exploitation, of which some experiences of labour exploitation happened within the commercial sex industry setting.

Compounding this, is a lack of awareness amongst social and community services of the indicators of human trafficking. A 2017 report analysed 300 client files from a family violence service closed between 2015–16 and involved clients whose migration status was temporary when they first came into contact with the service.<sup>3</sup> Of the 300 audited files, 11 had indicators of human trafficking<sup>4</sup>, 20 involved discernible evidence of forced labour and servitude and deceptive recruiting for the purpose of these offences<sup>5</sup>, with four of these 20 cases specifically relating to sexual servitude<sup>6</sup>. While this equates to approximately 10% of the audited files, the report indicates this is likely to be an underrepresentation of the prevalence of the crime as not all cases audited had sufficient detail to identify indicators of trafficking.<sup>7</sup>

## **2. The sex industry as a setting for labour exploitation**

Labour exploitation in the sex industry can manifest in multiple and intersecting ways and can be on a continuum, from breaches of workplace rights, workplace conditions and safety through to criminal forms of labour exploitation and modern slavery. The exploitation often goes unaddressed due to the high levels of stigma and discrimination about the industry and perpetuated towards people involved in the industry. This not only prevents people from reporting, but also inhibits state and commonwealth governments from actively addressing the exploitation which exists in the industry.

This is highlighted by the fact that workplace laws that exist in other legalised work industries to protect employees do not or rarely apply for women in the sex industry. In licensed brothels in Victoria, women in the sex Industry have limited protection under civil frameworks such as the Fair Work Act 2009 as they are generally employed as an “independent contractor” rather than an “employee”, despite their working conditions, as per the Indica Test, aligning with an employee. This “sham contracting” essentially strips women of laws enacted to protect them and precludes them from basic employment rights such as minimum wage, industry awards, superannuation or paid leave.

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<sup>3</sup> Segrave, Marie, *Temporary Migration and Family Violence: An analysis of victimisation, vulnerability and support*, Melbourne, School of Social Sciences, Monash University, 2017, p. 61

<sup>4</sup> Segrave, p. 61

<sup>5</sup> Segrave, p. 63

<sup>6</sup> Segrave, p. 64

<sup>7</sup> Segrave, p. 63

As independent contractors, women are only paid per booking. They are unable to set their rates, and brothel owners and managers take a high percentage of the booking fee. Women are often fined for not wearing the right clothes or being late to a “shift”, a practice that is illegal under the Fair Work Act 2009. Further, women often report that brothel owners and managers will give the money back to a client when they complain, including when they have sexually assaulted or when a woman stops the booking. While extreme, these are all examples of wage theft that go unchecked in the licensed sex industry.

Further, WorkSafe does not have a specific compliance and enforcement program for the sex industry, despite recognition that the sex industry is an industry of high risk, including for sexual and physical violence.<sup>8</sup>

### **3. The exploitation of migrant women in the sex industry**

Investigations by the Fair Work Ombudsman suggest that migrant workers are particularly vulnerable to workplace exploitation, due to difficulties understanding and securing their entitlements because of age, language and cultural barriers, the remoteness of their working location and, in some cases, their concerns about preserving their visa status.

The AIC report, and the literature cited in the AIC report indicates migrant women in the sex industry experience multiple compounding issues including language barriers and isolation, gender and race discrimination, and stigma associated with sex work that may exacerbate their risk in experiencing, and barriers to reporting incidents of violence and exploitation. These findings align with Project Respect’s work with migrant women.

Project Respect’s own work with women supports this finding, with migrant women in the sex industry commonly reporting that they are unlikely to be informed about their rights, laws and regulations in the sex industry, that they are expected to work extremely long shifts without earning any or very little money. Compounding this is a fear of authorities, cultural and linguistic barriers and, involvement in an industry which is heavily stigmatised and sometimes illegal in their country of origin. This prevents women from speaking out and/or seeking assistance about exploitative conditions. To date, Project Respect is unaware of any investigations undertaken by the Fair Work Ombudsman into the conditions of employment of women in brothels.

Moreover, recent findings from a Project Respect enquiry have found that in 2016/17 only 1 (brothel) compliance inspection had been undertaken by Worksafe Victoria<sup>9</sup> (as of September

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<sup>8</sup> Consumer Affairs Victoria 2016, *Operating a licensed sex work business: Guide for licensees and approved managers*, <https://www.consumer.vic.gov.au/businesses/licensed-businesses/sex-work-service-providers/running-your-business/licensee-in-effective-control>, accessed 13th February 2017.

<sup>9</sup> Personal communication, Monitoring and Evaluation, Advisory Service Worksafe Victoria, September 13 2017

2017) and none in 2015/16; in comparison, the construction industry received 10,926 visits in 2016/17<sup>10</sup>.

These factors, combined with the failure of state and territory, as well as commonwealth enforcement and regulation departments to adequately regulate a high risk industry have been utilised to develop a sex industry business model which actively exploit migrant worker vulnerabilities.

#### **a. Modern slavery**

At the extreme end of exploitation is modern slavery. Some women have consented to come to Australia to work in the sex industry, but once they arrive, they have their freedom removed from them, while other women may have freedom of movement, but their working conditions are severely exploitative. Other women are wholly deceived, and believe they are coming to Australia to work in other industries, such as non-sexual service massage parlours or hospitality, only to be forced to work in the sex industry.

#### **b. Debt bondage**

Incidents of debt bondage among migrants working in the sex industry have been reported to Project Respect. Debt bondage has been observed in a few prosecuted cases involving slavery and sexual servitude.<sup>11</sup>

#### **c. Migration agent exploitation and fees**

Many migrant women also report paying excessive fees to migration agent in their country of origin to travel to Australia. Sometimes they arrive in Australia on a visa that does not permit them to work, however they are required to work – because they are forced by the business they have been contracted to and because they perceive they have no other option because they need to pay back excessive migration agent fees.

#### **d. Visa status**

Temporary visa status can be utilised as a means of control over women in the sex industry, particularly if women are in the illegal space or where they have specific working restrictions on their visa. Visa status is used to further exploit women through threats to “dob them in” to ensure they do not report the situation or seek support. This increases the risk for women who are or have experienced violence.

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<sup>10</sup> Personal communication, Monitoring and Evaluation Service, Advisory Service Worksafe Victoria, December 1 2017

<sup>11</sup> AIC, *Migrant sex workers in Australia*, Research and Public Policy Series 131, 2015, p. xi

Additionally, 8% of AIC migrant respondents reported that they did not have easy access to their passport. This is significant as a lack of access to passport is considered an indicator of exploitation related to human trafficking and slavery like practices.<sup>12</sup>

Women on temporary visas experience a high-risk of homelessness. Research on women on temporary visas found that around a quarter (24%) of these women were living in crisis accommodation and around one in ten (11%) were living in temporary accommodation.<sup>13</sup> The status of their visa limits the housing support services available to them which can then increase the likelihood of women rough sleeping, sleeping in brothels or returning to violent partners. Many crisis accommodation services limit the number of women on temporary visas and their children that the service will accommodate and make the difficult decision to turn away these women and children as they tend to stay for longer periods of time. Women on temporary visas also experience increased stigma due to their different cultural backgrounds, with cultural and language barriers also reducing their access to services.

#### **e. Language barriers**

The AIC Report indicates that 57% of migrant respondents born in China and 70% born in South Korea reported low levels of English language proficiency, indicating that they did not speak English well, and 3% indicating they didn't speak English at all.<sup>14</sup> The language barriers for migrant sex workers extend from accessing sex worker organisations to more general services and information, through to an ability to understand and advocate for their rights, as well as acting a barrier to reporting unsafe or unfair working conditions.

#### **f. Exploitative business model**

According to the 2014 Interdepartmental Committee on Human Trafficking and Slavery (IDC) Report, migrant and other foreign workers are particularly vulnerable to substandard working conditions and more serious forms of exploitation, either by those who facilitate their journey to Australia or by employers once they arrive. The report suggests that this may be because of cultural and language barriers, a lack of knowledge of local workplace laws and standards, and in some cases, their reliance on their employer for their immigration status.<sup>15</sup>

This supports Project Respect's understanding of the migrant experience in the sex industry. Sex industry businesses don't provide workers – migrant or Australian – with information on their rights or obligations working in the sex industry. Australian women Project Respect engages with

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<sup>12</sup> AIC, 2015, p. 52

<sup>13</sup> [https://www.homelessnessnsw.org.au/sites/homelessnessnsw/files/2018-12/Path%20to%20Nowhere\\_0.pdf](https://www.homelessnessnsw.org.au/sites/homelessnessnsw/files/2018-12/Path%20to%20Nowhere_0.pdf)

<sup>14</sup> AIC, 2015, p. 26

<sup>15</sup> AIC, 2015, p. ix



speak about sex industry businesses actively isolating migrant workers from Australian born women so they are not able to learn about or seek out information on their rights or work standards. Further, they speak about how migrant workers are forced to work incredibly long hours, subjected to harmful racial stereotypes that drive unsafe sex practices and ultimately migrant women “suffer in silence”, as they don’t believe they are afforded the same protections and rights as Australian born women.

#### g. Violence and stigma

Migrant women in the sex industry experience a range of issues, both at and outside of work. According to the AIC Report, 47 of the women surveyed had experienced verbal abuse, 21 had experience verbal threats of violence, 9 had experienced physical violence, 9 had experienced threats to hurt their family, 7 had experienced sexual assault and 2 had experienced threats of deportation.

According to the 2012 Migrant and Multicultural Sex Workers Report, racial stereotyping of women from Asian backgrounds may contribute to the violence and exploitation that migrant women experience within the sex industry. A consequence of this stereotypical view of Asian sex workers is the perception that they will be malleable to client demands specifically for providing unsafe sexual services. Management report a perception that Asian women are “easier to manage” and that they would be unlikely to report exploitative practices to authorities.<sup>16</sup> A consequence of this stereotypical view of Asian sex workers is the perception that they will be malleable to client demands specifically for providing unsafe sexual services.

#### h. Barriers to accessing services

*The Fourth Action Plan of the National Plan to Reduce Violence against Women and their Children* highlights how women from culturally and linguistically diverse backgrounds experience complex forms of violence and harmful cultural practices, as well as the impact of racism, bias and other forms of discrimination on their help-seeking behaviour and their experience with service providers. Moreover, the Plan identifies as a specific national priority the need to better equip the service system and communities to address complex forms of violence and harmful cultural practices including early and forced marriage and human trafficking”.<sup>17</sup>

This is supported by the AIC report that highlighted how some groups of migrant sex workers experienced difficulties in accessing services, particularly those with low self-rated English proficiency. The barriers to services and information for migrant respondents involved language, a lack of knowledge about what services were available and a fear of using such services; what

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<sup>16</sup> Rhed, Migrant and Multicultural Sex Worker Report 2012

<sup>17</sup> Commonwealth of Australia (Department of Social Services) 2019, Fourth Action Plan 2010 – 2022, p. 5

those fears related to could not be ascertained from the survey responses. This highlights the important need for multilingual support services and translated information.

It has also emphasised issues that have important implications for those providing mainstream and/or sex work-specific services and support to migrant sex workers. The survey responses and literature highlighted the intersection of social and structural barriers that may marginalise migrant sex workers from accessing services and resources, such as the stigma associated with sex work, limited access to safe migration pathways, fear of deportation and language barriers.

Additionally, women on temporary visas are ineligible for many government supports, such as housing and Centrelink, leaving many migrant women with no income and with limited pathways to exit the sex industry if they choose.

Jane\* is originally from a South East Asian country. She paid approximately AUD \$10,000 to an agent who promised he would arrange a working visa and sex-free massage work. The agent also suggested for her to apply for a visa for a fake marriage, but she declined. After arriving in Australia she commenced working in a massage parlour providing sexual services. She met her Australia husband Glenn\* at the parlour and they married.

At the beginning, the relationship was good, however Glenn insisted Jane keep working in the brothel, and told her to comply with the owners demands. After six months, Glenn perpetrated various forms of family violence such as physical, verbal and emotional violence and psychologically manipulative behaviours. She discovered Glenn was in a relationship with the owner of the brothel and he worked for her. On one occasion, Glenn locked Jane in the house for a few days. Jane was starving and sought help from friends who called police who assisted Jane to get out of the situation. Glenn was arrested and an IVO placed. Jane was referred to the AFP and on to the STPP.

She had significant mental health issues including PTSD and suicidal ideation. She had a lot of debt, but was put on a temporary visa with no work rights. She felt helpless and planned suicide. Her boss called her and offered her work, despite the lack of work rights. Jane was very thankful for this and started working in the massage parlour again.

During the AFP investigation, the traffickers and associates threatened her and also said they would harm her family in her home country. This threat frightened Jane, and she refused to continue assisting the AFP. She was exited from the STPP. She is currently applying for a protection visa and is unable to leave Australia to visit her sick mother in her home country.

## 4. Gaps and Limitations in Government Policy and Response

### a. Applying a human rights framework

More recently, the Government has diversified their areas of focus when combatting modern slavery and criminal forms of labour exploitation. There are reports that migrant workers who have experienced slavery or criminal forms of labour exploitation are removed from the country without being screened for indicators of modern slavery and before they have the opportunity to obtain their unpaid wages. To address modern slavery and address systemic issues which contribute to the ongoing exploitation of migrant workers, greater policy and response effort need to be invested in addressing the root causes of migrant exploitation by ensuring employers do not engage in exploitative practices. This requires a three tiered approach:

- ensuring migrant workers are adequately informed of their rights, including pre-departure to Australia and also when in Australia;
- Increasing the knowledge and capacity of business owners, and more specifically business owners in high risk industries which employ large amounts of migrant workers of their employment obligations;
- Ensuring mechanisms of accountability are put in place for businesses which breach their obligations, rather than letting it go unaddressed.

### b. Limitations of the Criminal Code Act 1995

The Australian legal framework to prevent, protect and punish human trafficking crimes, the Commonwealth Criminal Code Act 1995 (Criminal Code), has a much narrower definition of domestic trafficking than the international definition, and stipulates an offence has only occurred if the act of trafficking has been facilitated by recruitment and does not include the act of transport, transfer, harbouring or receipt of person.

*(1) A person (the first person) commits an aggravated offence of domestic trafficking in persons if the first person commits the offence of domestic trafficking in persons in relation to another person (the victim ) and any of the following applies:*

*(a) the first person commits the offence intending that the victim will be exploited, either by the first person or by another, after arrival at the place to which the person has been transported;*

As a result, migrant women who experience trafficking once they arrive in Australia are often not considered to have been trafficked.

### **c. Limitations of the Support for Trafficked Persons Program**

Australia upholds support and protection measures as per Article 6 of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, through initiatives such as the Support for Trafficked People Program (STPP) and the Human Trafficking Visa Framework (HTVF). However, there are considerable barriers to accessing this protection due to support being contingent on participating in the criminal justice system, which results in some victims not willing to assist, are unable to assist or, the survivor does assist, but there is insufficient evidence to prosecute, and the survivor loses access to the protection offered by the Australian government. This creates a framework where the Australian government prioritises the prosecution of traffickers over the safety of victims through a conditional criminal justice approach.

The Criminal Code remains focused on judicial outcomes rather than the human rights of victims/survivors. In order to access the STPP, the trafficked person must be willing and able to assist the Australian Federal Police (AFP) with an investigation into their traffickers. It is well documented that the link between the STPP and the criminal justice system often acts as a considerable barrier to individuals who have experienced human trafficking. Many trafficked persons fear the possible repercussions of assisting and cooperating with the AFP in their investigations and potential court testimony. Individuals may not engage due to fear of threats and reprisal from their traffickers; to their own personal safety, and that of their families and friends. There are also a number of factors which impede women from being able to remain on the STPP, including the short initial assessment period which is an insufficient period to adequately support women to be mentally, emotionally and physically able to assist the AFP with an investigation. Adding to this, some women do want to assist, however, due to insufficient or lack of credible evidence, the AFP will no longer investigate the crime, subsequently exiting the women from the program. The lack of access to the comprehensive STPP support service program has resounding impacts on women, including their mental health and exposes them to the risk of being re-trafficked.

The United Nations Special Rapporteur on trafficking in persons states that the initial 45-day reflection period is very short, and may not be adequate for individuals who have experienced trafficking to reflect and make critical decisions.

### **d. The impact on women trafficked**

Overwhelmingly service providers are inadequately equipped to support trafficked individuals; not understanding human trafficking and the ongoing, significant, and multi-faceted impact it has is detrimental to the wellbeing of the survivor. Due to the STPPs conditional nature and subsequent inaccessibility, many trafficked individuals will fall through the gaps of the social welfare system. It is imperative that support services that understand the complexities of human

trafficking are able to fill some of the void left by the shortcomings of the eligibility requirements of the STPP.

Project Respect strongly advocates for the protection of human rights over the pursuit of criminal prosecutions. We advocate that regardless of whether or not individuals are able to assist in the criminal justice process, they should be afforded access to support services to ensure they do not fall through the gaps. Access to the STPP should be based on their status as a trafficked individual and their need for support. We advocate that support should be unconditional and ongoing, and delinked from their visa status, especially where individuals have made a contribution to an investigation but are unable or no longer required to assist.