



Submission No 19

**Inquiry into Slavery, Slavery-like conditions and People
Trafficking**

Organisation: Coalition Against Trafficking in Women Australia



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Submission from Coalition Against Trafficking in Women Australia (CATWA)

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Coalition Against Trafficking in Women Australia

www.catwa.org.au

Who are we?

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. It works locally and internationally to end all forms of sexual exploitation of women and children, especially prostitution, trafficking and pornography.

The Coalition Against Trafficking in Women Australia welcomes the invitation to provide input to the Committee and would like to address two of the terms of reference in this submission. These are: Australia's efforts to address people trafficking, including through prosecuting offenders and protecting and supporting victims; and international best practice to address all forms of slavery, slavery-like conditions and people trafficking.

Our Position

CATWA argues that no effective policy can be developed against the trafficking of women into prostitution – which is overwhelmingly the most common form of trafficking – without an understanding of its connection to the legalisation of the industry of prostitution. Indeed, the full legalisation of prostitution tends to increase inward flows of trafficking (Cho, Dreher and Neumayer 2012). We recommend what has been termed the Nordic Model, which criminalises the purchase of sexual services but decriminalises those within systems of prostitution. This approach recognises that systems of trafficking and prostitution are largely driven by demand and therefore targets the (overwhelmingly male) buyers rather than those (predominantly women) who are prostituted. The Nordic Model also focuses on public education programs about the harms of prostitution and the importance of providing a range of dedicated support services for those in prostitution to enable them to exit. Furthermore, the available evidence suggests that the Nordic Model is very effective in reducing sex-trafficking (Waltman 2011). This model has been adopted in Sweden, Norway and Iceland and is under consideration in France, Israel, Ireland, Northern Ireland and Scotland.

Our recommendations are based upon the principal international initiative aimed at dealing with trafficking in persons for the purposes of prostitution: the 2000 Protocol on Trafficking in Persons – also known as the Palermo Protocol – a supplementary protocol of the United Nations Convention against Transnational Organised Crime, which Australia signed in 2005.

Key Recommendations

- CATWA recommends the Nordic model as the most effective way of reducing the problem of trafficking in women, and that such legislation should be introduced in Australia.
- The demand by male buyers to use women in prostitution should be addressed through legislative and other means (particularly public education).
- CATWA recommends that all forms of debt bondage should be made a serious offence, without the necessity of proving ‘deception’, as this would aim at the heart of the trafficking industry, its profits.
- CATWA recommends that all women trafficked into debt bondage in Australia should be seen as victims of trafficking and have access to relevant services, whether or not they would qualify as having been subjected to what is understood as force or coercion.

Response to the Terms of Reference

Item 1: Australia's efforts to address people trafficking, including through prosecuting offenders and protecting and supporting victims.

CATWA’s main concern is the trafficking in women for prostitution has developed in Australia as a corollary of the legalised brothel and escort prostitution industry that exists in most states. Investigative journalists have repeatedly exposed trafficking into

legal brothels in Australia (e.g McKenzie and Beck 2011). Most often, women are transported to legal brothels where they are exploited and controlled through debt bondage. Some elements of the Australian sex industry and its lobby groups are demanding that this form of trafficking should be legalised through a 'sex work visa' system, including the acknowledgement of debts that women have to pay off as 'contracts' with legitimate 'brokers'. However, such 'sex work visas' would simply enable easier and more direct trafficking from prostitution networks in Asia to the legal and illegal brothels of Australia.

Forced/free distinction

CATWA is concerned that a false distinction has been created between those who supposedly travel to prostitution in Australia of their own free will, and those who are forced to do so. The Draft Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking Bill 2012), for instance, uses a forced/free distinction in its definition. Though it usefully extends the definition of 'coercion' to include 'the abuse of power or of a position of vulnerability' in consonance with the definition in the Palermo Protocol, it maintains the need for evidence of force or coercion.

In this way, a hierarchy is created between women who are seen as having been overtly forced or coerced, and are therefore seen as victims of trafficking, and women who cannot prove direct force or coercion, and are therefore seen as willing participants who have exercised their agency and choice. This creates difficulties for the successful prosecution of offenders, who can argue that the women they trafficked were exercising their free will.

The determination to assess the 'consent' of women trafficked into prostitution in Australia is misdirected. The use of a forced/free distinction creates difficulties of proof in law and shifts the onus of proof to the trafficked person's state of mind. In effect, it puts the onus on the trafficked women to prove that they have been forced into trafficking instead of targeting the action of the traffickers. This distinction signals a departure from the UN Protocol where the offence of trafficking is focused on the *act* of the trafficking instead of the mental state of the trafficked person.

Debt Bondage

Debt bondage is the foundation of the modern trafficking industry. Traffickers do not exist to help women migrate for labour by lending them the money for an airfare. Traffickers place a woman into debt in order to control her and make money. When women are placed into such debt they are always in a situation of bondage, and it is this that constitutes their exploitation. There are no good forms of debt (misleadingly, sometimes called ‘contracts’) and opposing bad forms of debt. When women are not paid, and are harnessed to the traffickers for the repayment of debt, their status as free workers is violated. This is understood internationally as a contemporary form of slavery. Unfortunately, current and proposed Australian legislation makes it an offence to ‘deceive’ someone as to the fact that they will be in debt bondage but does not make the transportation of women into debt of any kind or extent a serious offence in its own right. Recognising debt bondage as a central offence of trafficking and outlawing it would also remove the need to make any false distinctions between forced/free trafficking. It would greatly facilitate prosecution and serve to end the practice.

Forced marriage and marriage trafficking

CATWA would also like to call to the Committee’s attention, the potential for certain forms of marriage to involve trafficking in women and slavery-like practices. In situations where women are coercively taken from one place to another for marriage, and are subsequently exploited, they should be considered victims of trafficking in persons. Women may be exploited sexually, in forced domestic servitude, or in reproduction (i.e. forced childbearing). Forced marriage one of the most common examples of a contemporary marriage practice where this type of exploitation of women occurs. In such cases, victims often describe being made to feel like a slave, and of there being little else to their lives other than cooking, cleaning, forced sexual relations and childbearing (e.g. see Brandon and Hafez 2008; HAC 2011; Sanghera 2007).

CATWA welcomes the amendment to the Australian Criminal Code proposed by the Attorney-General earlier this year, which recognises forced and servile marriage as potential end-purposes of trafficking in persons. This is both a significant and

necessary measure that will put Australia at the international forefront of legislative initiatives to address the problem of forced marriage in the context of trafficking.

However, while this effort is most commendable, CATWA would like to express its concern at the lack of funding available for support services and for research into the problem of forced marriage that currently exists in Australia. In countries such as the United Kingdom, state funding for both academic research and for refuge and legal services for victims is made available through the government's Forced Marriage Unit (FMU). CATWA advises the Committee that similar systems are sorely lacking in Australia, despite the fact that many cases of young girls being trafficked both out of and into Australia for marriage have been documented by the media and acknowledged by various policymakers (e.g. see Senate Legal and Constitutional Affairs 2012).

Item 3: International best practice to address all forms of slavery, slavery like conditions and people trafficking.

CATWA maintains that the single most important legislative reform to combat trafficking of women to Australia for prostitution is the implementation of the Nordic Model. The Nordic Model acknowledges that trafficking is driven by male demand for prostitution and that prostitution itself can be understood as a form of violence against women (Raymond 2004). It directly addresses demand for prostitution by criminalising the buying of sexual services while simultaneously supporting the victims/survivors of prostitution and trafficking. 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 women for prostitution can no longer be facilitated in the local context. Sweden pioneered this model, introducing legislation which criminalised the purchase of sexual services in 1999. This law has had a significant impact on the demand for prostitution and has reduced the number of prostituted women in Sweden including halving the number of women in street prostitution (Waltman 2011). Traffickers now display a 'palpable reluctance' to pimping prostituted women in Sweden compared to neighbouring countries that have not yet adopted the Nordic Model (Waltman 2011: 468).

Reducing the demand

Trafficking in women for prostitution cannot exist unless there is a market for prostitution. It is therefore necessary to reduce the demand for the use of women in prostitution in order to combat the problem of the traffic in women, as called for in Article 9 of the Palermo Protocol. The trafficking of women cannot be separated from the many forms of the sex industry, including prostitution, pornography, strip clubs, lap dancing clubs and escort agencies, which depend directly on the demand of (overwhelmingly male) buyers. In order to reduce the demand for prostitution and address the proliferation of the traffic in women worldwide, it is necessary to challenge the social acceptability and normalisation of men's use of women in prostitution.

Article 9 of the United Nations Palermo Protocol (United Nations 2000) requires signatories to establish comprehensive policies and programmes to prevent and combat trafficking in persons, with a focus on protecting and supporting the victims of trafficking, especially women and children. It requires state parties to implement social, educational and cultural measures to 'discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking'. Explicit in this public education should be recognition that prostitution is harmful to women, as well as the promotion of equal and respectful relationships between women and men. This has been an integral part of the application of the Nordic Model in Scandinavia. As long as prostitution is regarded as an acceptable and harm free industry, the current practice of global sex trafficking and all other associated harms cannot be effectively dealt with.

Connection of trafficking to legalised prostitution

Legalised prostitution is implicated in the expansion of sexual exploitation and the trafficking of women for prostitution (Cho, Dreher and Neumayer 2012). Countries that have legalised or regulated prostitution are those into which the highest numbers of women are trafficked (Jakobsson and Kotsadam 2011; Raymond 2001: 8). For instance, when prostitution was legalised in Germany and the Netherlands, the number of trafficked women rose dramatically (Farley 2009: 313). Far from curbing trafficking, legalisation tends to expand the market for prostitution, providing

increased opportunities for criminal enterprises that traffic people into prostitution (US State Department 2004). There are reports that Australia fits this international trend, as senior police sources have acknowledged the links between ‘organised crime or sex trafficking syndicates and legal brothels’ (McKenzie and Beck 2011). Furthermore, the US State Department has noted that legalisation enables traffickers to use trafficked women and ‘blend in with a purportedly regulated sex sector’, making it more difficult for prosecutors to identify and punish traffickers (US State Department 2004).

The legalisation of prostitution also promotes and perpetuates a ‘prostitution culture’ in which the purchase of sexual services and sexual coercion become increasingly socially normalised (Farley, Stewart and Smith 2007; Waltman 2011, 149). With legalisation comes an increased demand for prostituted persons (Sullivan 2007, 2005; Schwartz, Williams and Farley 2007; Waltman 2011) and, consequently, more people are trafficked to sites of increased demand (US State Department 2007). In a recent cross-section of 150 countries, for example, economists from Germany and the United Kingdom found that legalising prostitution leads to an expansion of the ‘prostitution market’ and that, on average, legalised prostitution ‘increases human trafficking inflows’ (Cho, Dreher and Neumayer 2012: 1). The Swedish government has stated that trafficking in human beings ‘could not flourish but for the existence of local prostitution markets where men are willing and able to buy and sell women and children for sexual exploitation’ (Swedish Ministry of Industry 2004: 3).

Penalising only the buyers of trafficked women is not a solution

In some countries, governments have sought to address trafficking for prostitution by penalising only the buyers of trafficked women, rather than criminalising the purchase of sexual services altogether. It is important that Australia does not follow this flawed model. The model was introduced in the UK in 2009 and in Finland in 2006 (Victoria 2010: 163) and it is manifestly ineffective. Firstly, such legislation presumes that trafficking and prostitution are two separate issues, and ignores the reality that the demand for prostitution fuels trafficking, thereby failing to tackle the problem at its cause.

Secondly, men who use women in prostitution are often aware that the situation may involve overt coercion and abuse but this does not deter them. In a study conducted by Farley, Bindel and Golding in 2009, of 103 men who had used women in prostitution in London, it was found that 55% of the men believed that the majority of the women had been lured, tricked or trafficked. In addition, 36% thought that the women they used had been trafficked from another country (Farley, Bindel and Golding 2009: 15-17). Similarly, a study of 223 men who had used women in prostitution in Scotland and in the US found that 56% of the men in the US and 63% of those in Scotland believed that the women had been lured, tricked or trafficked (cited in Farley, Bindel and Golding 2009).

Where men do not demonstrate an awareness of trafficking as such, they do often recognise that the women are often from other countries. In a study of male buyers in East London, for example, almost half of the men interviewed estimated that the majority of women were not British, and were most probably Eastern European (Coy, Horvath and Kelly 2007: 23). Moreover, male buyers often perceive that women in prostitution are the victims of pimps (Farley, Bindel and Golding 2009: 15-17). Overwhelmingly, however, men do not report their suspicions to the police. Despite the awareness of coercion and violence demonstrated by a majority of the men interviewed by Farley, Bindel and Golding, only five reported their suspicions to the authorities. Furthermore, several men said that the women had informed them that they had been trafficked, but none of these men reported this to the police (Farley, Bindel and Golding 2009: 15-17). It is clear that buyers tend to be indifferent to the situation of the women they use. Given this, it cannot be expected that criminalising only the use of trafficked persons in prostitution will be a particularly useful policy approach.

In short, legislation penalising the buyers of trafficked women is ineffective because it does not address the demand that drives trafficking, it does not protect exploited women and it cannot be effectively enforced. Ultimately, it does not deter men from using coerced and abused women in prostitution. The Nordic Model, on the other hand, achieves all of these aims.

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