

**Parliamentary Joint Committee on the
Australian Crime Commission**

**Inquiry into trafficking in women for
sexual servitude**

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Inquiry into trafficking in women for sexual servitude

Submission from:

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1. Preamble

The Coalition Against Trafficking in Women Australia is the Australian branch of the international non-government organization Coalition Against Trafficking in Women which has Category II consultative status with ECOSOC (UN Economic and Social Council). Our website: www.catwa.com has links to international CATW as well as other CATW associated groups.

We are directing our submission to the inquiry to the third term of reference (3), the adequacy of the current legislative framework. We recommend that the legalisation of brothel prostitution in four Australian states and territories should be reconsidered in light of the increased trafficking of women associated with the growth of prostitution as an economic sector. This may require federal legislation to enable Australia to fulfil its obligations under the Protocol on Trafficking in Persons.

2. Protocol on Trafficking in Persons

The Australian government has signed (11 December 2002) the Protocol on Trafficking of the 2000 UN Convention on Transnational Organised Crime.

Article 9 of this Protocol is entitled '*Prevention, cooperation and other measures*' and it is the issue of prevention that we are most concerned with here.

Clause 5 is as follows:

States Parties shall take or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

The demand that leads to the trafficking of women and girls into 'sex slavery' is the demand of the men who want to buy women and girls for sexual use. There is not a separate demand for 'trafficking' into prostitution which is distinct from the demand for prostitution. The men who buy women in brothels are not necessarily concerned to buy 'trafficked' women as opposed to other categories of prostituted women. Trafficked women in Australia are found in both legal and illegal brothels. Indeed the first arrests (June 2003) under the 1999 Sex Slavery legislation were in relation to a legal brothel in Brunswick St., Nth Fitzroy, Melbourne, where 5 Thai women had been held in sex slavery. The demand to import trafficked women arises from a developing prostitution industry which is unable to find enough women to fill brothels profitably without importing women from countries in which women are poorer and more vulnerable.

We will suggest here, therefore, that a reduction in demand requires that the industry of prostitution should be downsized towards complete elimination.

3. Definition of Trafficking

In signing the Protocol the Australian government agrees to a definition of trafficking which acknowledges that trafficking does not require obvious force i.e. it can occur through ‘abuse of vulnerability’, nor does it require lack of consent on the part of the victim.

Article 3 Use of terms:

(a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other means of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

.....
(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used.....

Until very recently Australian governments and sex worker organizations such as Scarlet Alliance, have minimized the extent and seriousness of trafficking under such deliberate obfuscations as saying that the majority of trafficked women ‘choose’ to come to Australia and are not forced. The terms ‘migrant sex workers’ or ‘contract workers’ have been misleadingly used to describe trafficked women. However the new definition allows the size and severity of the problem to be acknowledged i.e. whether or not women know that they will be prostituted on arrival, they will be recruited, transported and controlled whilst in Australia by organized crime networks.

4. The False Distinction: Trafficking versus Prostitution

Until the 1980s there was remarkable agreement in the international community about the connection between trafficking and prostitution. Between the two world wars anti-trafficking campaigners considered that the abolition of brothels and pimping was necessary for any effective challenge to trafficking in women and children for prostitution. Brothels provided entrepots, or storage depots for trafficked women, and were magnets for constantly renewed supplies of women from any source including trafficking. This understanding of the connection between trafficking and brothel prostitution led to the 1949 UN Convention on the Trafficking in Persons and the Exploitation of the Prostitution of Others (which Australia did not sign).

The Convention commits contracting parties to punish any persons who entice another into prostitution, run brothels or profit from the prostitution of another, with or without the consent of that person. The meaning of the term ‘exploitation’ in 1949 was very clear. It meant third party profit from the prostitution of women. CEDAW (The Convention on the Elimination of all Forms of Discrimination Against Women) 1979, Article 6 requires that: *‘States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women’*. It is reasonable to assume that the meaning of that term

remains that of the earlier convention i.e. profiting from the prostitution of others. Australia has signed this convention but state governments which have legalised brothel prostitution have chosen to reinterpret the term 'exploitation' to suit their purposes i.e. as particularly severe exploitation rather than exploitation per se.

In the rapidly increasing surge in trafficking in women in the late twentieth century there has been an attempt to separate the issue of trafficking from that of prostitution by some governments and non-governmental organizations. This has been approached through the creation of a forced/free distinction. Trafficking is represented as requiring explicit force and lack of consent. Prostitution in which no force is obvious is considered to be 'free' and frequently represented as ordinary 'work' or even as the exercise of women's 'choice'.

The creation of such a distinction suggests that there could be a form of prostitution that is not damaging to the women and young people involved. There is considerable research to the contrary. For example one recent piece of research shows the connection between 'free' prostitution and suicide. This looked at the involvement in prostitution and suicide amongst street youth in Ontario, Canada (Kidd, Sean A. and Kral, Michael J. 2002: Suicide and Prostitution among Street Youth: A Qualitative Analysis. *Adolescence*, Vol. 37, no. 146 411-430). The connection with suicide clearly emerged from their experience of prostitution. 29 young women and men from 17-24 years were interviewed. 69% were involved in prostitution. 76% reported one suicide attempt and of these 86% had made more than one attempt. When asked about their reasons for these attempts 'many described feelings of being merely an object for someone to "get off on" or "just some hole"' (Ibid 421). Also, prostitution brought back earlier experiences of child sexual abuse which were connected in their minds with their entry into prostitution in the first place.

The forced/free distinction, though necessary for state governments concerned to maintain legalized sex industries, does not hold. As prostitution has been expanding as an industry in recent decades worldwide there has been a convergence between trafficking and 'free' prostitution.

5. The Legalisation of Brothel Prostitution

Brothel prostitution has been legalized in Victoria, ACT, New South Wales and Queensland. This has contributed to a growth in trafficking in women in several ways:

5.1 The legalisation of brothel prostitution leads to the expansion of the industry

Legalisation and decriminalisation lead to the growth of the industry of prostitution. The financial pages in this country cover the profits to be made from investing in prostitution. The annual turnover of Australia's sex industry was said in 1998 in a financial analysis in *The Age* newspaper, to have an estimated annual turnover of \$A1.2 billion. In Melbourne, in which men's prostitution abuse of women has been normalised since legalisation of brothels in 1984, it was estimated that by 1998 60,000 men bought women for sex in Melbourne brothels each week. As an indication of the growth and development of the industry, The Daily Planet brothel was launched on

the Australian Stock Exchange in 2003 and has plans to set up franchises internationally.

The traffic in women to supply the legal and illegal brothels is an inevitable result of legalisation. Prostitution industry entrepreneurs find it hard to source women locally to supply an expanding industry and trafficked women are more vulnerable and more profitable. Trafficked women are placed in both illegal and legal brothels in Australia. They can work legally in legal brothels with work permits if the traffickers apply on their behalf for refugee status.

The 2000 Protocol on Trafficking in Persons of the UN Convention on Organised Crime recognises the connection between trafficking in women and prostitution. It calls upon states' parties to put in place strategies to reduce the demand for prostitution. The legalisation of brothel prostitution, CATWA suggests, specifically creates the demand. As the prostitution industry grows so brothel owners require trafficked women to meet the demand.

This has happened in those European cities where brothel prostitution has been tolerated or legalised in recent times. In Amsterdam, where brothel prostitution was formally legalised in 2000, owners are only allowed to employ women with EU residency who are registered to work as prostitutes. Brothel owners are complaining loudly that they have lost the majority of their workers and cannot begin to meet the demand (Rapporteur's Report on Trafficking into the Netherlands 2002). Moreover eligible women are being frightened off by requirements that prostituted women be identified and that the tax authorities need to be informed. Thus there are pressures to create 'legal and controlled access to the Dutch market' for those currently classified as 'illegals' and lift the temporary ban on 'illegals'. The idea that there should be 'legal' trafficking in response to an increased demand is in complete contradiction to the requirements of the 2000 Optional Protocol.

A 2003 report from Europap (European Network for HIV-STD Prevention in Prostitution) estimates that well over half of all prostituted women in the EU were not born in the country where they work, a figure which has doubled since 1990. Of these three-quarters have traveled from outside the EU, 'Trafficking volume is soaring in Europe, impelled by increasing demand for prostitution in the EU, the rise of organized crime in Eastern Europe, and the desperation of the migrant women themselves' (David Stewart Organised crime is flooding Europe with migrant sex workers. *Time Magazine* October 20, 2003 | Vol. 162 No. 15). The decriminalisation of pimping and procuring in Spain in 1995 is now understood to have led to a huge increase in trafficking. 90% of the 50,000 prostituted women in Madrid are estimated to be immigrants, of whom 70% are in sex slavery (Alvarez, M.J. El 90% de las 50,000 mujeres que se prostituyen en Madrid son inmigrantes. 30 de Octubre, 2003 www.abc.es/madrid/noticia.asp). As these figures show it is becoming less and less tenable to make a distinction between trafficking and prostitution.

5.2 The growth of organized crime

As the industry expands, so does the organized crime associated with it. These organized crime networks are involved in the trafficking of women. The desire to contain organised crime was the most significant underlying reason for legalisation in

Victoria. This is one area in which legalisation is spectacularly unsuccessful. Where legalisation is introduced there is always an illegal sector which is considerably larger than the legal sector. In Victoria estimates from the police and the legal brothel industry put the number of illegal brothels at 400, four times more than the legal ones (Murphy, Padraic 2002: Licensed brothels call for blitz on illegal sex shops. *The Age* 3 June). Victoria, ACT and Queensland require police checks on prospective brothel owners to make sure that they do not have criminal offences on their records. But such checks are not necessarily effective. In some cases, it seems, brothel owners may just be members of organized crime families who do not have offences to their names. In other cases men with criminal convictions can effectively run legal brothels, whilst not being the official owners, through the use of frontspeople or front organisations. Legalisation leads to the suspension of police intervention in prostitution and provides a vacuum in which organised crime can flourish.

Organised crime involvement in prostitution arises from the fact that prostitution relies upon the exploitation of vulnerability, and is not like other forms of work. The 'workers', women, girls and boys, can be 'used' even if they are tied up or unconscious. The bodies of the 'workers' are the objects 'used' and their personhood can be an obstacle in the exchange. Thus the buying and selling of these bodies is an enticing possibility for organised crime networks that might find it harder to exploit forms of labor in which the workers were required to be more than bodies. Consequently trafficking and other forms of violence are not aberrations that can be removed from a respectable 'free' prostitution industry, but integral elements of prostitution historically and in the present.

5.3 Opportunities for police corruption

Though the ending of police corruption and involvement in the industry of prostitution is commonly given as a reason to legalise and regulate prostitution, corruption continues. In two states royal commissions have been held to investigate the problem of police corruption with particular reference to prostitution. These are the Fitzgerald Inquiry in Queensland (1989) and the Wood Commission in New South Wales (1997). The Bracks Labour government in Victoria promised on taking office for the first time that there would be such an inquiry but it has not taken place. There is evidence for the corruption of police, the magistracy, the judiciary, lawyers and politicians in relation to prostitution in some published sources and in the Royal Commission reports (Hoser, Raymond, Victoria Police Corruption, 1999; Bottom, Bob, *The Godfather in Australia*, 1988). Police corruption, which seems endemic to prostitution, enables the organised crime and trafficking networks to operate safely.

6. Recommendations

CATWA applauds the decision by the federal government to improve the possibilities for women to escape traffickers through a visa system and the dedication of more money to track down traffickers. We recommend legislative change as follows:

6.1 New federal sex slavery legislation

The 1999 Sex Slavery legislation needs to be revised. It relies too heavily on a forced/free distinction and proof of intent to enslave on the part of traffickers. More effective legislation is required using the definition in the 2000 Protocol and incorporating other recommendations of the Protocol now that Australia has signed.

6.2 Penalising the buyers

As the convergence of trafficking and so-called 'free' prostitution becomes clearer it should be possible to move towards legal reform. The present systems of legalisation and decriminalisation of brothel prostitution in Australia are not in the interests of the prostituted women, but of the increasing numbers of men who want to buy women and those who seek to make a profit out of this demand legally or illegally. This demand from men is not inevitable.

Legislation against the buying of sexual services is likely, when combined with good educational programmes for men and boys and exit programmes for women in prostitution, to severely reduce the demand for trafficking. Thus, Sweden introduced in 1999 a law penalising the buyers of sexual services. The new law has created a context which is inimical to the interests of traffickers and consequently trafficking into prostitution has been largely eliminated (Speech by Swedish trafficking advisor, Gunilla Ekberg at Swedish Mission side event, CSW, UN New York March 2003). Australia could usefully follow this example.