



**Submission to the Review of the Operation of Part 4 of  
the Criminal Law (Sexual Offences) Act 2017**

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**Coalition Against Trafficking in Women Australia**  
[www.catwa.org.au](http://www.catwa.org.au)

## **Who we are**

The Coalition Against Trafficking in Women Australia (CATWA) was formed in Melbourne in 1994 and is the Australian branch of CATW International. CATWA is a Non-Governmental Organisation that has Category II consultative status with the United Nations Economic and Social Council. CATWA works locally and internationally to end all forms of sexual exploitation of women, especially in relation to issues of prostitution and trafficking in women.

## **Introduction**

CATWA welcomes the opportunity to contribute to the current Review of the Operation of Part 4 of the Criminal Law (Sexual Offences) Act 2017, being undertaken by the Department of Justice and Equality. CATWA holds the position that prostituted people should never be criminalised but those who profit from them, i.e. pimps, brothel owners and sex buyers, should be held accountable. Prostitution in and of itself is not criminalised anywhere in Australia. However, some prostitution-related activities, such as brothel-keeping, or street solicitation are prohibited in some states and territories, although often tolerated informally. Australian states and territories each approach prostitution from different legislative models, however, the majority of states and territories have either legalised or decriminalised prostitution.

The Australian states of Victoria and New South Wales were among the first in the world to implement models of legalisation and decriminalisation of prostitution. Brothels and most forms of prostitution have been legalised in Victoria since 1984, and decriminalised in New South Wales beginning in 1979. Prostitution has been legalised in Queensland and the Australian Capital Territory since 1992, and fully decriminalised in the Northern Territory last year. CATWA has been operational in Australia for over 26 years. We have expert knowledge on these different models of prostitution legislation and have been able to track their effects over many years.

It is abundantly clear that full decriminalisation and legalisation have failed to meet many of their aims. Australia's sex industry is plagued with charges of sex and drug trafficking, child exploitation, violence, money laundering and organised crime (McKenzie et al. 2019; McPhee 2019; Rep 2018; Thompson 2018). This is why we

advocate for legislation that shares the central aim of Part 4 of the Criminal Law (Sexual Offences) Act 2017 that seeks to combat exploitation and coercion in prostitution and to target the trafficking of persons into the sex industry by reducing demand and therefore the overall size of the industry.

This submission will outline some key aspects of the largely decriminalised or legalised Australian sex industry and urge you to continue to target the demand for prostitution, while decriminalising the majority who are bought in the sex trade.

### **Decriminalisation harms those it is purported to protect**

The sex industry is gendered; the vast majority of people in prostitution are women and those who buy sex are mostly men. Women in prostitution experience extreme forms of violence and suffer immediate and long-term negative effects on their health and wellbeing as a result. Prostitution causes grave physical and psychological harm to women involved who experience repeated sexual and physical violence (Farley et al. 2003). Alarming, research on male buyers of prostitution in Australia shows that men who buy sex violate safe sex practices, coerce women into unwanted or unagreed upon sex acts, sexually objectify women and actively seek to violate and enact violence on women in prostitution (Jovanovski and Tyler 2018). Sex buyers have sex with women whom they know do not want to be there, for example:

“She did not want me touching her not even her boobs. . . . Even When I was kissing her neck she turn the other way. Here is the worse part, she was asking me to touch myself and get myself hard. I was thinking to myself “why the hell am I paying you for if I am suppose to do all that?” . . . I did not show my displeasure but did let the reception know when I left” (June 2012; NSW) (cited in Jovanovski and Tyler 2018, p. 1899).

Instead of protecting women and allowing them to say no to customers, decriminalisation legitimises sex buyers as customers empowering them to complain about their “service”. This is taken to a harmful extreme in new legislation in the Northern Territory of Australia, which enacted legislation to fully decriminalise the sex industry last year. This legislation includes provisions that allow sex buyers to sue for 'breach of contract' if a woman retracts consent for a sex act (Stevens 2019). While

other government initiatives teach enthusiastic consent, the sex industry normalises sexual coercion.

Full decriminalisation, as well as legalisation, have failed to provide worker protections and to prevent violence against women in the sex industry in Australia. There are many laws in place in Australia's sex industry to ensure workplace safety and wellbeing, yet these are wholly ineffective. For example, after the tragic murder of a woman working in Sydney's decriminalised sex industry last year, a fellow worker commented, saying "violence and murder is part of our job" (Graham 2019: n.p.). This is not an isolated incident. Clearly, full decriminalisation has failed to promote workplace safety and wellbeing if people are being murdered at work. Women who have been trafficked into prostitution face additional forms of violence and exploitation.

### **How much harm is acceptable for women to live with if harm reduction is the goal?**

Full decriminalisation is premised on a harm minimisation strategy. This model accepts that prostitution causes some harm, but instead of working to end that harm, seeks only to reduce it. The underlying assumption is that prostitution is inevitable and cannot be eradicated and so we must accept some harm. What this means in practice is that some women will certainly face harm, some more than others. Which women will be sacrificed to absorb the most harm will undoubtedly be decided by socioeconomic factors relating to class, age, race, ethnicity and migration status.

This is why feminists and survivors of prostitution reject full decriminalisation. While some prostitution may always exist, as will theft, murder, rape and other crimes, this is no reason to decriminalise the practice. The underlying assumption of harm minimisation, on which full decriminalisation is premised, must be challenged rather than accepted. Feminists have asked: 'How much harm is acceptable for women to live with if harm reduction is the goal?' (Coy et al. 2019). The answer to this question should be *none*.

Fortunately, there is an approach to prostitution legislation, developed by feminists, that does not accept men's desire to use women in prostitution as inevitable. The

Nordic/Equality Model is based on the principle that no amount of harm is acceptable and so works towards harm eradication, rather than minimisation.

### **The Nordic/Equality Model**

Full decriminalisation only exists in three jurisdictions in the world: New Zealand, and New South Wales and very recently the Northern Territory in Australia, whereas the Nordic/Equality Model is being increasingly adopted as progressive policy all over the world. Jurisdictions with variations of the Nordic/Equality Model include Sweden, Norway, Iceland, Northern Ireland, Ireland, Canada, France and Israel, and it is being considered in a number of other countries (including Scotland, Lithuania, Colombia and the Philippines).

The Nordic/Equality Model is a form of asymmetric decriminalisation: it directly addresses demand for prostitution and trafficking by criminalising sex buyers and third parties who profit from prostitution, while simultaneously supporting the victims/survivors of prostitution and trafficking (for further information, see Tyler et al. 2017). The Nordic/Equality Model functions by decriminalising prostituted persons but prohibiting pimping, brothel owning and the purchase of sex. Evidence, particularly from Sweden – where the Nordic/Equality Model originated and was first implemented in 1999 – shows that it successfully reduces the market for prostitution and decreases trafficking inflows (Tyler et al. 2017). Numerous women’s groups and prostitution survivor organisations around the world also endorse the Model.

CATWA advocates that all penalties should apply to pimps, brothel owners and buyers of prostituted women, and that no penalties should be associated with prostituted persons. 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 persons for prostitution can no longer be facilitated in the local context (see Cho et al. 2013, for a comprehensive analysis).

The Nordic/Equality Model is also the only legislative approach to prostitution that fits with the principal international initiative aimed at dealing with trafficking for the purposes of prostitution: the United Nations (UN) Protocol to Prevent, Suppress and

Punish Trafficking in Persons, especially Women and Children (also known as the Palermo Protocol). The legalisation/full decriminalisation of prostitution, in comparison, has been shown to increase trafficking inflows (Cho et al. 2013). Of all the intergovernmental and international strategies and initiatives available, the Nordic/Equality Model is the most effective strategy for countering the demand for prostitution. It is victim-friendly, incorporates education-based change and, most importantly, research shows that it works (Waltman 2011).

### **Discrimination and stigma against women in the sex industry**

Decriminalisation and/or legalisation of the industry are often promoted on the basis that they will reduce social stigma or discrimination against those who sell sex (e.g. Stardust 2017). Through this reasoning, it is argued that stigma and discrimination will be reduced by decriminalising or legalising the sex industry, as the normalisation and treatment of prostitution as a job like any other will eliminate negative connotations with the industry. However, this has not happened for women in the sex industry anywhere in the world, regardless of the legislative model (Moran and Farley 2019).

Theory and research demonstrate that this is because stigma in the sex industry is gendered; it is only attached to those who are prostituted, who are mostly women, and is rarely attached to the men who buy sex, or brothel owners/managers (Barry 1995; Coy et al. 2019; Moran and Farley 2019). Prostituted women are stigmatised because they are seen as an object for sexual use; therefore, stigma is the result of the broader cultural devaluation of women. This is reflected in studies addressing male sex buyer attitudes, including in legalised and decriminalised systems.

These studies show the discriminatory attitudes of men who purchase sex, including their complete dehumanisation of women in the industry and admissions of sexual violence (e.g. Tyler and Jovanovski 2018). If stigma were the primary cause of harms against women in the sex industry, and decriminalisation were a pathway to alleviating stigma and discrimination and the associated harms, men who choose to purchase sex in decriminalised and legalised systems—thereby endorsing the industry as a legitimate sector—would not participate in such forms of abuse.

Moreover, as Moran and Farley (2019) point out, while addressing the very real prejudices against women in the industry is important, a focus on stigma exclusively distracts from the myriad other harms they experience. These include sexual harassment, physical and sexual abuse, and coercion and manipulation by sex buyers, 'brothel managers' and others. The sex industry is a symptom of broader gender inequality; women face the brunt of violence and exploitation in the industry by the hands of men, yet women are the ones who are stigmatised.

The way to address stigma is therefore to address the demand for prostitution. Addressing demand in this way works in concert with broader gender equality goals, and questions men's right to use women in prostitution. Promoting an industry founded on sexual objectification is at odds with a broader gender equality agenda.

### **Listen to survivors**

Survivors of prostitution are increasingly speaking out against decriminalisation. Survivor voices should be prioritised in this discussion because survivors have unique lived experience of systems of prostitution. Below is the testimony of a survivor of prostitution, Sabrinna Valisce, who worked in New Zealand before and after full decriminalisation was implemented:

When New Zealand passed full decriminalisation, things changed in unexpected ways and I came to understand that the myths of legal protection, autonomy, increased choice and greater community acceptance were unfounded. We didn't have the legal protections we expected because we sat in a grey area between employee and independent contractor. On paper, we were independent contractors but this was only true in terms of not receiving an hourly wage, sick pay, holiday pay, superannuation or any other employee benefits. We were not considered employees despite brothel owners, escort agency owners and other third party profiteers deciding our starting hours, finishing hours, amount of shifts per/week, pay rates and attire including shoes, hair styles, nail polish and makeup. On top of this the brothels began to charge us to work there and fine us if we didn't live up to 'employee' expectations. Unlike every other independent contractor, we were denied the right to work at multiple businesses. Pay rates decreased. Fees and fines increased. Shift hours were up to seventeen per/night. Shifts had three times as many women as were feasible to make a decent income.

Competition grew fierce and safe sex practices became a thing of the past. The myth of health being better was proved false in less than 6 months of the law reform. Women were kissing and risking herpes, doing oral sex without condoms with the risk of throat warts, doing rougher and riskier practices just to get the jobs. I did doubles with many women and saw these things happening first hand. I dealt with punters' changing expectations. I experienced the long hours, nightclub level music, painful heels and increased competition. I had no choice but to fight against this model ever spreading to another country. (Sabrinna Valisce, SPACE International Australia 2018).

Survivors consistently speak about their experience of legalisation and decriminalisation making their situation worse. Decriminalisation empowers sex buyers, pimps and brothel owners/managers but not the worker. This can be seen in the example of the Northern Territory, touched on above (under 'Decriminalisation harms those it is purported to protect'), whereby under the fully decriminalised system, sex buyers can sue a woman in prostitution for "breach of contract", if she retracts consent for a sex act (Stevens 2019). Decriminalisation leaves women more exposed to a laissez-faire prostitution market that does not protect the worker and means women can be prosecuted for refusing sex acts.

### **The need for exit services**

Studies show that the majority of women in prostitution would leave prostitution if they could (Farley et al. 2003). There are many valid reasons why people wish to exit the sex industry. Aside from the violence and exploitation that occurs, other reasons for exiting include health problems, discrimination, age and financial hardship. For example, according to Australia's peak "sex worker" body, Scarlet Alliance, "[s]ex workers don't get sick pay and holiday pay, and many have no superannuation or savings" (Scarlet Alliance 2020: n.p.). This is despite legalisation and decriminalisation. In relation to the COVID-19 pandemic, Scarlet Alliance argue that lockdown restrictions have "directly impacted on sex workers' ability to maintain housing, buy food and basic items, support their dependents, and access healthcare and prescriptions" (Scarlet Alliance 2020: n.p.). These challenges expose the poverty and instability associated with working in the industry, even when legalised and decriminalised.



There are many barriers to exiting the industry, such as homelessness, drug and alcohol addiction, and violence and discrimination, which mean leaving the sex industry is not like other 'career change' experiences. Those wishing to transition out of the industry require specialist and robust support services that meet their unique needs. Exit services are an essential part of any model of prostitution legislation or regulation, and are a key pillar of the Nordic/Equality Model. Funding should be made available for exit programs and other forms of comprehensive and appropriate social and economic support for all trafficked women, as well as any women who wish to leave the sex industry. This support should include integrated case management and service access, should be strengths-based and promote meaningful activity and alternative employment options.

### **Sex trafficking**

Australia is a destination for victims of sex trafficking, the majority of whom originate from Southeast Asia as well as China and South Korea (US Dept. of State, 2018). Australia's domestic sex industry targets Asian women for sex trafficking and procurement into prostitution. A 2016 study of the online advertising of Melbourne-based prostitution businesses, for example, found 41 per cent promoted predominantly Asian women (Street & Norma 2016). A 2012 report to the New South Wales Ministry of Health also determined that more than 50 per cent of survey respondents in approved brothels in metropolitan Sydney were of 'Asian' or 'other non-English speaking background', and nearly 45 per cent of these respondents were categorised as speaking only 'poor' or 'fair' English (Donovan et al., 2012). These circumstances suggest that vulnerable populations of women are targeted by the sex industry, raising concerns around debt-bondage, consent and knowledge of their rights under Australian law.

Legalisation and decriminalisation have led to the expansion of the sex industry. Women are trafficked to Australia in order to fill the increasing demand for sexual services. Australia has ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol), and this obliges the government to enact measures to fulfil Article 9.5:

States Parties shall adopt 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.

Australia's anti-trafficking obligations to discourage demand are effectively undermined by the legal and thriving sex industry. Additionally, Australia's failure to address the demand for commercial sex has long been identified in the periodic reports on Australia's progress towards meeting the goals of the Convention for the Elimination of all forms of Discrimination Against Women (CEDAW). In 2018, the CEDAW committee was concerned with the Australian government's failure to address demand in both practice and in its periodic report, stating its concern that Australia "has not taken measures to address the demand for prostitution, to prevent women and girls from entering prostitution and support those who wish to exit prostitution" (Committee on the Elimination of Discrimination Against Women 2018: 10). A decriminalised or legalised sex industry contravenes international anti-trafficking conventions and stymies progress towards global gender equality goals.

## **Conclusion**

CATWA commends the Irish government for their efforts in reducing the harm caused to women by systems of prostitution by holding pimps, sex buyers and other profiteers accountable. Changes in laws produce normative change. As we have seen in Australia, decriminalising and legalising the sex industry has resulted in normalising the sex industry and reinforcing the idea that women exist for men's sexual use. Despite the legislations stated aims of reducing and controlling the industry, legalisation and decriminalisation have led to an expansion of the sex trade.

Commercial sex has become a lucrative business for pimps and brothel owners, while women in prostitution are struggling to survive financially. While women in systems of prostitution continue to face stigma, the men who use and profit from them have become increasingly accepted as displaying normal male behaviour. Laws that send the message that it is not acceptable to pay women for sex contribute to changing these attitudes, which is a necessary step in the move towards gender quality. This is why we

urge you to maintain the key principles of Part 4 of the Criminal Law (Sexual Offences) Act 2017.

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