



# **CATWA Submission to Australia's Review of the Modern Slavery Act 2018**

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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) 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, especially in relation to issues of prostitution and trafficking in women.

## About this submission

This submission from the Coalition Against Trafficking in Women Australia focuses on the area of our organisation's expertise: the trafficking of women for the purposes of sexual exploitation. While there are other forms of trafficking, women are disproportionately targeted by traffickers, making up around two thirds of all reported victims of all forms of trafficking (UNODC, 2021), and sexual exploitation is the most commonly identified form of trafficking in persons (UNODC, 2021). This is especially important in the Australian context, as Australia is 'primarily a destination country for women and girls subjected to sex trafficking', according to the US Department of State (US Dept. of State, 2015).

## Key recommendations

- Trafficking (primarily of women) for sexual exploitation be recognised as a key area of concern regarding modern slavery in Australia.
- The demand for the purchase of sexual services in Australia's commercial sex industry be recognised as the primary driver of trafficking in women, and thus measures to reduce demand be taken in order to prevent trafficking for sexual exploitation.
- The 'Nordic' or 'Equality' Model approach to the sex industry (asymmetric decriminalisation) be adopted in Australia and recognised as the international best practice for preventing trafficking for sexual exploitation.
- Because of the high potential for human trafficking and modern slavery in the sex industry, all sex industry businesses should be required to report on modern slavery risks in their operations and supply chains, regardless of annual turnover.
- The increasing acceptance of "sex work" in Australia via the adoption of full decriminalisation be recognised as impeding the identification of victims of human trafficking.

## Background

Last month, a global human trafficking syndicate was exposed for running 'a national illegal sex racket moving exploited foreign women around the country like "cattle"' ([McKenzie, Ballinger and Tozer, 2022](#)). It has been reported that the AFP uncovered evidence suggesting dozens of women from South Korea had been imported to Australia over many years. Inspector James Cheshire involved in the investigation commented:

'When you speak to the individuals being trafficked, the distress they're in, the lack of control, the lack of knowledge, and just the exploitation that goes on in the sex industry, it's pretty horrific' ([McKenzie, 2022](#)).

Women trafficked into Australia's sex industry experience grave abuses of their human rights, exploitation and degradation. Unfortunately, this recent expose is not new. Trafficking of women into Australia's sex industry has been happening for decades.

This is why the Coalition Against Trafficking in Women Australia (CATWA) continues to highlight that the sex industry is a key area for trafficking into Australia. Again, we recommend specific measures to address the demand for commercial sex that fuels sex trafficking and sexual exploitation in this country.

### **Trafficking in Australia**

Australia remains a destination country for women trafficked into the sex industry (US Dept. of State, 2021), but there is no definitive data on the number of persons trafficked into Australia (Flynn et al, 2014). Further, Australia's prosecution rates of human trafficking remain shamefully low and have drawn international criticism from both the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the United States Trafficking in Persons (TIP) Report, discussed below. Given its illegal nature, human trafficking is a difficult area of research and the precise extent of such practices can be difficult to ascertain, although they are understood to be widespread (UNODC, 2011, 2014). The International Labor Organisation (ILO) estimates that almost 21 million people worldwide (or about three in every 1000 people) are victims of forced labour, bonded labour, and commercial sexual servitude (ILO, 2020).

Trafficking for the purposes of sexual exploitation often carries acute harms for victims, with the violation of forced labour compounded by repeated rape and associated high levels of psychological distress and physical harm (Farley, 2003). Although the exact scale of sex trafficking to Australia is difficult to determine with precision, researchers have estimated that approximately 2000 women are trafficked to Australia each year for sexual exploitation (SBS, 2012). Furthermore, it is clear that the domestic Australian sex industry targets Asian women for sex trafficking and procurement into systems of prostitution. A study of the online advertising of Melbourne-based prostitution businesses found 41 per cent promoting predominantly Asian women (Street & Norma, 2016). A 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 a lack of support for victims to exit prostitution.

### **"Sex work" ideology impedes the identification of victims of human trafficking**

Australian legal scholars Andreas Schloenhardt and Hannah Bowcock found that: "Whilst both the Trafficking in Persons Protocol and Australia's domestic provisions under divs 270 and 271 of the Criminal Code explicitly provide that consent is neither a necessary factor to establish the offence, nor a defence to a charge, the issue of consent continues to be raised and discussed in the case law" (2015, p. 625). The article reviews several cases of human trafficking in Australia where discussion of consent hinders the ability of the courts to identify victims of trafficking as victims. The authors argue that: "One of the major challenges facing prosecutors of trafficking in persons offences is that victims of trafficking frequently do not conform to the popular portrayal of a victim of crime" (p. 627). For example, due to "popular stereotypes and prejudices" victims who have consented to any stage of their trafficking or exploitation are not recognised as victims but rather are seen as "shrewd business women" - this particular framing also has racial elements as most sex trafficking victims are from Asia.

The authors argue for "the need to move away from the consenting or non-consenting dichotomy" (p. 597). The focus on consent in court cases, as well as the stereotype of the

“shrewd business woman”, reflect dominant conceptions of “sex work” as consensual, lucrative etc. and although this article relates specifically to the treatment of human trafficking cases in the courts, this perspective is found throughout academia and non-government organisation reports.

For example, an NGO report from 2019 found that many women working in illegal massage parlours in Sydney were unable to refuse clients, worked extended hours including 24hr shifts, were on temporary working holiday and student visas, were moved between brothels by management, had low levels of English language, and lived onsite at the brothel - which are recognised as **indicators of human trafficking by Australian authorities** - however the authors of the report concluded that there were no signs of human trafficking because most women “have consented to come to Australia” (Davidson 2019, p. 10).

Similarly, an academic study by Selvey et al. from 2018 reports similar conditions in Western Australia, including women not being able to refuse clients, having to work when they did not want to, and not being able to leave the brothel. Alarming, the article does not mention “human trafficking” or “exploitation” once, but instead frames these experiences as poor working conditions and “bad clients.”

The above are examples of potential victims of human trafficking not being recognised in the first instance because they are seen as consenting “sex workers.” Arguably, Australia's legal treatment of prostitution as “sex work”, and the accompanying ideology, directly impacts the ability of people from all areas, including authorities, to identify victims of human trafficking. Even when victims are formally identified and cases make it to court, barriers to identifying victims as victims remain (Schloenhardt and Bowcock 2015).

### **International criticism of Australia's approach to human trafficking**

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), to which Australia is a party, has continued to criticise Australia's failure to meet its obligations under Article 6:

“States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women”

CATWA has tracked comments regarding Article 6 from the initial report submitted in 1986 through to the most recent report, the 8th, submitted in 2016. CEDAW's concluding remarks from the most recent round published in 2018, relate to “trafficking and exploitation of prostitution”, and expresses several concerns including:

Section 31:

(a) The lack of a gender perspective in the reports issued by the Interdepartmental Committee on Human Trafficking and Slavery;

(e) Prevailing attitudes among members of the judiciary and law enforcement officials regarding victims of trafficking as offenders and migrants with irregular migration status, rather than as victims, which constitutes an obstacle to reporting and to the early identification and referral of victims of trafficking to the appropriate social and legal services;

(f) The low prosecution rate in trafficking cases;

Section 33 also states:

The Committee is concerned that the lack of harmonization of state and territory legislation on women in prostitution impedes their access to health care, support and legal services and employment. It is also concerned that the State party has not taken measures to address the

demand for prostitution, in order to prevent women and girls from entering prostitution and support those who wish to exit prostitution.

Australia's reply to CEDAW's list of issues states: "As Australia does not consider that legalised sex work is exploitation of prostitution unless circumstances arise where sex workers do not consent to engage in sex work or are minors, data for exploitation of prostitution is included in human trafficking data. Between 2004 and 30 June 2017, the Australian Federal Police specialist investigative teams received 841 referrals relating to human trafficking, slavery and slavery-related offences, including forced marriage."

This means that because "sex work" is seen as just a type of wage labour, awareness and definitions of sex trafficking as a distinct form of trafficking and exploitation have become less pronounced - there has been a move towards "modern slavery" and human trafficking in general, that means although it is recognised that human trafficking occurs in Australia's sex industry, the sex industry is seen as just one industry where trafficking happens, instead of a distinctly gendered and particularly sexually violent phenomenon that is inseparable from the sex industry.

#### Trafficking in Persons (TIP) Report

CEDAW's concerns are also reflected in the most recent TIP report that states: "The [Australian] government also did not adequately screen vulnerable groups traffickers may target, including domestic workers, international students, and migrant workers, which at times may have resulted in the government's detention or deportation of unidentified victims."

The sex work perspective means that women in the sex industry, even those found to be working under exploitative conditions or in the illegal sector, which includes a significant proportion of women on student visa's and so called "migrant sex workers", are treated as willing agents - which leads to punitive action against the women rather than acknowledging the potential for victim status.

#### **The preferred course of action to address the matters identified**

Trafficking for sexual exploitation is a key area of trafficking to Australia. Therefore, the sex industry, and the practices of businesses therein, should come under particular scrutiny in any future legislative and policy approaches. There have been numerous media reports of trafficking, debt bondage and sexual slavery into Australia, including in legal brothels in states where the sex industry is legal and regulated (e.g. Bucci et al. 2015; Duff, 2015; McKenzie & Beck, 2011; SBS, 2012; Uibu, K. 2015). The ongoing issues of organised crime and trafficking into the sex industry in Sydney were also raised by both the New South Wales Police and the Australian Federal Police during the 2015 inquiry into brothel regulation in New South Wales (Henskens et al., 2015).

International best practice for preventing the trafficking in women and children for sexual exploitation is the "Nordic" or "Equality" Model. The Nordic/Equality Model constitutes a system of asymmetric decriminalisation of the sex industry: it directly addresses demand for trafficking and sexual exploitation by criminalising sex buyers and third parties who profit from prostitution, while simultaneously decriminalising and providing material support to the victims/survivors of trafficking and prostitution (Tyler et al., 2017; Waltman, 2011). The Nordic/Equality Model originated in Sweden, where it was introduced in 1999, and has been adopted (with some level of variation) in Norway, Iceland, Northern Ireland, Ireland, Canada, France, and Israel, and is being considered in a number of other jurisdictions including Scotland, Lithuania, Colombia, the Philippines and most recently, Spain. The Nordic/Equality Model has been endorsed as best practice for tackling trafficking and gender inequality by the European Parliament (2014). Furthermore, the Council of Europe (2014) has declared the Swedish legislation to have had "proven positive results in terms of reducing demand for trafficking" and

has called on all member states to discourage, including through criminalisation, the purchase of sexual services as a way of addressing modern slavery in Europe.

In order to prevent modern slavery in the sex industry in Australia, more needs to be done to address the demand for commercial sexual services. International research has shown that, in countries where the purchase of sexual services is legalised – and, therefore, increasingly socially tolerated – demand outstrips supply and women are trafficked into the growing and lucrative markets for prostitution to meet demand (Cho et al., 2013). 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. The Nordic/Equality Model is also an important way in which Australia can better meet its obligations under the United Nations (UN) Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, also known as the Palermo Protocol. The Palermo Protocol makes clear that fundamental to addressing the issue of trafficking for the purposes of prostitution is ending the demand that fuels the traffic in women. This occurs in Article 9, Clause 5, which requires states to:

“[A]dopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multicultural cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.”

The approach taken in the Protocol – to focus on primary prevention and demand – has been found to be one of the most effective means of preventing and countering trafficking in women for sexual exploitation. The Coalition Against Trafficking in Women Australia has also submitted to previous trafficking inquiries that the Australian government should establish an ongoing compensation scheme for victims of trafficking.

The sex industry is disproportionately affected by human trafficking (ICHTS, 2016). The known risk of modern slavery and human trafficking for sexual exploitation in this industry as well as the scale and profitability of the sex industry in Australia means that sex industry businesses should face particular scrutiny. At a minimum all sex industry businesses should be required to report on modern slavery risks in their operations and supply chains, regardless of annual turnover. This requirement may help to foster greater levels of awareness of trafficking within the sex industry among brothel owners and managers. It is clear there is a lack of understanding of the prevalence and nature of human trafficking and modern slavery in Australia's sex industry.

In 2013, a woman from China was found hidden in a wall cavity in a Melbourne brothel (Bucci et al. 2015). No criminal charges were laid on the brothel owner because he was deemed not responsible for hiring the woman or checking her visa status, despite the fact he had built the wall cavity. Although the brothel owner was fined for breach of the brothel license, he was able to keep his license and continue operating the brothel. After serving as many as 185 clients in her two months at the brothel, the unnamed woman was voluntarily deported without any support (Bucci et al. 2015). This case demonstrates not only a lack of understanding of human trafficking and modern slavery but also a lack of responsibility on brothel owners and managers to combat modern slavery risks in their operations and supply chains. A requirement for sex industry businesses to report would be a first step in the fight against modern slavery.

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