

**Submission
No 168**

INQUIRY INTO THE REGULATION OF BROTHELS

Organisation: Fighting for Justice Foundation

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SUBMISSION:
INQUIRY INTO THE REGULATION OF
BROTHELS IN NEW SOUTH WALES

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Dear Committee,

In relation to the *Submissions Sought for Inquiry into Brothels in NSW by the Select Committee on the Regulation of Brothels*, Fighting for Justice Foundation would like to submit the following:

Fighting for Justice Foundation seeks justice for all – and seeks to speak up for those who cannot speak for themselves, committed to the preservation and advancement of the rights of all persons, particularly vulnerable women and children, the rule of law, and the dignity, worth and value of all persons.

In standing for the rights of women and children, in standing against the commodification and exploitation of women's and girls' bodies, and in standing against the international crime of human trafficking, I urge the Committee to consider the following:

In considering the regulation of brothels in NSW, a profile of those working in brothels first needs to be understood. Are these women entering prostitution voluntarily?

1. The women in Prostitution:

It is estimated that 50 to 90% of prostitutes do not practice the profession voluntarily (SPIEGEL, 2013) and those who do have come into it as vulnerable women, and as a last resort.

[Dr Melissa Farley](#) has written over 35 books on prostitution across 40 years of research and activism with persons in prostitution. Some of Dr. Farley's statistics on prostitution are compiled below:

- the average entry age into prostitution is 13;
- 65% to 95% of prostituted women have been sexually assaulted or raped before they entered prostitution;
- nearly half of prostitutes were victims of incest;
- 83% of prostituted women are addicted to substances such as heroin, cocaine, cannabis and alcohol;
- 54% of prostitutes suffer from very severe depression;
- 42% of prostitutes had at least committed one suicide attempt, many suffering from psychological disorders;
- 75% of women in prostitution are or have been homeless at some point in their lives;
- 70% to 95% of women in prostitution working in the street have been physically assaulted during the exercise of prostitution;
- 41% of women were attacked in brothels;
- 60% to 75% of people were raped while in prostitution; and
- 85% and 95% want to leave prostitution, but have no other means of survival.

In a study conducted on 859 people in 9 countries, over 68% of women working in strip clubs, massage parlors and street suffer from post-traumatic stress disorder (PTSD) comparable to war veterans, rape victims and survivors of state torture.

According to the [American Journal of Epidemiology](#), the murder rate of prostitutes is 12 times that of the general population, and the general risk of premature death for a prostitute, including illness, or overdose, is 77 times higher.

These statistics brings into question the voluntariness or choice a person has to becoming a prostitute.

Prostitution allows the commodification of women's bodies, reinforced gender based violence, and endorses the legalised victimisation of trafficked persons within the industry.

Legalised prostitution increases tolerance for violence against women and children, including sexual violence, and increases [child prostitution](#) and creates a demand for human trafficking.



2. Evidence of human trafficking into New South Wales:

There is no doubt that human trafficking occurs into New South Wales, particularly into Sydney, evidenced by various reports exposing this abhorrent crime that sells the flesh of women and children over and over again.

The raids that were conducted on Sydney brothels in October 2011 by a taskforce of police and immigration inspectors as part of a wider investigation into Asian Women being trafficked in the sex industry found that the issue of trafficking is a particular problem in NSW. The data revealed that 148 women in a federal government support program for those trafficked into the sex industry in Australia since 2004, 119 (80 per cent) were discovered in NSW, with 70 per cent of those victims being women for sexual exploitation, sexual servitude and the other 30 per cent for labour trafficking.¹

The Australian Federal Police acknowledged in March 2012 that human traffickers were attracted to Australia because of the relatively high value of the Aussie dollar.

The then University of Queensland Associate Professor Julie Hepworth's five year study concluding in 2012 revealed that up to 2000 women are trafficked into Australia every year and effectively forced to work as sex slaves in Sydney and Melbourne.²

An investigation carried out by *The Age* and *Four Corners* revealed that every week in Victoria, more than 60,000 men buy women in prostitution.³

According to the business research company IBISWorld, the Australian sex industry has ballooned over the past decade. High growth has forced pimps to forge international supply routes to source their "product", which, in the case of the sex industry, is mostly women and children. Asian women in particular are a consumer favourite.

We know that in February 2012, a Sydney man of Chinese-Cambodian origin who was the owner of the [redacted] brothel in [redacted], was charged with human trafficking offences following raids by the Australian Federal Police in Sydney, resulting in the rescue of three Thai young women who were trafficked under sexual exploitation conditions.⁴

We know that dozens of Asian women from Hong Kong and Thailand have been snared into student visa scams that funneled them into Sydney brothels where they were forced into selling sex and drugs for up to 20 hours a day. In 2012-13, 3446 appeals against refusals were lodged from 290,761 student visa applications submitted over the same period.⁵

In October 2012, the University of Queensland reported: A study has found that trafficked women in the Greater Sydney region lacked access to a breadth of health and community services, as there was a national focus on border protection and criminalisation rather than human rights.⁶

The Sydney Morning Herald (SMH) as recently as 31 October 2014⁷ reported "Federal police are investigating a record number of human trafficking cases in Australia involving sex slavery, forced marriages and child brides."

¹ The Sydney Morning Herald 8 October 2011 Tom Reilly; 'Human Trafficking Prompts Raids on Brothels':

<http://www.smh.com.au/national/human-trafficking-prompts-raids-on-brothels-20111007-1ldmz.html>

² News.com 2 October 2012 'Shocking Finding: Women Used as sex slaves in Sydney and Melbourne':

<http://www.news.com.au/national/trafficked-women-forced-into-brothels/story-fndo4eg9-1226486787059>

³ Sydney Morning Herald 13 October 2011 Caroline Norma; 'It's Time to Get Serious About Sex Trafficking in Australia':

<http://www.smh.com.au/it-pro/its-time-to-get-serious-about-sex-trafficking-in-australia-20111012-1lkzi.html>

⁴ The Daily Telegraph 2 February 2012 'Salvation Army Rescues Trafficked Women': <http://www.dailytelegraph.com.au/salvation-army-rescues-trafficked-women/story-e6freuyi-1226260583411>

⁵ The Sydney Morning Herald 30 March 2014 Eamonn Duff; 'Trafficking: Women Lured with Student Visas Forced into Sex Slavery':

<http://www.smh.com.au/nsw/trafficking-women-lured-with-student-visas-forced-into-sex-slavery-20140329-35q88.html>

⁶ UQ News 2 October 2012 'Study Finds Sydney's Trafficked Women Need More Support':

<https://www.uq.edu.au/news/article/2012/10/study-finds-sydney%E2%80%99s-trafficked-women-need-more-support>



3. The links between the legalisation of prostitution and human trafficking:

An [international academic research study](#) concluded that the legalisation of prostitution leads to a rise in the exploitation of vulnerable women and girls through human trafficking.

The 2012 study published in 'World Development' titled: "[Does Legalized Prostitution Increase Human Trafficking?](#)" investigates the effect of legalised prostitution on human trafficking inflows into high-income countries.

The study's findings concluded that countries with legalised prostitution are associated with higher human trafficking inflows than countries where prostitution is prohibited.

The study also concluded that the type of legalisation of prostitution does not matter — it only matters whether prostitution is legal or not, and that there is a 13.4% higher probability of receiving higher inflows in a democratic country than otherwise.

Human trafficking is fuelled by a demand for prostitution - it works on the simple economic principle of supply and demand, and as a former victim put it: men paying for sex are addicts using women's bodies as drugs, and that men believe the time they have purchased to be with a woman puts them completely in control, which makes the woman vulnerable to abuse – and worse.

The legalised policy approach to prostitution, is known to:

- increase trafficking and violence against prostitutes;
- lead to a cheaper, more widely available "commodified trade" - the price per act decreases- *devaluing the person as a prostitute and as a human being*;
- give law enforcement permission to turn their backs on this issue, making it is extremely hard to regulate the sex trade;
- give pimps and johns free reign over their victims and almost no legal recourse for the exploited; and
- give traffickers more *legal* ways to exploit women and children - including exploiting the vulnerable so that they live without any enforceable housing standards, proper healthcare, wages –without basic rights for personal subsistence.

4. Failed Legalised models:

The legalisation of prostitution results in the normalising of the intrinsically harmful treatment of the exploitation and practice of violence against women and children.

As a New South Wales Police Officer who investigates sex trafficking observed on the effects of decriminalisation: "Although the intention was to provide a safe working environment for sex workers the reverse has occurred in that pimps and brothel operators were empowered and enriched."⁸

The Victorian jurisdiction is evidence that the legalized model does not work. Estimates from police and the legal brothel industry put the number of illegal brothels at 400 in Victoria, four times the number of legal ones, and legal brothels are being used as fronts for illegal operators and criminal activity. Brothel owners have been caught bribing local government officials to warn them of license checks.

After New Zealand's decriminalisation legislation was introduced, the police noted that "as a result of legislative changes, Police...has less contact with the sex industry, and there is no systematic intelligence gathering and collation," making it more difficult to discover abuses and exploitation."⁹

⁷ <http://www.smh.com.au/national/sex-trafficking-slavery-and-forced-marriage-on-the-rise-in-australia-say-police-20141030-11e62z.html>

⁸ The Sydney Morning Herald, 11 October 2011 "*Licensing law to tighten screws on brothel chiefs*".



In Germany in 2007 the government found that there “are no viable indications that the [law] has reduced crime,” and that the law “has as yet contributed only very little in terms of improving transparency in the world of prostitution.” Over one-third of prosecutors noted that legalising prostitution “made their work in prosecuting trafficking in human beings and pimping more difficult.”¹⁰

[At a recent UN event](#) in New York, women rescued from prostitution criticised UN agencies and Amnesty International for trying to legalise prostitution insisting legalisation would lead to more girls being trafficked, and transform pimps into legitimate businessmen.

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“What the hell are they [Amnesty International] thinking,” said Rachel Moran, a former prostituted woman from Ireland. Rachel Moran is the author of *'Paid For: My Journey Through Prostitution'*.

The failed legalized approach is also assessed in various international academic reports, such as: ***Unprotected: How Legalizing Prostitution Has Failed Der Spiegel Online.***¹¹

5. Australia’s Legal and International Obligations:

When considering legislative amendments to brothels in NSW, it is important to consider the following international and national instruments:

- Australia has ratified the United Nations *Convention against Transnational Organized Crime* (UNTOC). In addition in 2005 Australia ratified the *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the Convention on Transnational Crime - the [Trafficking Protocol](#)* – which is an international reference point for the criminalisation of human trafficking, in all its forms globally.
- Article 6 of the Convention on the Elimination of All Forms of Discrimination Against Women, signed in 1979 by the United Nations states: [State Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.](#)
- Articles 4 and 5 of the [Universal Declaration of Human Rights](#) calls for the prohibition of all forms of slavery and servitude, declaring that no one is to be subject to cruel, inhuman or degrading treatment.
- The United Nations Convention on the Rights of the Child and its supplementary protocol on the sale of children, child prostitution and child pornography is also to be taken into account.
- In 2013, the Australian Parliament passed two Acts intended to enhance Australia's legislative frameworks around human trafficking and slavery. The *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013* (Slavery Act) and the *Crimes Legislation Amendment (Law Enforcement Integrity, Vulnerable Witness Protection and Other Measures) Act 2013* (Vulnerable Witness Act) amended the *Criminal Code Act 1995* (Criminal Code) and the *Crimes Act 1914* (Crimes Act).

⁹ New Zealand Ministry of Justice, Report; *'The Prostitution Law Committee on the Operation of the Prostitution Reform Act 2003*, May 2008, pg. 101.

¹⁰ German Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, Report by the Federal Government; *The Impact of the Act Regulating the Legal Situation of Prostitutes* (Prostitution Act), July 2007, pg. 79.

¹¹ <http://www.spiegel.de/international/germany/human-trafficking-persists-despite-legality-of-prostitution-in-germany-a-902533.html>



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- Divisions 270 and 271 of the *Criminal Code Act 1995* contain offences for human trafficking, slavery, and slavery-like practices including servitude, forced labour, deceptive recruiting for labour or services, debt bondage, and forced marriage.
- The *National Action Plan* to combat human trafficking and slavery 2015-19 provides the strategic framework for Australia's response to human trafficking and slavery over the five years from 2015 to 2019, recognises that Human trafficking and slavery are serious crimes that fundamentally curtail freedom, making them amongst the most grave of human rights violations. No country in the world is immune to these crimes.
- The *National Action Plan* recognises the dignity and worth of each person, and the obligation we have as a nation to work against those who seek to benefit by restricting another's freedom. It affirms the importance of preventing these practices before they occur; detecting and investigating possible circumstances of human trafficking and slavery; ensuring perpetrators are brought to justice; and protecting and supporting those who have experienced human trafficking and slavery, including by providing access to an effective remedy.

6. The victims of human trafficking:

According to the United Nations Office of Drug and Crime, trafficking often occurs from less developed countries to more developed countries, where people are rendered vulnerable to trafficking by virtue of poverty, conflict or other conditions.

Vulnerable women and children are the easiest targets for traffickers, and indeed, make up the majority of the world's known slaves today.

Vulnerable victims are exploited in the sex trade on a daily basis across the world.

According to a [United Nations Office of Drugs and Crime Report](#), the crime of trafficking in persons affects virtually every country in every region of the world. Most victims of trafficking in persons are foreigners in the country where they are identified as victims - more than 6 in 10 of all victims - have been trafficked across at least one national border.

The majority of trafficking victims are subjected to sexual exploitation.

The [UNODC Report](#) goes on to reveal that approximately half of all detected trafficking victims are adult women.

Women comprise the vast majority of the detected victims who were trafficked for sexual exploitation. In some regions, particularly in Asia, most of the victims of trafficking for forced labour were women.

Since UNODC started to collect information on the age profile of detected trafficking victims, the share of children among the detected victims has been increasing. Globally, children now comprise nearly one third of all detected trafficking victims. Out of every three child victims, two are girls and one is a boy.

The [UNODC Report](#) also revealed that for nearly all crimes, male offenders vastly outnumber females.

Human Trafficking starts with Pornography.

The exploitation of a woman or a girl through sex trafficking begins with the download of pornography - in turn creating a demand for trafficked persons through prostitution.

Porn has been referred to as [the industry of torture and greed](#), and is worth about 100 billion dollars per annum.



Porn glorifies the abuse, degradation and the violence of women, most of them very very young.

Mainstream porn would be impossible without a massive exploitation, violence and abuse of women industry.

7. The prevalence of human trafficking globally:

In a world where no country is immune to human trafficking according to the UN, and where the trafficking of children is on the rise according to the [United Nations](#), there are at least 152 countries of origin and 124 countries of destination affected by trafficking in persons, and over 510 trafficking flows criss-crossing the world.

There is no place in the world where children, women or men are safe from human trafficking [as stated by](#) the UNODC Executive Director, Yury Fedotov earlier this year.

According to the [Global Slavery Index](#), there are 36 million known slaves in the world today.

Every year, 1.2 million children are being trafficked according to the International Labor Organization's 2002 estimation in the [Every Child Counts, New Global estimate on Child Labour](#) Report.

Trafficking in persons is, in itself, a human rights violation, and one which can result in a series of further abuses, involving debt-bondage, forced labour and slavery-like conditions, as well as rape, torture, imprisonment and even murder.

The treatment of human beings as commodities, or products to be bought and sold, is considered a violation of their most basic rights to freedom, autonomy and human dignity by the United Nations (UN) and international human rights groups (Anti-Slavery International 2004; Human Rights Watch 2004; United Nations Office on Drugs and Crime 2005).

The United Nations estimates that trafficking in persons generates \$US 10 billion annually for traffickers.

The legalisation of prostitution model creates a social norm accepting the commodification, exploitation and abuse of women physically and sexually, it creates a safe harbour for criminal enterprise, and creates a demand for the trafficking of persons.

8. The alternative to the legalised approach:

Prostitution has been recognised as one of the worst expressions of the unequal division of powers between men and women. Prostitution and human trafficking for sexual purposes represent a serious obstacle to both social equality and gender equality.

Scandinavia has taken another path since 1999, with Sweden, then Norway, Iceland and Finland in punishing the act of buying sex in order to reduce the demand for trafficked persons and the exploitation of women and girls through prostitution. There the discussion was approached from a gender equality perspective and prostitution was banned. Prostitution is viewed there as violence against women and against gender equality, therefore being punishable.

Chapter 6 s8 of the Swedish Penal Code states:

"Anyone who promotes or encourages or improperly exploits for commercial purposes casual sexual relations entered into by another person in exchange for payment is guilty of a criminal offence and shall be sentenced for procuring to imprisonment for at most 4 years"

Within the first five years of what is now referred to as the Nordic Model, human trafficking in Sweden was halved, with traffickers declaring it was not viable for them to do business in Sweden any longer.



“In Sweden it is understood that any society that claims to defend principles of legal, political, economic, and social equality for women and girls must reject the idea that women and children, mostly girls, are commodities that can be bought, sold and sexually exploited by men” – Ekberg.

The Swedish government criticises countries such as Australia that allow legal prostitution on the basis that it generates demand for the criminal activity of traffickers and organised crime. Swedish bureaucrats understand that prostitution and trafficking are two sides of the same coin. In 1999 they made pimps, traffickers, and prostitution "clients" liable for criminal prosecution.

As stated by Nyamko Sabuni – the Swedish Minister for Integration and Gender Equality:

“It is unacceptable that people – mostly women and children – are being purchased and exploited like merchandise. Victims of human trafficking and prostitution lose power over their lives and their bodies. They are robbed of the chance to enjoy their human rights.”

The Nordic Model, or the criminalisation of buyers allows women to seek care, support, and report if a client is violent. 60% of women who enrolled in the Swedish social programs – where the Nordic Model originated - were able to leave prostitution, and the stigma was shifted from the act of selling sex to the act of buying sex.

Dr Caroline Norma, lecturer at RMIT and a member of the Coalition Against Trafficking in Women Australia notes that if legalising prostitution hasn't eliminated the problems of the sex industry in Australia, it is time that Australia considers the Nordic Model.

Under the Nordic Model, violence against [women decreased substantially](#).

This shift in social norms in our society away from seeing the victims of trafficking as criminals, but rather criminalizing the demand for the commodification of women and girls is key if we want to curb human trafficking and reduce the prevalence of sexual violence against women.

Traffickers no longer think its worth doing business in Sweden.

The Nordic Model has now become the international best practice model in curbing human trafficking, and was considered by the Canadian, French and Irish parliaments in 2014.

Israel is in the process of adopting the Nordic Model.¹²

Many reviews of the Nordic System are available, including an analysis of its success and revealing its limitations here:

1. [Coalition Against Trafficking in Women Australia](#)
2. [The official report from the Swedish government](#), or the
3. [Abolish Now](#) blog.

9. The need for an exit program in NSW:

The success of the Nordic Model is not only attributed to the women's equality approach that declares the exchange of money for sex violence against women, criminalising the demand for the commodification and exploitation of women and girls, but it is also in the shift in social norms towards to equality and rights of all women and girls, the community education campaigns in this regard, the training of all law enforcement personnel on these new standards, and the provision of exit programs for women who want to exit the industry.

¹² http://www.rsy-netzer.org.uk/images/stories/Proposed_legislation.pdf-accessed 5 November 2014.



The provision of exit programs for women and girls working in brothels, on the streets, in escort agencies or the like, providing them with psychological, social and employment rehabilitation is crucial for their reintegration of ex-prostitutes back in to the normal work force, and back into normal society.

This would require a provision of accommodation, assistance writing resume, the provision of internships, a counselor or psychologist and a job place mentor.

This approach to the protection of women from harmful exploitation is particularly necessary for those prostitutes with children.

10. Recommendations:

In order to comply with international standards for the eradication of human trafficking, the promotion of gender equality, and the abolition of the commodification of flesh, the Committee is called upon to consider the following:

- A. Adopt a human rights approach to preventing, protecting and redressing trafficking in persons, including providing an exit program for women working in brothels who would like to access other forms of employment, who have been abused or trafficked;
- B. Ensure children, or persons under the age of 18 years of age cannot work in brothels as receptionists, cleaners or in any other roles;
- C. Ensure that the children of prostitutes are required to be housed away from the brothels, with access to education and a healthy living environment, and the full support of the government;
- D. Improve the coordination amongst government agencies and NGOs in assisting trafficked women and women and girls wanting to exit working in brothels;
- E. Provide information in various languages in brothels as to how women can access help if they have been trafficked, raped or assaulted in brothels.
- F. Provide an exit program for women and girls seeking to exit prostitution, and no longer wish to work in brothels, or in the streets.
- G. Provide a state-wide education campaign on the criminality of the exploitation of women and children, in line with Article 9.5 of the Palermo Protocol, which expressly says:

“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.”¹³

- H. Institute compulsory up to date periodical training for all NSW Police Officers on how to identify a trafficked person, a person in bonded slave labor, a domestic slave, a girl in forced marriage or a sexual slave, in compliance with the *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013* (Slavery Act) and the proper referral channels to the Australian Federal Police Trafficking of Persons Unit and the Child Safety Team respectively.
- I. Consider compensation for the victims of trafficking:
 - a. Article 6(6) of the Trafficking Protocol calls for: ‘Each State Party [to] ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.’¹

¹³ http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf



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- b. Article 25(2) of the UNTOC states: 'Each State Party shall establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by this Convention'.¹⁴
- J. That NSW cooperates cross-jurisdictionally to report the knowing of traffickers whereabouts, and the consideration for a regional cooperation of reporting, investigating, prosecuting and combating the international crime of human trafficking, which preys on vulnerable persons;
- K. Consider a State-wide and Nation-wide data sharing scheme – to ensure traffickers do not abscond the NSW jurisdiction and re-offend elsewhere, without law enforcement being informed;
- L. Ensure that traffickers are deterred from their criminal enterprise by enforcing a maximum sentence, and consider moving towards life imprisonment as a sentence to deter human trafficking occurring within, out of, and into Australia.

New South Wales is currently out of step with international norms and well as international policy developments in prostitution law reform.

A truly progressive society encourages the equality and dignity of all women, not the prostitution of women.

I want to see Australia targeting predators and pimps more actively, upholding a human rights approach to the eradication of exploitation, and helping vulnerable individuals escape prostitution, while upholding the dignity of all women and children.

We can do better for the women and youth of Australia, and we must.

Thank you.
Andrea Tokaji
24 August 2015

¹⁴ *United Nations Convention and Transnational Organized Crime*, General Assembly resolution 55/25 (2000); *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, General Assembly resolution 55/25 (2003).