

Submission  
No 27

## INQUIRY INTO HUMAN TRAFFICKING

**Organisation:** Collective Shout

**Date received:** 4 March 2017

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Committee Secretary  
Legislative Council Select Committee

Dear Committee Secretary,

**Submission: Inquiry into Human Trafficking**

We are a grassroots campaigns movement mobilising and equipping individuals and groups to target corporations, advertisers, marketers and media which objectify women and sexualise girls to sell products and services. We are concerned about the increasing pornification of culture and the way harmful messages about women and girls have become entrenched in mainstream society. We engage, more broadly, in efforts to address related issues such as violence against women, pornography, prostitution and trafficking.

Supporters of our movement include survivors of the global sex trade. Their recounted experiences of harm inform the comments on the Committee's inquiry that we offer below.

Thank you for this opportunity to contribute to your Committee's deliberations. We would welcome the opportunity to supply more information, or address the committee in person.

Dr. Caroline Norma for Collective Shout

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**Collective Shout**  
PO Box 781  
Neutral Bay NSW 2089  
Australia

# Legislative Council Select Committee on human trafficking

## ***1. a) The role and effectiveness of New South Wales law enforcement agencies in responding to human trafficking:***

The Palermo Protocol's new inclusion of the crime of "forced labour" as a form of trafficking has allowed the Australian Government to almost completely abandon measures against the sex industry – which fuel trafficking in the first place. While we acknowledge the seriousness of forced labour, we do not think this should overshadow the reality of trafficking in Australia's sex trade. Without this acknowledgement, resources for law enforcement will continue to be inadequate.

[https://d3n8a8pro7vhmx.cloudfront.net/collectiveshout/pages/1097/attachments/original/1465353894/Collective\\_Shout\\_submission\\_Select\\_Committee\\_on\\_the\\_Statutes\\_Amendment\\_\(Decriminalisation\\_of\\_Sex\\_Work\)\\_Bill\\_2015.pdf?1465353894](https://d3n8a8pro7vhmx.cloudfront.net/collectiveshout/pages/1097/attachments/original/1465353894/Collective_Shout_submission_Select_Committee_on_the_Statutes_Amendment_(Decriminalisation_of_Sex_Work)_Bill_2015.pdf?1465353894)

Unfortunately, Australian Governments have not demonstrated any real commitment to suppressing prostitution, which contributes to the demand for trafficked women. This is evident in the federal government's own publications:

Cases of men and women exploited in situations outside the sex work industry, such as in the domestic work, hospitality and construction industries, or within intimate or family relationships, are identified by Australian authorities on a comparable basis to those exploited within the sex work industry (Australian National Action Plan to Combat Human Trafficking and Slavery, 2015).<sup>1</sup>

The government has been criticised internationally for its approach by the US Department of State:

The [Australian] government did not take significant steps to reduce the demand for commercial sex acts, but continued to undertake specific efforts to raise awareness of and prevent trafficking within its legal sex trade.<sup>2</sup>

At the same time the Australian federal government trumpets its national anti-trafficking legislation as 'best practice' policy in the field,<sup>3</sup> it oversees state and territory governments that continue to legalise and decriminalise their local sex industries, and have done so since the mid-1980s. These provincial governments have enacted 'harm minimisation' policies on prostitution for as long as the Netherlands and Germany. Even with a 2012 United Nations Office on Drugs and Crime finding that 80 per cent of reported trafficking victims globally are

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<sup>1</sup> <https://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Documents/Trafficking-NationalActionPlanToCombatHumanTraffickingAndSlavery2015-19.pdf> p. 6

<sup>2</sup> Department of State, 'Country narratives,' United States Government, p. 83 at <http://www.state.gov/documents/organization/226845.pdf>

<sup>3</sup> <https://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Documents/Trafficking-NationalActionPlanToCombatHumanTraffickingAndSlavery2015-19.pdf>

sexually exploited,<sup>4</sup> and research in the same year showing a positive link between sex industry legalisation and trafficking crime,<sup>5</sup> Australian state governments pursue escalated forms of sex industry deregulation: they seek to dismantle regulation whenever legislative reviews are held,<sup>6</sup> they mock and malign stakeholders who urge consideration of other regulatory models,<sup>7</sup> they fund programs that advocate recognition of 'migration for sex work',<sup>8</sup> and they disseminate untruths about alternative policy approaches to prostitution.<sup>9</sup> The Australian government appears to forget its obligations under the Protocol, which it ratified in 2005. In particular, it is subject to Article 6 of the Protocol, which instructs that 'State Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women', and also Article 9.5, which stipulates that States Parties 'shall take or strengthen legislative or other measures...to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that lead to trafficking'. In defining prostitution as work, and the sex industry as a business sector like any other, the Australian government's laws and public policy programs directly contravene both of these articles. The federal Anti-People Trafficking Interdepartmental Committee not only restricts its focus to trafficking taking place 'outside the sex industry', but openly declares an intent to exclude the sex industry from view: 'During the next year there will be a continued focus on issues related to trafficking of people for exploitation outside the commercial sex industry'.<sup>10</sup>

In 2013, the Australian government erased all mention of sexual exploitation as a special case of trafficking in its federal anti-trafficking legislation, despite the Protocol's continuing insistence on this particularity. The Australian trafficking legislation had previously included this special pleading, but no longer after the amendments. The explanatory memorandum to Australia's trafficking legislation now instructs courts to see prostitution as an industry no different from any other in terms of the harms that accrue to those forced into it:

It is intended that the conduct of the offender should be the relevant factor in determining whether the offence was aggravated, rather than the industry in which the exploitation took place. For example, the fact that a slavery-like offence involved exploitation within the sex industry is not in itself intended to warrant an aggravated charge as inherently cruel,

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<sup>4</sup> Lauren Gambino, '2.4 million victims of human trafficking worldwide, says UN,' 4 April 2012, retrieved 7 September 2014, <http://www.telegraph.co.uk/news/worldnews/9185811/2.4-million-victims-of-human-trafficking-worldwide-says-UN.html>

<sup>5</sup> S Cho, A Dreher, E Neumayer, 'Does Legalized Prostitution Increase Human Trafficking?', *World Development*, vol. 41, no. 1, 2013, pp. 67-82.

<sup>6</sup> See, for example, the submission of the Australian Capital Territory government to a 2012 review of the territory's prostitution legislation arguing against strengthened powers for the Office of Regulatory Services. Retrieved 7 September 2014, [http://www.parliament.act.gov.au/\\_data/assets/pdf\\_file/0006/373317/Submission\\_No\\_34\\_-\\_ACT\\_Government\\_OCRv7.pdf](http://www.parliament.act.gov.au/_data/assets/pdf_file/0006/373317/Submission_No_34_-_ACT_Government_OCRv7.pdf)

<sup>7</sup> Meagan Tyler, 'Buying sex should be banned in Australia,' 4 December 2013, *The Conversation*, retrieved 7 September 2014, <http://theconversation.com/buying-sex-should-be-banned-in-australia-21079>

<sup>8</sup> Scarlet Alliance, 'Scarlet Alliance Migration Project funded for another three years,' 16 September 2011, retrieved 7 September 2014, [http://www.scarletalliance.org.au/media/News\\_Item.2011-09-15.3248/view](http://www.scarletalliance.org.au/media/News_Item.2011-09-15.3248/view)

<sup>9</sup> Tyler, 'Buying sex should be banned in Australia'.

<sup>10</sup> Anti-People Trafficking Interdepartmental Committee, *Trafficking in Persons: The Australian Government's Response 1 July 2011–30 June 2012*, retrieved 9 September 2014, <http://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Documents/ReportoftheAntiPeopleTraffickingInterdepartmentalCommitteeJuly2012toJune2012.doc>

inhuman or degrading treatment of the victim.<sup>11</sup>

While people forced to labour in kitchens or fields are victimised through the contrivances of third parties in successfully imposing debt or other controls that achieve their servitude and exploitation are victims of crimes of slavery deserving punishment, and harsher punishment if the conduct of the third party is egregious, it is important to note that the elements of forced labor are found in these aspects, and not in the performance of the labour itself, such as the washing of dishes or picking of cucumbers. This fact distinguishes forced labor fundamentally from trafficking. In the case of trafficking, third-party orchestration of the exploitation of prostitution not only arranges a victim's sexual enslavement, it also gives rise to crimes of rape and sexual assault. By definition, therefore, prostitution inflicts 'inherently cruel, inhuman and degrading treatment' on trafficking victims. This reality is erased in Australia's legislation, which promotes a fallacy of equal harm arising in trafficking for prostitution and forced labour. This fallacy allows the government to internationally proclaim its anti-trafficking efforts while paying no special attention to the organisation of women and children for prostitution in Australia, even though this special attention is warranted, and is in fact insisted upon in the Protocol.

***i) how New South Wales law enforcement agencies respond to human trafficking, including slavery, slavery like practices such as servitude, forced labour, and people trafficking***

Appropriate local and state government regulatory and compliance functions for brothels

***Recommendation: The NSW government should establish a sex industry action agency.***

The delegation of regulatory and enforcement functions to local government effectively creates an environment of total impunity for sex industry operation. Local governments in Australia do not have the resources or expertise to regulate an industry that is heavily infiltrated by organised crime, overseas syndicates, and persons with criminal records. The NSW state government should resource an agency tasked with liaising with police to shut down all operators not currently registered with local government, and fund women's NGOs to assist sex industry victims to transition out of prostitution and into mainstream employment. A statewide education campaign to raise public awareness of the harms of the sex industry for individuals, communities and social equality should be launched, and local government should be supported to decline future applications for the registration of prostitution businesses.

The demarcation in local and state government roles and responsibilities

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<sup>11</sup> Australian Commonwealth Government, *Report of the Anti-People Trafficking Interdepartmental Committee*, 2012, p. 29, retrieved 9 September 2014, <http://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Documents/ReportoftheAntiPeopleTraffickingInterdepartmentalCommitteeJuly2012toJune2012.pdf>

***Recommendation: Local government should be relieved of any role or responsibility in relation to the sex industry.***

An industry of such scale, resources and criminality is not an appropriate target of local government oversight. Instead, the state government should strengthened the resources and expertise of police to coordinate a central agency (with a reference group drawn from survivor organisations, women's groups and public health professionals) that tackles the sex industry from all angles. The agency's role in contracting the size of the sex industry in NSW could be supported through government-funded research into the Nordic Model and other policy solutions that seek to reduce the size and profits of prostitution businesses.

#### Current regulation of brothels in New South Wales and other states

***Recommendation: The NSW government should commission research into the prostitution policymaking models of countries like Canada, Sweden, Norway and Northern Ireland.***

Industry deregulation is mostly the legislative and policy model pursued by Australian state governments in relation to prostitution.<sup>12</sup> Even in jurisdictions where brothels and escort agencies are licensed, deregulating the sex industry's activities is the motivating impetus of the policymaking; in Victoria, for example, over the past twenty years requirements for licensee holders have mostly not been enforced or checked.<sup>13</sup> In many respects, the Victorian jurisdiction is similar to NSW in its lack of governance of sex industry operations. Rather than other Australian states, therefore, the Committee should look to countries like Canada, Sweden, Norway and Northern Ireland for models of effective and human rights orientated policymaking on prostitution.

#### Penalties and enforcement powers required to close illegal brothels

***Recommendation: A NSW Police taskforce, similar to the Sex Industry Unit within Victoria Police, should be established specifically to tackle the problem of illegal prostitution businesses in NSW.***

New South Wales has proven to be an unregulated minefield of exploitation, abuse and an ever-expanding illegal sector associated with other criminal activities. Media reports over the past two years indicate that New South Wales has allowed criminals to run brothels in the state, despite having criminal convictions recorded against them.<sup>14</sup> In one case, brothel owners banned in Victoria for pimping underage girls were found to have moved to Sydney and

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<sup>12</sup> Crofts, Penny, Maher, Janemaree, Pickering, Sharon, & Prior, Jason. (2012). Ambivalent regulation: The sexual service industries in NSW and Victoria - sex work as work, or as special category? *Current Issues in Criminal Justice*, 23(3), 393-412.

<sup>13</sup> Pickering, Sharon, Maher, JaneMaree, Gerard, Alison, *Working in Victorian Brothels*, Report, Melbourne, Victorian Government, 2009.

<sup>14</sup> Matthew Benns, 'Inside seedy world of sex for sale,' *Daily Telegraph*, 8 March 2014, p. 4.

launched major prostitution businesses. A brothel called 'Liaisons' was found to be run by a man whose licence was revoked in Victoria for pimping an underage girl. The same man was later found with a 16-year-old girl at another brothel he operated after her mother forged the girl's birth certificate.<sup>15</sup>

Brothel proprietors have been criticised for being involved in illegal practices and allowing their employees to be placed in dangerous situations. One report criticises a brothel that ignored warnings about a predatory drug addicted neurosurgeon who was targeting women in the sex industry. Not only did the brothel sell cocaine to the doctor but two young women died as a result of being given lethal doses of cocaine.<sup>16</sup>

The *Law and Sex Worker Health* (LASH) report of 2012, commissioned by the NSW health ministry and conducted by UNSW and the Kirby Institute, found that of 201 respondents involved in the sex trade, 46% stated that they would 'not feel comfortable' or would feel 'very uncomfortable' with reporting a sexual assault to a police officer.<sup>17</sup>

2012 also saw the release of a study which found that 507 people working in the sex industry were offering unprotected oral sex.<sup>18</sup>

In NSW, a police officer who investigates sex trafficking commented 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".<sup>19</sup>

#### Options for reform including a scheme of registration or licencing system for authorised brothels

***Recommendation: No student or working holiday visa holders should be allowed on brothel premises in NSW, or on the books of escort agencies.***

Overseas governments are aware of the risk their citizens face in relation to visa-mediated trafficking in Australia's sex industry. The South Korean Ministry of Foreign Affairs and Trade, for example, has hosted pre-departure trains for Koreans participating in working holiday programs in Australia on their vulnerability to sex trafficking (US Department of State, 2011, p. 218). There are many examples of sex trafficking in Sydney carried out through Australia's visa scheme. For example, in 2009, six young women were enslaved to work up to 20 hours a day in the Diamonds brothel in Willoughby and ordered them to perform

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<sup>15</sup> *ibid*

<sup>16</sup> <http://www.smh.com.au/nsw/brothels-ignored-warning-on-neurosurgeon-suresh-nair-20140524-38vk9.html>

<sup>17</sup> [http://nothing-about-us-without-us.com/wp-content/uploads/2012/03/LASH\\_NSW-Sex-Industry-Report\\_2012.pdf](http://nothing-about-us-without-us.com/wp-content/uploads/2012/03/LASH_NSW-Sex-Industry-Report_2012.pdf)

<sup>18</sup> [www.dailytelegraph.com.au/news/nsw/more-than-500-sydney-prostitutes-are-offering-unprotected-sex-to-clients-in-brothels/story-e6freuzi-1226240239728](http://www.dailytelegraph.com.au/news/nsw/more-than-500-sydney-prostitutes-are-offering-unprotected-sex-to-clients-in-brothels/story-e6freuzi-1226240239728)

<sup>19</sup> <http://www.smh.com.au/nsw/licensing-law-to-tighten-screws-on-brothel-chiefs-20111010-1lhm7.html>

unusual sex acts against their will so they could pay "debts" to the madam Wong recruited the women from Malaysia and arranged for them to arrive on student visas, telling them they had to pay a \$5000 debt for their enrolment in education courses, airfares and visas.<sup>20</sup>

There have been persistent and continuing practices of sexual enslavement within the NSW sex industry, regardless of whether or not proprietors are registered with local councils. In 2009, Jang, Jung and Dalton published an article (followed by a book in 2010) based on surveys and interviews with 21 Korean women in Sydney's sex industry. They found that more than half the women "felt that they were deceived about their eventual working conditions [in Australia] and found their working conditions to be either worse or much worse than what they expected or heard" (2009, p. 255). Interviewees experienced "surveillance or [being] in captivity" and had their "physical appearance or . . . daily activities controlled" while in Australia at rates of more than 80 percent (2009, p. 940). In 2006 it was reported that a 36-year-old woman was detained at the Songpa Police Station in Seoul for successfully recruiting 50 women for trafficking into prostitution in Sydney. She had been undertaking this activity since April 2004. The newspaper reporter noted she "lured women by telling them that the sex trade is legal in Australia" ("Women Lured into Australian Sex Trade," 2006). Jang, Jung, and Dalton noted that "international employment networks based in Korea . . . may have played a significant role in the entry of Korean women into the Australian entertainment and sex industry," and a "large number of recruiters in Korea [are] working as agents for Australia-based Korean recruiters of entertainment and sex workers" (Jang, Jung, & Dalton, 2009, p. 258). Indicative of foreign trafficker activity within Australia's borders is the statistic that over 54 per cent of women in prostitution in Western Sydney were born overseas (Kakar et al, 2010).

#### The protection of sex workers, including issues around organised crime and sex trafficking

***Recommendation: The over-representation of Asian-background women with poor English proficiency in the NSW sex industry should be recognised as a red flag of trafficking crime, and action taken accordingly.***

The deregulation of most of the Australian sex industry means that awareness about trafficking, and initiatives to detect it, are almost non-existent in the country. The Australian Anti-People Trafficking Interdepartmental Committee not only restricts its focus to trafficking taking place 'outside the sex industry' (with program funding directed accordingly), but openly declares an ongoing intent to exclude the sex industry from view: 'During the next year there will be a continued focus on issues related to trafficking of people for exploitation outside

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<sup>20</sup> Paul Bibby, Stephanie Gardiner, 'Madam convicted of enslaving students at north shore brothel,' *The Sydney Morning Herald*, 3 April 2013, p. 5; <http://www.smh.com.au/nsw/jail-for-brothel-keeper-who-enslaved-women-20130705-2phgf.html>



the commercial sex industry.<sup>21</sup> Indeed, the Australian Government closes its eyes to trafficking into the sex industry. Police in the country's capital admitted to a 2012 parliamentary inquiry that no checks on either licensed or unlicensed brothels had been performed for a period of five years in the territory.<sup>22</sup> A view of prostitution as work circulates so strongly in Australian society that trafficking victims are barely conceived of in public policy, let alone identified. There have been less than fifteen convictions for trafficking-related offences in the country. Foreign women in prostitution are simply perceived of as sex work migrants. This is shown in a 2012 *The sex industry in New South Wales: A report to the Ministry of Health* document in which the authors identify more than 50 per cent of survey respondents in approved brothels in metropolitan Sydney as of Asian or other non-English speaking country background, and nearly 45 per cent of these respondents as speaking only 'poor' or 'fair' English. Nonetheless, they find 'no evidence of recent trafficking of female sex workers in the...brothel survey'.<sup>23</sup> Recent developments in Australia toward the introduction of a 'sex work visa' category further reflect this idea of prostitution as an industry into which women simply migrate for labour.

A second indicator of trafficking in Australia is the emergence of 'Asian women only' brothels,<sup>24</sup> which have become popular in recent years, and particularly in NSW.<sup>25</sup> The Queensland Prostitution and Licensing Authority<sup>26</sup> in 2011 noted with concern in its annual report that this type of brothel had become more common. Asian-women only brothels was also mentioned earlier in a 2009 report commissioned by the Victorian state government in relation to venues that offer women for prostitution on a 'rotation' basis. This is a well-known practice of traffickers. A brothel manager interviewed by researchers in Australia in 2009 described the practice of 'rotation' in this way:

Most of them [i.e., Asian women in prostitution], they're just here on working visas and then they buzz back overseas in three months because they [brothel owners] turn them over. Their policy is to turn the girls over all the time. So the way they do it is they work between three or four brothels and they have them working one week there, one week there,

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<sup>21</sup> Anti-People Trafficking Interdepartmental Committee, *Trafficking in Persons: The Australian Government's Response 1 July 2011–30 June 2012*, retrieved 9 September 2014, <http://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Documents/ReportoftheAntiPeopleTraffickingInterdepartmentalCommitteeJuly2012toJune2012.doc>

<sup>22</sup> ACT Government, 'Standing committee on justice and community safety inquiry into the Prostitution Act 1992: ACT Police submission,' p. 156, retrieved 9 September 2014, <http://www.legassembly.act.gov.au/downloads/reports/JACS09%20Prostitution%20Act.pdf>

<sup>23</sup> The Kirby Institute, 'The sex industry in NSW,' 2012, pp. 11 and 17-18, retrieved 9 September 2014, <http://kirby.unsw.edu.au/sites/default/files/hiv/attachment/NSWSexIndustryReportV4.pdf>

<sup>24</sup> <http://www.smh.com.au/national/health/the-threat-to-health-from-cheap-brothels-20110730-1i5an.html>

<sup>25</sup> Queensland Prostitution Licensing Authority, 'Annual Report 2010-2011,' p. 18 at <http://www.pla.qld.gov.au/Resources/PLA/reportsPublications/annualReport/2011/documents/Annual%20Report%202010-2011.pdf>

<sup>26</sup> The government agency that oversees the legalised brothel industry in the Australian state of Queensland.

one week there and they say, advertise, new girls, new girls. They haven't got new, they're just back after three or four weeks at another place they just rotate them around.<sup>27</sup>

This practice of 'turning girls over' and 'rotating them around' generally requires the trafficking of women. In order for pimps to be able to offer customers a 'variety' of women (and thereby make more profit), they need to secure networks and channels for the procurement of women. The existence of 'Asian-only' brothels allows pimps to sell trafficked women on a rotation basis with less possibility of being reported to authorities by local women in the industry.

The emergence of 'Asian women only' brothels in Australia shows how well local pimps have developed networks and channels in overseas countries. While there are, of course, many women of Asian-backgrounds living in Australia, the overall lack of English language skill among women in prostitution in Australia suggests that pimps aren't recruiting local Asian women. On the contrary, they are advertising women precisely on the basis of their foreign nationality, as this quote from a prostitution buyer on a review website indicates:

Lately there has ben [*sic*] a number of girls advertising/claiming to be Japanese, Korean etc. with similar websites and photos and different names. Are they the same girl or are there a whole lot of them that have decended [*sic*] into Melbourne?<sup>28</sup>

The sex industries of, particularly, Melbourne and Sydney have become 'Asianised' over the last decade, as this quote from a prostitution buyer posted to an online reviewer website indicates:

Club 8 ran by new management with an overhaul of Australian WLs [i.e., prostituted women] to give us mostly Chinese and Korean WLs now. The facilities at Club 8 look like the Hotel brothels you get in China with all the space, huge lounge/waiting room, counter and hotel-styled rooms...<sup>29</sup>

The 'Asianisation' of the Australian sex industry points to an increasing involvement of pimps and sex industry investors from countries like Korea and China. While this, too, doesn't necessarily constitute evidence of trafficking, it does show the likelihood that brothel owners in Australia have contacts among sex industry business people overseas, and possibly use these networks to procure women, and 'rotate' them around licensed and unlicensed prostitution businesses in Australia.

In spite of these many outward signs that trafficking is a feature of the Australian sex industry, government officials and researchers continue to repeat the claim that trafficking is rare in the country. For example, the 2011 report of the Australian Commonwealth Anti-People Trafficking Interdepartmental

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<sup>27</sup> <http://www.docstoc.com/docs/43328676/Working-in-Victorian-Brothels--An-independent-report-commissioned>

<sup>28</sup> Mikemelb, 'Punter Planet, 22 September 2010

<sup>29</sup> 'bareback spider,' Punter Planet, 4 March 2011

Committee claims that '[o]pportunities to traffic people into Australia are limited because of our strong migration controls and geographic isolation'.<sup>30</sup> This statement reflects some naivety about the extent to which the sex industry is moving women around in Australia (i.e., trafficking them) to meet demand for prostitution. It was reported in July 2012, for example, that Asian women are being trafficked into mining towns like Mt Isa, and are 'working on a fly-in, fly-out basis, two weeks here, two weeks in the next town and so on; they are being advertised as available in the local newspapers, and they are coerced or threatened into doing it'.<sup>31</sup> The US Department of State in its 2011 *Trafficking in Persons Report* describes the trafficking of women into prostitution in Australia in similarly clear terms:

[S]ome brothels are run by Asian organized crime groups that arrange for Asian women to travel, sometimes on student visas, to work in brothels. The women and girls are sometimes held in captivity, subjected to physical and sexual violence and intimidation, manipulated through illegal drugs, and obliged to pay off unexpected or inflated debts to their traffickers.<sup>32</sup>

The culture of denial that surrounds sex trafficking in Australia contributes to an environment in which prosecutors bring very few trafficking-related cases to court (less than 40 in the country's history), and achieve very few convictions (less than ten). When a conviction is achieved, moreover, prison sentences are often allocated to the women controlling the victims (who are often former victims themselves), rather than the (mostly male) pimps who organised their traffic. In one case tried successfully this year, a former prostituted woman (from Thailand) was convicted of a slavery offence, while the man she was connected to, who raped the victim soon after arriving in Australia, was not tried on any trafficking-related charge.<sup>33</sup> While the woman was certainly involved in the victim's trafficking, and should indeed be penalised, the fact she herself had been in prostitution before the victim was trafficked into Australia suggests she might not have been the original instigator of the crime. The Australian courts are ignorant of the sophisticated strategies of traffickers, which include using former trafficking victims as recruiters.

The Australian anti-trafficking legislation contains only weak provisions against the brokers and middlemen who are crucial to trafficking networks worldwide. The government continues to see sex trafficking as organised by a few rogue individuals, rather than well-connected organised crime networks. The Australian Federal Police were criticised in the media in 2011 for failing to coordinate with Taiwanese public prosecutors over a trafficking network

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<sup>30</sup> p. 3 <http://www.ag.gov.au/Peopletrafficking/Documents/Trafficking+in+Persons.pdf>

<sup>31</sup> <http://www.theage.com.au/queensland/sex-workers-trafficked-through-queensland-mining-towns-20120710-21sgh.html>

<sup>32</sup> <http://www.state.gov/j/tip/rls/tiprpt/2011/164231.htm>

<sup>33</sup> <http://www.canberratimes.com.au/act-news/how-this-sex-ledger-helped-convict-act-brothel-madam-of-slavery-20120411-1wshh.html>

operating in Taipei that sent a number of women to Australia.<sup>34</sup> There appears to be a lack of comprehension among high levels of government, the judiciary, and law enforcement in Australia about the attractiveness of the country for pimps and traffickers in the Asia-Pacific region.

Australia is seen as an 'attractive' investment destination for pimps and traffickers because most of the country's sex industry operates free of government monitoring and intervention. Even when state governments introduce licensing systems for brothels, this doesn't necessarily mean they perform checks on the sex industry. This kind of welcoming environment for sex industry businesses makes Australia an attractive target for sex industry investors, and therefore makes Asian women vulnerable to cross-border trafficking into Australia, given the country's location in the region.

The Australian government does not publicly acknowledge any link between the country's large and legal sex industry and the trafficking of women. It prefers to think that the causes of trafficking reside in other countries, and not within Australia's borders. This view is clearly expressed in a June 2011 statement by Australia's permanent mission to the United Nations. According to the mission, there are two causes of trafficking, both of which originate overseas. The first is the 'poverty, unemployment, corruption, gender inequality, lack of access to education and discriminatory cultural norms' of countries other than Australia. The second is the inadequate 'capacity of States to address trafficking in persons'—states overseas, that is, and not Australia.<sup>35</sup> The Australian government also likes to imagine, as much as possible, that trafficking is a crime that occurs outside of the sex industry. The most recent Australian federal Anti-People Trafficking Interdepartmental Committee report shows how keen the government is to draw attention away from trafficking as a crime driven by demand for prostitution, and toward other industries and forms of labour smuggling:

During the past year, the Australian Government has maintained its focus on combating trafficking for *labour exploitation*...During the next year there will be a continued focus on issues related to trafficking of people for exploitation *outside* the commercial sex industry (italics added).<sup>36</sup>

When the government is forced to recognise the existence of foreign women in Australia's sex industry, it prefers to imagine these women have autonomously 'migrated' to Australia to pursue 'sex work', rather than having been trafficked. In other words, the government subscribes to an idea of 'migration for sex work'. It promotes this revisionist idea of trafficking through measures like funding a project by an organisation called the Scarlet Alliance in 2009 to 'raise awareness' among 'migrant sex workers' about the 'legal and migration rights and

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<sup>34</sup> <http://www.abc.net.au/4corners/stories/2011/10/06/3333668.htm>

<sup>35</sup> Human Rights Council – 17th Session Clustered Interactive Dialogue with the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health and the Special Rapporteur on Trafficking in Persons, Especially Women and Children Statement by Australia 1 June 2011 <http://www.geneva.mission.gov.au/gene/Statement211.html>

<sup>36</sup> <http://www.ag.gov.au/Peoplettrafficking/Documents/Trafficking+in+Persons.pdf>

responsibilities to people considering travelling to Australia for sex work'. This initiative, called the Migration Project, aims to improve 'access to justice and services for migrant sex workers and industrial conditions for sex workers in Australia.'<sup>37</sup>

### Options to maintain the high level of public health outcomes

***Recommendation: The sex industry should be recognised as posing an unacceptably large public health risk in NSW as a commercial sponsor of sexually transmitted disease transmission (mostly to women in the industry itself). Efforts should be made to reduce its scale and size as part of public health prevention efforts.***

In a 2010 research project, one hundred and eighty-five female prostituted women in Sydney were surveyed, among which ninety-eight (54.5%) were born overseas (predominantly China) and 82 (45.6%) were born in Australia. One hundred and seventeen (68%) were English speaking backgrounds (ESB), while 55 (32%) were from non-English speaking backgrounds (NESB). Seventy-two (38.9%) had symptoms of sexually transmitted disease at the time of the survey, with Chlamydia the most commonly reported STI in the previous 12 months at 28 cases (15.1%). Among the survey group, women from NESB were significantly more likely to be older, have symptoms of STIs, have had a hepatitis B diagnosis in the previous year and work more shifts per week, compared with women from ESB.<sup>38</sup> The research shows the heinousness of the situation facing Asian women in the NSW sex industry, and the unlikelihood these women have entered the industry through strategies other than debt-bondage, manipulation and coercion, which all fit the Australian federal legislative definition of trafficking.

Another research report from 2006 reports on data collected from 72 prostituted women in Sydney via face to face interviews. The interview included structured diagnostic assessment of DSM-IV PTSD; drug dependence; depression; experience of childhood trauma; and an assessment of their history of prostitution. All but one of the women interviewed reported experiencing trauma, with the majority reporting multiple traumas that typically began in early childhood. Child sexual abuse, adult sexual assault and work related violence were commonly reported. Just under half of the women met DSM-IV criteria for PTSD and approximately one-third reported current PTSD symptoms. Adult sexual assault was associated with current PTSD symptoms. Depression and drug dependence were also highly prevalent; cocaine dependence in particular was associated with elevated rates of injecting risk and sexual risk behaviours.<sup>39</sup> This research shows the extent of mental health harms inflicted on women in the NSW sex industry, and the unlikelihood of women in the sex

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<sup>37</sup> [http://www.scarletalliance.org.au/projects/migration/News\\_Item.2010-12-09.4018](http://www.scarletalliance.org.au/projects/migration/News_Item.2010-12-09.4018)

<sup>38</sup> Kakar SR, Biggs K, Chung C, Sawleshwarkar S, Mindel A, Lagios K, Hillman RJ. A retrospective case note review of sex worker attendees at sexual health clinics in the western suburbs of Sydney. *Sexual Health* 2010; 7: 3– 7.

<sup>39</sup> Roxburgh A, Degenhardt L, Copeland J. Posttraumatic stress disorder among female street-based sex workers in the greater Sydney area, Australia. *BMC Psychiatry*. 2006;6:24

industry having the psychological capacity to exit the industry into mainstream work, due to the extent of abuse sustained in prostitution.

#### Any legislative changes that may be required

There are numerous examples of sex industry legislation that criminalise the industry and its customers (but not its victims) around the world, including: Ireland, Canada, Canada Exploratory Memorandum, Northern Ireland, Northern Ireland Assembly Memorandum.

### ***(ii) the influence of organised crime in human trafficking in New South Wales***

#### The current extent and nature of the brothel industry in New South Wales

***Recommendation: The NSW government should commission research into the extent of organised crime, trafficking victim, and foreign national involvement in NSW's sex industry.***

The Asianisation of the NSW sex industry continues, and trafficked Asian women in the NSW sex industry continue to remain unrecognised as victims. The 2012 *The sex industry in New South Wales: A report to the Ministry of Health* document identified more than 50 per cent of survey respondents in approved brothels in metropolitan Sydney as of 'Asian' or 'other non-English speaking background', and nearly 45 per cent of respondents as speaking only 'poor' or 'fair' English (pp. 17-18). Despite this finding, the authors maintain they found 'no evidence of recent trafficking of female sex workers in the...brothel survey' (p. 11). But it is unlikely that women who cannot speak English, and who are from impoverished countries like Thailand, have had the resources and networks to 'migrate' to Australia independently (organising visas, flight tickets, accommodation in Australia), and organise a 'labour contract' with a brothel owner. While lack of English and foreign nationality do not, in themselves, constitute evidence of trafficking, they do point to the existence of a significant channel of women coming from, particularly, Asia into the Australian sex industry. Given the poverty of women living in the Asia-Pacific region, it would be prudent to assume that some form of trafficking crime is taking place in Australia. The UK government exercises this kind of caution in relation to the possibility. The presence of foreign women in that country's sex industry who do not speak the local language is recognised as a red flag of trafficking; a new law against prostituting a 'coerced, deceived or threatened person' came into effect in the UK in 2010 after an NGO found more than eighty per cent of prostituted women in London were foreign nationals.

Asian-styled 'massage' parlours comprise a large part of the NSW sex industry, and are a sector that is wholly unregulated and unmonitored. There is no question that these venues are mediating the prostitution of women, and particularly women of Asian backgrounds. Massage parlours almost totally ignore local council requirements for business registration. They are often run by syndicates who transport women between different venues and locations. This takes place particularly for Asian-background women in the sex industry. It

was reported in October 2011 that an “inner city Sydney brothel . . . specializes in Korean prostitutes and is closely linked to the Comancheros outlaw motorcycle club and senior Asian organised crime figures” (McKenzie & Beck, 2011). March 2008, three people were arrested in Sydney for sexually enslaving 10 Korean women, and in December in 2008, a Korean woman thought to have been involved in Sydney’s sex industry was found dead in an apartment (Ramachandran, 2008).

*“The involvement of organised crime, including transnational organised crime, in human trafficking”*

The criminality of the sex industry in NSW should be recognised by the Committee as intrinsic to the business of prostitution, and reason to criminalise the industry and its customers. This criminality is described in detail in a Collective Shout submission to the 2015 NSW Select Committee Inquiry,<sup>40</sup> but further evidence of it is found in local media and court reports. Descriptions of people running brothels in NSW despite having criminal convictions are easily found in newspapers, such as the case of brothel owners banned in Victoria for pimping underage girls who were later moved to Sydney to launch major prostitution businesses.<sup>41</sup> In a more recent example, the NSW Land and Environment Court in 2015 made a finding of fact against a pimp for having operated a Sydney brothel illegally, and made orders to close it down and for payment of the plaintiff’s \$15,000 legal bill.<sup>42</sup> Media descriptions of the case convey a picture of trafficking: the women who were pimped included ‘five female workers [who] provided services to 59 male clients, over an 11-hour shift’, and who were described in advertising as “angels” from Japan, Korea, China and Taiwan’. When building management staff attempted to intervene in their exploitation on the apartment premises, these staff encountered ‘several ugly flashpoints with “thugs” linked to the brothel’.

No trafficking charges were brought against anyone involved in this case, as is typical for cases involving sex-related offences against Asian women in Australia. Prevailing attitudes of sexualised racism mean that Asian women are viewed as appropriate sexual targets of Australian men on the basis they are ‘docile, domesticated, disposable women, sexually submissive and easily controlled’.<sup>43</sup> The resulting weak human rights protection of Asian women in Australia includes anti-trafficking provisions set so high level that few traffickers are ever convicted. There has been not more than 15 such convictions since legislation was introduced in 2005. There is widespread incredulity in Australian society and the legal system about the prevalence of sex trafficking in the country. Despite the proliferation of unregistered Asian ‘massage’ businesses through the Sydney metropolitan area, which are populated with women almost exclusively

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<sup>40</sup> [https://www.academia.edu/27580531/NSW\\_inquiry\\_into\\_the\\_regulation\\_of\\_brothels](https://www.academia.edu/27580531/NSW_inquiry_into_the_regulation_of_brothels)

<sup>41</sup> Matthew Benns, ‘Inside seedy world of sex for sale,’ *Daily Telegraph*, 8 March 2014, p. 4.

<sup>42</sup> Madam Wu’s \$2m million sex racket, *Sun Herald*, 14 February 2016, Eamonn Duff.

<sup>43</sup> <http://www.smh.com.au/good-weekend/gw-classics/the-shameful-story-of-australias-serial-husbands-20140827-109b5i.html>

from Asian country-backgrounds,<sup>44</sup> there is little public inquiry into the lives of these foreign women in Australia's sex industry, nor into the routes by which they came to be prostituted in Australia. In racially stereotypical terms, it is assumed this population of women comprises 'migrant sex workers' who are eager to make money. No questions are raised about the appropriateness of Australia hosting a sex industry that is disproportionately populated with Asian women, let alone the human right implications of Australian men sexually exploiting women who have come here from countries poorer than our own. Natividad Gutiérrez Chong explains this particular link between prostitution and racism against Asian women:

Racist and sexual stereotypes of women are exploited in the sex industry; traditional patriarchal culture has an idiosyncratic role in setting up stereotyped female passivity and submissiveness of the female attitude; racialised and ethnicised peoples are prone to experience violence in all its manifestations, sexual exploitation being one of them.<sup>45</sup>

The criminality of the sex industry is not limited to its entrepreneurs; men who participate in the industry as customers also demonstrate a range of criminal behaviours. For example, as articulated by Judge John Pickering in 2016, 'the clients engaging in that industry are themselves interested in drugs and using drugs and trying to source the drugs from the girls'.<sup>46</sup> A 2015 study carried out in NSW surveyed 309 men as customers of the sex industry, and found these men had mostly been prostituting women even before the sex industry was decriminalised in that state: 'the average length of time men had been procuring sexual services was 21 years'. In other words, the men, in general, had previously ignored prevailing laws in NSW. They were frequent customers of the NSW sex industry: 'almost 59 per cent of the men who answered this question (based on  $n=262$ ) stated they purchased sex weekly, fortnightly or monthly ( $n=154$ )'. Furthermore, the '[m]en were asked if they would stop purchasing sexual services if it was re-criminalised in New South Wales. The majority of men indicated that they would not (69.3 per cent,  $n=180$ )'.<sup>47</sup> Again, their tendency to break the law is indicated in these responses, and a greater propensity for criminality of many kinds among sex industry customers was confirmed empirically by Melissa Farley and colleagues in 2011.<sup>48</sup>

Even people on the outskirts of the sex industry are frequently engaged in

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<sup>44</sup> <http://www.news.com.au/finance/work/at-work/if-you-looked-hard-enough-you-might-find-a-massage-parlour-that-doesnt-offer-sex/news-story/ef8e3d61d0179d1c3c86083de6e44e64>

<sup>45</sup> Gutiérrez Chong, N. (2014) Human Trafficking and the Sex Industry: Does ethnicity and race matter? *Journal of Intercultural Studies*, v35(2): 196-213.

<sup>46</sup> Madeline, the happy ex-hooker, *Daily Telegraph*, 19 August 2016, Sarah Crawford.

<sup>47</sup> Birch, P., & Ireland, J. (2015). Men procuring sexual services from women: Everyman or peculiar man? *Journal of Forensic Practice*, 17(1), 13.

<sup>48</sup> <https://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=0ahUKEwiV8eOFxMXRAhVDIjQKHU3jDBcQFggsMAI&url=http%3A%2F%2Fwww.prostitutionresearch.com%2Fpdfs%2FFarleyetal2011ComparingSexBuyers.pdf&usg=AFQjCNGS Hudrg7Y9-szvSDqWBDDwh9Mnaw>



criminal behaviour. These people act as ‘drivers’, ‘security’, touts and in other roles that keep women tied to venues or individual pimps. These individuals target even customers of the sex industry, as shown in a NSW District Court case from 2009 that involved the son of Rodney Hall, as owner of the Stairway to

<sup>49</sup> Heaven Brothel in St Marys, western Sydney. In this case, Hall violently victimised a customer of the brothel, and involved a woman prostituted through the brothel in his perpetration of this crime.<sup>50</sup> The criminality of all groups involved in the sex industry is not incidental to the industry itself. Organising and enacting the prostitution of women is inherently an activity requiring violence and intimidation, or at least manipulation and trickery. This fact is recognised by survivors of the industry in Australia who describe tactics deployed to entice them into prostitution, and to keep them there. One woman in 2016 recalled the steps that preceded her entry into the Australian sex industry:

“Bar staff wanted,” the ad read. “I can do that,” I thought. I’d been looking for a job for weeks and it didn’t seem as though the search was going to end any time soon. I didn’t have any experience behind a bar – not having my alcohol serving qualification made it difficult – but the ad assured me all training would be provided. My heart sank when I recognised the name of the bar – one of the local gentlemen’s clubs in Queensland, Australia...I replied to the number listed and a few days later was heading to the interview. 5pm on a Tuesday afternoon...I arrived at 5pm on the dot only to be met with words that felt like a punch in the stomach – “We don’t actually have any bar positions left, but we do have dancing positions if you want to try out for one of those?” Light bulb moment – so that’s how they lure girls in (there never were any bar positions, I later found out).<sup>51</sup>

### ***(b) the prevalence of human trafficking in New South Wales***

*“The prevalence of human trafficking in Australia, including in culturally and linguistically diverse communities”*

Ham and colleagues in 2016 described the plight of Korean women in Australia’s sex industry, and noted the fact their interview respondents were concerned about ‘requirements in certain [sex industry] workplaces regarding required deposits paid to the owner, lack of choice regarding shifts and clients, and pressure to take on longer shifts’. One of the respondents explained:

You have to stay on premise until close of business, which is normally

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<sup>49</sup> <http://www.austlii.edu.au/au/cases/nsw/NSWDC/2009/279.html>

<sup>50</sup> <http://www.austlii.edu.au/cgi->

[bin/sinodisp/au/cases/nsw/NSWDC/2009/279.html?stem=0&synonyms=0&query=pimp](http://www.austlii.edu.au/au/cases/nsw/NSWDC/2009/279.html?stem=0&synonyms=0&query=pimp)

<sup>51</sup> Caroline Norma and Melinda Tankard Reist (eds), *Prostitution narratives: Stories of survival in the sex trade*, Melbourne, Spinifex Press, 2016, P. 180.

three or four o'clock in the morning as free transport is available only at that time. Otherwise you have to take a taxi at your expense. And he prefers girls working at least six days a week. If you try to choose working days and hours at your own convenience, he won't let you continue to work. That how I got fired. (Emma, 28, former *noraebang doumi* [i.e., karaoke bar hostess], Sydney) <sup>52</sup>

While researchers in this case, as in many studies undertaken by Australia-based researchers, seek to de-emphasise trafficking as a feature of the Australian sex industry, their research nonetheless uncovers significant indicators of trafficking, as in the 'required deposits paid to the owner' mentioned above, and a range of other red flags, such as, in the case of interview respondents from Sydney, 'women noted that if their employers were Korean, they were more likely to have their earnings withheld or "managed", and their working hours and fees dictated to them'. Despite the existence of this kind of unequivocal evidence of trafficking activity taking place in the Australian sex industry--and particularly in its Asianised parts--Australian governments, police, the courts and social service agencies continue to deny resist suggestions that prostitution in the country is significantly organised through the criminal trafficking of women, and particularly Asian women.

### ***(c) the effectiveness of relevant legislation and policies***

The Australian government currently takes advantage of the Palermo Protocol's delinking of trafficking and prostitution. It uses the Protocol to assume a moral high ground internationally in its anti-trafficking efforts while openly eschewing any commitment to suppressing prostitution. This is evident in the federal government's own publications:

Cases of men and women exploited in situations outside the sex work industry, such as in the domestic work, hospitality and construction industries, or within intimate or family relationships, are now being identified by Australian authorities on a comparable basis to those exploited within the sex work industry

(Australian National Action Plan to Combat Human Trafficking and Slavery, 2015).<sup>53</sup>

The government has been criticised internationally for its approach by the US Department of State:

The [Australian] government did not take significant steps to reduce the demand for commercial sex acts, but continued to undertake specific efforts to raise awareness of and prevent trafficking within its legal sex

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<sup>52</sup> Silence, mobility and 'national values': South Korean sex workers in Australia, Julie Ham, Kyungja Jung, Haeyoung Jang *Sexualities* Vol 19, 2016, Issue 4, pp. 432 - 448.

<sup>53</sup> <https://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Documents/Trafficking-NationalActionPlanToCombatHumanTraffickingAndSlavery2015-19.pdf> p. 6

trade.<sup>54</sup>

At the same time the Australian federal government trumpets its national anti-trafficking legislation as 'best practice' policy in the field,<sup>55</sup> it oversees state and territory governments that continue to legalise and decriminalise their local sex industries, and have done so since the mid-1980s. These provincial governments have enacted 'harm minimisation' policies on prostitution for as long as the Netherlands and Germany. Even with a 2012 United Nations Office on Drugs and Crime finding that 80 per cent of reported trafficking victims globally are sexually exploited,<sup>56</sup> and research in the same year showing a positive link between sex industry legalisation and trafficking crime,<sup>57</sup> Australian state governments pursue escalated forms of sex industry deregulation: they seek to dismantle regulation whenever legislative reviews are held,<sup>58</sup> they mock and malign stakeholders who urge consideration of other regulatory models,<sup>59</sup> they fund programs that advocate recognition of 'migration for sex work',<sup>60</sup> and they disseminate untruths about alternative policy approaches to prostitution.<sup>61</sup>

The Australian government appears to forget its obligations under the Protocol, which it ratified in 2005. In particular, it is subject to Article 6 of the Protocol, which instructs that 'State Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women', and also Article 9.5, which stipulates that States Parties 'shall take or strengthen legislative or other measures...to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that lead to trafficking'. In defining prostitution as work, and the sex industry as a business sector like any other, the Australian government's laws and public policy programs directly contravene both of these articles. The federal Anti-People Trafficking Interdepartmental Committee not only restricts its focus to trafficking taking place 'outside the sex industry', but openly declares an intent to exclude the sex industry from view: 'During the next year there will be a continued focus on issues related to trafficking of people for exploitation outside the commercial sex industry'.<sup>62</sup>

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<sup>54</sup> Department of State, 'Country narratives,' United States Government, p. 83 at <http://www.state.gov/documents/organization/226845.pdf>

<sup>55</sup> <https://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Documents/Trafficking-NationalActionPlanToCombatHumanTraffickingAndSlavery2015-19.pdf>

<sup>56</sup> Lauren Gambino, '2.4 million victims of human trafficking worldwide, says UN,' 4 April 2012, retrieved 7 September 2014, <http://www.telegraph.co.uk/news/worldnews/9185811/2.4-million-victims-of-human-trafficking-worldwide-says-UN.html>

<sup>57</sup> S Cho, A Dreher, E Neumayer, 'Does Legalized Prostitution Increase Human Trafficking?', *World Development*, vol. 41, no. 1, 2013, pp. 67-82.

<sup>58</sup> See, for example, the submission of the Australian Capital Territory government to a 2012 review of the territory's prostitution legislation arguing against strengthened powers for the Office of Regulatory Services. Retrieved 7 September 2014, [http://www.parliament.act.gov.au/\\_data/assets/pdf\\_file/0006/373317/Submission\\_No\\_34\\_-\\_ACT\\_Government\\_OCRv7.pdf](http://www.parliament.act.gov.au/_data/assets/pdf_file/0006/373317/Submission_No_34_-_ACT_Government_OCRv7.pdf)

<sup>59</sup> Meagan Tyler, 'Buying sex should be banned in Australia,' 4 December 2013, *The Conversation*, retrieved 7 September 2014, <http://theconversation.com/buying-sex-should-be-banned-in-australia-21079>

<sup>60</sup> Scarlet Alliance, 'Scarlet Alliance Migration Project funded for another three years,' 16 September 2011, retrieved 7 September 2014, [http://www.scarletalliance.org.au/media/News\\_Item.2011-09-15.3248/view](http://www.scarletalliance.org.au/media/News_Item.2011-09-15.3248/view)

<sup>61</sup> Tyler, 'Buying sex should be banned in Australia.'

<sup>62</sup> Anti-People Trafficking Interdepartmental Committee, *Trafficking in Persons: The Australian Government's Response 1 July 2011-30 June 2012*, retrieved 9 September 2014, <http://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Documents/ReportoftheAntiPeopleTraffickingInterdepartmentalCommitteeJuly2012toJune2012.doc>

In 2013, the Australian government erased all mention of sexual exploitation as a special case of trafficking in its federal anti-trafficking legislation, despite the Protocol's continuing insistence on this particularity. The Australian trafficking legislation had previously included this special pleading, but no longer after the amendments. The explanatory memorandum to Australia's trafficking legislation now instructs courts to see prostitution as an industry no different from any other in terms of the harms that accrue to those forced into it:

It is intended that the conduct of the offender should be the relevant factor in determining whether the offence was aggravated, rather than the industry in which the exploitation took place. For example, the fact that a slavery-like offence involved exploitation within the sex industry is not in itself intended to warrant an aggravated charge as inherently cruel, inhuman or degrading treatment of the victim.<sup>63</sup>

While people forced to labour in kitchens or fields are victimised through the contrivances of third parties in successfully imposing debt or other controls that achieve their servitude and exploitation are victims of crimes of slavery deserving punishment, and harsher punishment if the conduct of the third party is egregious, it is important to note that the elements of forced labor are found in these aspects, and not in the performance of the labour itself, such as the washing of dishes or picking of cucumbers. This fact distinguishes forced labor fundamentally from trafficking. In the case of trafficking, third-party orchestration of the exploitation of prostitution not only arranges a victim's sexual enslavement, it also gives rise to crimes of rape and sexual assault. By definition, therefore, prostitution inflicts 'inherently cruel, inhuman and degrading treatment' on trafficking victims. This reality is erased in Australia's legislation, which promotes a fallacy of equal harm arising in trafficking for prostitution and forced labour. This fallacy allows the government to internationally proclaim its anti-trafficking efforts while paying no special attention to the organisation of women and children for prostitution in Australia, even though this special attention is warranted, and is in fact insisted upon in the Protocol.

***(d) the practical measures and policies including security measures to protect New South Wales identity documents that would address human trafficking in New South Wales***

The ability of police and the judiciary to comprehend the crime of trafficking in Australia requires education as to realistic red flags of trafficking, in addition to recognisable signs of the crime, such as pimps withholding passports. In addition to these traditional forms of evidence of trafficking, public education is needed as to the business activities of the sex industry that lead to trafficking. For example, debt 'contracts', escort 'tours' (i.e., women being moved around hotel rooms in major Australian cities for 'booking' in advance), 'deposits' required by business owners, women living in brothels or pimp-owned apartments, and the advertising of women who, in reality, speak very little English and do not know

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<sup>63</sup> Australian Commonwealth Government, *Report of the Anti-People Trafficking Interdepartmental Committee*, 2012, p. 29, retrieved 9 September 2014, <http://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Documents/ReportoftheAntiPeopleTraffickingInterdepartmentalCommitteeJuly2012toJune2012.pdf>

the location in which they are being prostituted. In the UK and other countries, all of these features of the sex industry are well understood to be red flags of trafficking crime. In Australia, on the other hand, beyond the confiscation of passports, almost nothing is taken in evidence of trafficking activity, and, accordingly, very little action is taken against pimps and traffickers, and very few convictions are recorded in the courts.

### ***(e) other related issues.***

*The extent to which human trafficking is facilitated by migration visas (including marriage, partner, student and work visas)*

Visa holders are currently allowed to work and invest in Australia's sex industry, and prior sex industry involvement is no obstacle to obtaining visas to enter or remain in Australia. The New Zealand government, similar to Australia, oversees a mostly deregulated domestic sex industry, but, different to Australia, does not allow visa holders to engage in prostitution or be involved in the local sex

industry.<sup>64</sup> This disqualification is for the sake of ensuring New Zealand's

obligation[s] under the United Nations Convention Against Transnational Organised Crime and its protocols on the smuggling of migrants and trafficking of persons can be fully engaged in respect of prostitution and commercial sexual services...to ensure that in decriminalising the laws on prostitution, we do not unwittingly allow people to be brought into the country for the purposes of prostitution.<sup>65</sup>

The latest *National Action Plan to Combat Human Trafficking and Slavery* states that 'Australia works to deter human trafficking and slavery by creating a hostile environment for prospective offenders in our region',<sup>66</sup> and so, in accordance with this commitment, there are compelling reasons to follow NZ's lead in disqualifying visa holders from involvement in the sex industry.

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<sup>64</sup> See *Prostitution Reform Act 2003*, Section 19: (1) No visa may be granted under the Immigration Act 2009 to a person on the basis that the person—

(a) has provided, or intends to provide, commercial sexual services; or  
(b) has acted, or intends to act, as an operator of a business of prostitution; or  
(c) has invested, or intends to invest, in a business of prostitution.

(2) It is a condition of every temporary entry class visa granted under the Immigration Act 2009 that the holder of the visa may not, while in New Zealand,—

(a) provide commercial sexual services; or  
(b) act as an operator of a New Zealand business of prostitution; or  
(c) invest in a New Zealand business of prostitution.

(3) It is sufficient reason for the Minister of Immigration or an immigration officer to determine that a temporary entry class visa holder is liable for deportation under section 157 of the Immigration Act 2009 if the Minister or the officer believes, on reasonable grounds, that the holder is engaged in any of the things listed in subsection (2)(a) to (c) of this section.

(4) Any conditions of a resident visa are deemed not to have been met and the resident is liable for deportation under section 159 of the Immigration Act 2009 if the Minister of Immigration or an immigration officer determines that the holder of a resident visa acts as an operator of, or invests in, a New Zealand business of prostitution.

(5) This section applies to all visas and permits held and all requirements and conditions imposed under the Immigration Act 1987 or the Immigration Act 2009, whether granted or imposed before or after the commencement of this section.

<sup>65</sup> The Honorable Lianne Dalziel (Minister of Commerce), New Zealand Parliament, Hansard (debates), 14 May 2003, 'Prostitution Reform Bill — In Committee', Volume:608;Page:5739 at [http://www.parliament.nz/en-nz/pb/debates/debates/47HansD\\_20030514\\_00001525/prostitution-reform-bill-%e2%80%94in-committee](http://www.parliament.nz/en-nz/pb/debates/debates/47HansD_20030514_00001525/prostitution-reform-bill-%e2%80%94in-committee)

<sup>66</sup> Commonwealth of Australia, *National Action Plan to Combat Human Trafficking and Slavery 2015-19*, 2014, p. 24 at <https://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Documents/Trafficking-NationalActionPlanToCombatHumanTraffickingAndSlavery2015-19.pdf>

Australia's sex industry increasingly trades Asian women for prostitution. A 2012 *The sex industry in New South Wales: A report to the Ministry of Health* publication identifies more than 50 per cent of survey respondents in approved brothels in metropolitan Sydney as of 'Asian' or 'other non-English speaking background', and nearly 45 per cent of these respondents as speaking only 'poor'

<sup>67</sup> or 'fair' English. Similarly, a 2010 study found over 54 per cent of women in prostitution in Western Sydney as born overseas.<sup>68</sup> A 2014 audit of the online advertising of Melbourne-based prostitution businesses found 41% promoting predominantly Asian women.<sup>69</sup> This influx of Asian women into Australia's sex industry is not occurring on a piecemeal basis: entrepreneurs from Asia are investing and operating in the local industry, and organising tourist, student and working-holiday visas to facilitate the immigration of women into their

<sup>70</sup> prostitution businesses. A 2015 Australian Institute of Criminology report states that, 'Reports based on immigration data suggest that many [people in prostitution] have initially entered Australia on tourist (e.g. Working Holiday and Work and Holiday Visas) and student visas'.<sup>71</sup> A 2006 National Audit Office report suggests that '[t]raffickers facilitate the women's entry into Australia by providing funds, airfares and visas'.<sup>72</sup> A 2010 Victorian government inquiry similarly noted in its final report that 'it is not unusual for traffickers to arrange documentation such as student, visitor/tourist or working holiday visas on the basis of incorrect, forged or otherwise fraudulent applications in the source country'.<sup>73</sup> Individuals relocating their prostitution businesses to Australia are likely to be key perpetrators of trafficking crime, given the utility of their home-country networks, and the relative difficulty of securing local women to enter prostitution in Australia.<sup>74</sup> These entrepreneurs are financially incentivised to use Australia's visa regime to facilitate the movement of women into their businesses, given the relatively bigger profits that can be made in Australia

<sup>75</sup> compared to prostitution businesses in Asia. Researchers Jang, Jung, and Dalton in 2009 noted that 'international employment networks based in Korea may have played a significant role in the entry of Korean women into the

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<sup>67</sup> *The sex industry in New South Wales: A report to the NSW Ministry of Health*. (2012). Sydney: Kirby Institute, University of New South Wales, pp. 17-18.

<sup>68</sup> Kakar SR, Biggs K, Chung C, Sawleshwarkar S, Mindel A, Lagios K, Hillman RJ. A retrospective case note review of sex worker attendees at sexual health clinics in the western suburbs of Sydney. *Sex Health*. 2010 Mar;7(1):3-7.

<sup>69</sup> Tatum Street, 'Australian male sex tourists in their own country?: Online advertisements of Asian women in Melbourne's brothel and escort industry: responding to demand,' RMIT University, unpublished honours thesis on file with author, 2014, p. 16.

<sup>70</sup> See 'Migrant workers in the unregulated sex industry,' chapter in James Rowe, *Shantusi: Surveying HIV and need in the unregulated sex industry*, Inner South Community Health Service, RMIT University, 2011 at [http://ischs.org.au/content123/uploads/2012/08/ISCHS\\_RMIT\\_SHANTUSI\\_Full\\_Report.pdf](http://ischs.org.au/content123/uploads/2012/08/ISCHS_RMIT_SHANTUSI_Full_Report.pdf)

<sup>71</sup> Lauren Renshaw and Jules Kim, *Migrant sex workers in Australia*, Research and Public Policy Series no.131, Canberra: Australian Institute of Criminology, November 2015.

<sup>72</sup> Australian National Audit Office, *Management of the Australian Government's Action Plan to Eradicate Trafficking in Persons*, ANAO Audit Report, No.30 2008-09, p. 30 at [http://www.anao.gov.au/uploads/documents/2008-09\\_Audit\\_Report\\_30.pdf](http://www.anao.gov.au/uploads/documents/2008-09_Audit_Report_30.pdf)

<sup>73</sup> Victorian Government, *Inquiry into People Trafficking for Sex Work: Government Response*. 2011, p. 39 at <http://www.parliament.vic.gov.au/57th-parliament/dccp/article/965>

<sup>74</sup> See reference to 'worker shortage' on p. vi of Sharon Pickering, *Working in Victorian brothels*, Consumer Affairs Victoria, 2009 at <https://www.consumer.vic.gov.au/library/publications/resources-and-education/research/working-in-victorian-brothels-2009.pdf>

<sup>75</sup> The IBIS Business Information service in a 2010 prediction nominated 'sexual services' as the likely highest earning personal service industry in Australia. It predicted that the sector's revenues would increase to about A\$2.475 billion by the end of the decade. This equates to a 6.8 percent annual rise at a time when the Australian GDP growth rate is below 3 percent (in Mary Lucille Sullivan, *Making Sex Work*, Spinifex, 2007, p. 138).

Australian entertainment and sex industry', given that a 'large number of recruiters in Korea [are] working as agents for Australia-based Korean recruiters of entertainment and sex workers'.<sup>76</sup> A 2009 Victorian government-commissioned report cited testimony from a legal brothel operator in Melbourne that he was regularly 'offered groups of workers by brokers or agents who approached them', mainly comprising 'workers [i.e., groups of women organized for prostitution] from Korea, China, and Thailand'.<sup>77</sup> There is currently no restriction on visa holders investing in or operating prostitution businesses in legalised jurisdictions in Australia. The *Victorian Sex Work Act 1994*, for example, does not bar visa holders from applying for a brothel or escort agency license, and in fact offers interpreters for applicants to sit the licensee exam.<sup>78</sup>

Australia's efforts in the Asia-Pacific region in coordinating with overseas partners to suppress trafficking crime are being undermined by domestic laws, which are acting both as an incentive and a facilitator of inbound trafficking activity. Regional anti-trafficking efforts would be better served through Australia coordinating with New Zealand in leveraging its visa regime to tackle the crime.

There have been only 17 convictions for trafficking or slavery offences in Australia since 2005,<sup>79</sup> which reflects difficulties faced by police and prosecutors in gathering evidence of the crime and defending it in court. Often, police resort to using living-off-the-proceeds-of-crime charges to impede the commercial activity of traffickers.<sup>80</sup> This relative absence of a legal deterrent to trafficking crime in Australia makes *disrupting the business model of prostitution entrepreneurs* a more effective and less resource-intensive means of suppressing the crime. Critically, this business model centres on the ability of operators to source women from Asia using student and working- holiday visas. In a 2009 case, for example, six young women were enslaved to work up to 20 hours a day in the Diamonds brothel in Willoughby and ordered...to perform unusual sex acts against their will so they could pay 'debts' to the madam. [The madam] recruited the women from Malaysia and arranged for them to arrive on student visas, telling them they had to pay a \$5000 debt for their enrolment in education courses, airfares and visas.<sup>81</sup>

Even in blatant cases like this, Australian prosecutors are mostly unsuccessful in securing trafficking convictions. Empowering police with the ability to exclude or deport visa holders in the sex industry (or prevent them entering the industry) would therefore fulfil more effectively Australia's commitments to suppressing

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<sup>76</sup> Jang, H, Jung, K, Dalton, B and Wilson, R, *Sex Trafficking Or Shadow Tourism?: The Lives of Foreign Sex Workers in Australia*, 2009, p. 258.

<sup>77</sup> See footnote 11: Pickering, 2009, p. 43

<sup>78</sup> The Business Licensing Authority application form to apply for a 'sex work provider license' states that, 'If you are not an Australian citizen, you must attach a copy of your passport, residency status and visa permitting you to work in Australia' at Consumer Affairs Victoria, 'Apply for a sex work service provider's licence,' <https://www.consumer.vic.gov.au/businesses/licensed-businesses/sex-work-service-providers/licensing/apply-for-a-licence>

<sup>79</sup> University of Queensland, 'Statistics and other data,' at <http://www.law.uq.edu.au/human-trafficking-statistics>

<sup>80</sup> Dan Oakes, 'Police arrest brothel syndicate members in raids across city,' 2 July 2013, *The Age*, at <http://www.theage.com.au/victoria/police-arrest-brothel-syndicate-members-in-raids-across-city-20130702-2pa5e.html>

<sup>81</sup> Paul Bibby, Stephanie Gardiner, 'Madam convicted of enslaving students at north shore brothel,' *The Sydney Morning Herald*, 3 April 2013, p. 5; <http://www.smh.com.au/nsw/jail-for-brothel-keeper-who-enslaved-women-20130705-2phgf.html>

trafficking crime under the United Nations Palermo Protocol (2000).

As mentioned, the proportion of overseas-born women in Australia's sex industry who have 'fair' or 'poor' levels of English proficiency is very high. In contrast, most patrons of the sex industry in Australia are local English speakers. A 2015 study notes that '[n]early all [migrant sex worker] respondents reported their customers to be primarily Anglo (92 per cent)'.<sup>82</sup> Inability to communicate in the context of prostitution transactions poses health and safety risks for women in the sex industry. Evidence of violence perpetrated by Australian men against foreign women in prostitution is mostly available in the sex tourism literature,<sup>83</sup> but it is likely Asian women encounter similar violence in Australia's domestic industry; there have been a number of deaths of these women in prostitution in Australia.<sup>84</sup> Excluding visa holders from Australia's sex industry would therefore more effectively fulfil policy objectives established under Australia's 'harm minimisation' approach to prostitution

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<sup>82</sup> Elena Jeffreys, 'Anti-trafficking Measures and Migrant Sex Workers in Australia,' *Intersections: Gender and Sexuality in Asia and the Pacific*, Issue 19, February 2009 at <http://intersections.anu.edu.au/issue19/jeffreys.htm>

<sup>83</sup> Kruhse-MountBurton, S. (1995). Sex tourism and traditional Australian male identity. In E.M. Bruner, J.B. Allcock & M.F. Lanfant (Eds.), *International tourism: identity and change* (1st ed., pp. 192-202). London: Sage Publications; Garrick, D. (2008). Excuses, excuses: rationalisations of Western sex tourists in Thailand. *Current Issues in Tourism*, 8(6),497-509.

<sup>84</sup> Natalie O'Brien, 'Police baffled by prostitute murder mystery,' 31 January 2009, [The Australian](http://www.theaustralian.com.au/archive/news/police-baffled-by-prostitute-murder/story-e6frg606-1111118716217) at <http://www.theaustralian.com.au/archive/news/police-baffled-by-prostitute-murder/story-e6frg606-1111118716217> Andrew Dowdell, 'Man accused of murdering sex worker Ting Fang in Hindley St hotel claims police have wrong man,' 12 January 2015, [The Advertiser](http://www.adelaidenow.com.au/news/south-australia/man-accused-of-murdering-sex-worker-ting-fang-in-hindley-st-hotel-claims-police-have-wrong-man/story-fni6uo1m-1227182441787?nk=c3332cb06fe63062c5d9de337d3fa27b-1449812671) at <http://www.adelaidenow.com.au/news/south-australia/man-accused-of-murdering-sex-worker-ting-fang-in-hindley-st-hotel-claims-police-have-wrong-man/story-fni6uo1m-1227182441787?nk=c3332cb06fe63062c5d9de337d3fa27b-1449812671>

Thomson, T. 2011, October 11. 'Death and drugs,' *Courier Mail*; Ramachandran, A. 2008, December 23. Brothels said to operate in unit block where woman's body found. *The Sydney Morning Herald* at <http://www.smh.com.au/news/national/brothels-said-to-operate-in-unit-block-where-womans-body-found/2008/12/22/1229794326951.html>