



Committee Secretary
Parliamentary Joint Committee on Law Enforcement
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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.

We address, specifically, items 5(a) and 6 of the inquiry terms of reference.

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

Kind regards

Dr. Caroline Norma
for Collective Shout



Parliamentary Joint Committee on Law Enforcement

Inquiry into human trafficking

5(a) 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.¹ 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.²

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',³ 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.

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

¹ 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.

² 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%94-in-committee

³ 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>

per cent of these respondents as speaking only ‘poor’ or ‘fair’ English.⁴ Similarly, a 2010 study found over 54 per cent of women in prostitution in Western Sydney as born overseas.⁵ A 2014 audit of the online advertising of Melbourne-based prostitution businesses found 41% promoting predominantly Asian women.⁶ 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 prostitution businesses.⁷ 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 (eg Working Holiday and Work and Holiday Visas) and student visas’.⁸ A 2006 National Audit Office report suggests that ‘[t]raffickers facilitate the women’s entry into Australia by providing funds, airfares and visas’.⁹ 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’.¹⁰ 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.¹¹ 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 compared to prostitution businesses in Asia.¹² 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 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’.¹³ 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’.¹⁴ 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.¹⁵

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.

⁴ *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.

⁵ 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.

⁶ 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.

⁷ 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

⁸ Lauren Renshaw and Jules Kim, *Migrant sex workers in Australia*, Research and Public Policy Series no.131, Canberra: Australian Institute of Criminology, November 2015.

⁹ 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

¹⁰ Victorian Government, *Inquiry into People Trafficking for Sex Work: Government Response*. 2011, p. 39 at <http://www.parliament.vic.gov.au/57th-parliament/dpc/article/965>

¹¹ 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>

¹² 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).

¹³ 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.

¹⁴ See footnote 11: Pickering, 2009, p. 43

¹⁵ 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>

There have been only 17 convictions for trafficking or slavery offences in Australia since 2005,¹⁶ 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.¹⁷ 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.¹⁸

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 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)'.¹⁹ 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,²⁰ 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.²¹ Excluding visa holders from Australia's sex industry would therefore more effectively fulfil policy objectives established under Australia's 'harm minimisation' approach to prostitution.

6. The effectiveness of relevant Commonwealth 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

¹⁶ University of Queensland, 'Statistics and other data,' at <http://www.law.uq.edu.au/human-trafficking-statistics>

¹⁷ 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>

¹⁸ 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>

¹⁹ 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>

²⁰ 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.

²¹ Natalie O'Brien, 'Police baffled by prostitute murder mystery,' 31 January 2009, *The Australian* at <http://www.theaustralian.com.au/archive/news/police-baffled-by-prostitute-murder/story-e6frg606-111118716217> Andrew Dowdell, 'Man accused of murdering sex worker Ting Fang in Hindley St hotel claims police have wrong man,' 12 January 2015, *The Advertiser* 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>

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).²²

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.²³

At the same time the Australian federal government trumpets its national anti-trafficking legislation as 'best practice' policy in the field,²⁴ 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,²⁵ and research in the same year showing a positive link between sex industry legalisation and trafficking crime,²⁶ Australian state governments pursue escalated forms of sex industry deregulation: they seek to dismantle regulation whenever legislative reviews are held,²⁷ they mock and malign stakeholders who urge consideration of other regulatory models,²⁸ they fund programs that advocate recognition of 'migration for sex work',²⁹ and they disseminate untruths about alternative policy approaches to prostitution.³⁰

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'.³¹

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:

²² <https://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Documents/Trafficking-NationalActionPlanToCombatHumanTraffickingAndSlavery2015-19.pdf> p. 6

²³ Department of State, 'Country narratives,' United States Government, p. 83 at <http://www.state.gov/documents/organization/226845.pdf>

²⁴ <https://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Documents/Trafficking-NationalActionPlanToCombatHumanTraffickingAndSlavery2015-19.pdf>

²⁵ 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>

²⁶ S Cho, A Dreher, E Neumayer, 'Does Legalized Prostitution Increase Human Trafficking?', *World Development*, vol. 41, no. 1, 2013, pp. 67-82.

²⁷ 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

²⁸ 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>

²⁹ 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

³⁰ Tyler, 'Buying sex should be banned in Australia'.

³¹ 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>

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.³²

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.

³² 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>