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COMMITTEE SECRETARY
JOINT STANDING COMMITTEE ON FOREIGN AFFAIRS,
DEFENCE AND TRADE
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CANBERRA ACT 2600

To the Committee Secretary of the Inquiry on Establishing a Modern Slavery Act in Australia.

Thank you for the opportunity to submit a response to the Terms of Reference regarding whether Australia should adopt a Modern Slavery Act comparable to the United Kingdom's Modern Slavery Act 2015.

The Nordic Model Australia Coalition 'NorMAC' is a secular organisation directed by and for survivors of commercial sexual exploitation and sexual servitude in Australia, a harmful cultural practice that we seek to end.

We are responding to your Inquiry into the adoption of a modern slavery act based on the UK legislation because the trafficking of women into debt-bonded prostitution is a form of sexual slavery and remains the primary reported form of human-trafficking in Australia.

The findings from the Parliamentary Joint Committee on the Australian Crime Commission Inquiry into the trafficking of women for sexual servitude in June 2004 noted that a number of these problems still remain.

*"The Committee found that most of the trafficked women in Australia were recruited from South East Asia and China. Some of the women are recruited from within the sex industry and are aware of what they are required to do when they arrive in Australia, while others are deceived either as to the nature of the work they have contracted to do, or the conditions they will work under in Australia. In any case, they will typically incur a debt of \$35,000- \$40,000 to be brought into the country. The traffickers facilitate the women's entry to Australia by a range of fraudulent means, including providing visas (typically student or holiday), false passports and funds. Traffickers usually bring the women into Australia through Sydney before being farmed out to brothels in Melbourne, Perth and other areas. The Committee remains concerned at the ease with which traffickers appear able to obtain entry visas for the hundreds of women they bring into Australia each year for the purpose of sex work, and accordingly recommends that the Australian Crime Commission focuses its investigations on the methods by which people traffickers are able to circumvent Australian immigration barriers through visa fraud."*¹

¹ www.aph.gov.au/binaries/senate/committee/acc_ctte/completed_inquiries/2002-04/sexual_servitude/report/report.pdf



The Victorian Government's 2010 *Inquiry into people trafficking for sex work*, revealed that the majority of women are trafficked from Thailand, South Korea and China. The report also suggested that Sydney was a main gateway for a mobile population of trafficked women who were readily shifted between states and through both the legal and non-legal sex trade.²

In June 2012 the US State Department identified Australia as a destination country for trafficked persons and stated the following;

*"Australia is primarily a destination country for women subjected to forced prostitution and to a lesser extent, women and men subjected to forced labor. Child sex trafficking also occurs with a small number of Australian citizens, primarily teenage girls, exploited within the country, as well as some foreign victims. Some women from Thailand, Malaysia, South Korea, China, and, to a lesser extent, India, Vietnam, Eastern Europe, and Africa migrate to Australia voluntarily intending to work legally or illegally in a number of sectors, including the sex trade. Subsequent to their arrival, however, some of these women are coerced into prostitution in both legal and illegal brothels. There were news reports that some Asian organized crime groups recruit Asian women to migrate to Australia, sometimes on student visas, and then subsequently coerce them into the sex trade. 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. Some victims of sex trafficking have also been exploited in domestic servitude."*³

- **The nature and extent of modern slavery (including slavery, forced labour and wage exploitation, involuntary servitude, debt bondage, human trafficking, forced marriage and other slavery-like exploitation) both in Australia and globally;**

According to the European Commission's Department of Migration and Home Affairs 'People are trafficked for the purpose of sexual and labour exploitation or the removal of organs. Women and children are particularly affected: women and girls represent 56 % of victims of forced economic exploitation and 98 % of victims of forced commercial sexual exploitation.'⁴

Australia's current situation reflects the findings of a recent report, *Does Legalized Prostitution Increase Human Trafficking?*, (a collaboration between the London School of Economics and Political Science (LSE), the German Institute for Economic Research, and Heidelberg University) which described international human trafficking as "*one of the dark sides of globalisation*". The report explained that most victims of international human trafficking are women and girls, the

² http://www.parliament.vic.gov.au/images/stories/committees/dcp/trafficking_Final_full_report_with_cover.pdf

³ <http://www.state.gov/j/tip/rls/tiprpt/2012/192366.htm>

⁴ http://ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/trafficking-in-human-beings_en



vast majority of whom end up being sexually exploited through prostitution. Domestic policy on prostitution in countries of destination, it says, has a marked effect. The researchers used a global sample of 116 countries and found that countries where prostitution is legal tend to experience a higher reported inflow of human trafficking than countries in which prostitution is prohibited.⁵

NorMAC acknowledges the correlation between sexual servitude in prostitution and human trafficking as described by Sigma Huda, former UN Special Rapporteur on Trafficking, Huda states – *“It is rare that one finds a case in which the path to prostitution and/or a person’s experiences within prostitution do not involve, at the very least, an abuse of power or an abuse of vulnerability.....put simply, the road to prostitution and life within ‘the life’ is rarely one marked by empowerment or adequate options.”*⁶

- **The prevalence of modern slavery in the domestic and global supply chains of companies, businesses and organisations operating in Australia;**

The reality for many women trafficked into Australia is that they are lured here under false promises, forced to work in brothels against their will, under threats and intimidation and often without pay.

Numerous cases have also been reported in the media of sex trafficking of particularly Asian women. The Sydney Morning Herald reported on an investigation which found that upon arriving in Australia on travel visas, dozens of women from Hong Kong and Thailand were met by brothel managers who lodged study visa applications on their behalf.⁷

A joint investigation by the Sydney Morning Herald and ABC’s Four Corners in 2011 examined details regarding Federal Police investigations which found evidence of two legal Sydney brothels and three legal Melbourne brothels linked to international human trafficking. The sex slavery syndicate convinces Asian women to come to Australia to study. When they arrive here they are kept against their will, stripped of passports and forced to work as sex slaves. One member of the brothel syndicate was charged with killing Melbourne man Adrian Papo, who was helping a Korean sex slave to escape.⁸

The investigation also found that state and local authorities responsible for approving legal brothels have taken no action, despite court documents in August 2011 detailing Federal Police allegations against brothels and their managers. Senior police sources said the links between organised crime, sex trafficking syndicates and legal brothels highlighted the need for stronger

⁵ http://www.lse.ac.uk/geographyAndEnvironment/whosWho/profiles/neumayer/pdf/Article-for-World-Development-_prostitution_-anonymous-REVISED.pdf

⁶ [http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/577950/EPRS_BRI\(2016\)577950_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/577950/EPRS_BRI(2016)577950_EN.pdf)

⁷ <http://www.smh.com.au/nsw/trafficking-women-lured-with-student-visas-forced-into-sex-slavery-20140329-35q88.html#ixzz3iznZyeC0>

⁸ <http://www.theage.com.au/victoria/police-arrest-brothel-syndicate-members-in-raids-across-city-20130702-2pa5e.html>



state regulation and criticised NSW and Victoria for their woeful oversight of the industry.⁹

In 2011 an article published in the West Australian reported that; *“A prostitution racket operating between Perth and Hong Kong is flourishing under the cover of temporary visas promoted by the Australian and Chinese governments.”* The article went on to state that women are aged between 18 and 30 were being encouraged via websites, seminars and pamphlets in Hong Kong to take one-year working holidays to Western Australia. One female report from Hong Kong responded to the ad and spent almost a week at a massage business located in an eastern Perth suburb. She gathered evidence showing that the business allegedly operated as a brothel and claimed women were encouraged to offer ‘extra services’ to earn more money and tips.¹⁰

In February 2012 The Sydney Morning Herald revealed that a legal brothel in the New South Wales suburb of Guildford was under investigation by the Australian Federal Police ‘AFP’ after three women (believed to be under-age) had their student visas confiscated by the brothel owner who forced them into prostitution. Glyn Lewis, the AFP’s national co-coordinator of human trafficking operations, referred to the brothel as abhorrent and stated – *“It’s our general experience that these women live under very harsh conditions, their freedom’s restricted, they may be forced in various ways coercively, threatened with deportation by the owners and lied to. They often have poor language skills so they’re really in a very frightened state when we get to meet them.”*¹¹

In February 2013, consultancy firm Brothel Busters contacted two senior officials within Immigration's national investigation unit, identifying four Hong Kong women who were delivered to Australia to work in the sex industry. The girls were dispersed between two brothels in Blacktown and an associated parlour in Sydney's south. Brothel Busters head Chris Seage also provided a paper trail that demonstrated exactly how sex traffickers were utilising the student visa system. Three months later, a regular client of the Blacktown parlours became irate about prolific drug use on premises and turned whistle-blower. In a letter, dated May 19, 2013, to Blacktown Council mayor Len Robinson, he stated - *“These working girls hardly speak a word of English ... are here on a student visa and are permitted limited hours per week to work (20 hours) but are forced to work up to 18 hours a day.”*¹²

Another case saw a brothel madam exposed for enslaving a group of Malaysian women and forcing them to work 17 hour shifts, including coerced unprotected sex acts.¹³

⁹ <http://m.smh.com.au/national/legal-brothels-linked-to-international-sex-trafficking-rings-20111009-1lfxs.html>

¹⁰ <https://au.news.yahoo.com/thewest/latest/a/10076082/women-encouraged-to-come-to-wa-to-work-as-masseurs/>

¹¹ <http://www.smh.com.au/nsw/brothel-owner-charged-over-human-trafficking-20120202-1qvoo.html#ixzz1k01NQSCy>

¹² <http://www.dailytelegraph.com.au/news/nsw/brothel-owners-banned-in-victoria-for-employing-underage-prostitutes-now-running-big-brothels-in-sydney/story-fni0cx12-1226848537447?nk=269f499e0d84b5af747fa64738b2bb94>

¹³ <http://www.smh.com.au/nsw/jail-for-brothel-keeper-who-enslaved-women-20130705-2phgf.html>



Also in February 2013 the Daily Telegraph reported a court case investigating six young women on student visas were forced to work in a Sydney brothel in conditions of sexual servitude for up to 20 hours a day. Crown prosecutor Carolyn Davenport SC said the women reported to a boss called 'Yoko' who told the women that they needed to pay off a \$5000 debt for getting them into Australia before they could leave the Diamonds brothel in Willoughby.¹⁴

In 2014, Senior Sergeant Marilyn Ross was quoted in the media after a four month investigation led to the arrest of two women for running illegal brothels in the Victorian suburbs of Coburg and Brunswick. Sergeant Ross said up to 300 suspected illegal brothels continued to ply their trade throughout Melbourne, most of them in massage parlours. "We know there are some places where there are some issues," she said. "I just think we're starting to see more of it." She said officers from the sex industry unit were aware of underage girls working as prostitutes, and of links to human trafficking into sex slavery from Asia. "Definitely - there is human trafficking in Victoria," she said.¹⁵

Finally, we note that the 2015 New South Wales government inquiry into the regulation of brothels made a number of important findings.¹⁶

FINDING 9 - Unapproved massage parlours and karaoke bars where sexual services are provided without planning approval and in an underground manner, allow significant potential for them to be affiliated with organised crime or human trafficking and sexual servitude especially compared with the approved sector of the sex services industry in NSW.

FINDING 11 - Successful sex slave prosecutions and evidence from both the Australian Federal Police and the NSW Police Force make it probable that:

- Sexual servitude occurs in NSW; and
- Criminal networks do operate in some parts of the NSW sex services industry.
- **Identifying international best practice employed by governments, companies, businesses and organisations to prevent modern slavery in domestic and global supply chains, with a view to strengthening Australian legislation;**

In April 2014 the Parliamentary Assembly of the Council of Europe called on member states to "consider criminalising the purchase of sexual services, based on the Swedish model, as the most effective tool for preventing and combating trafficking in human beings."¹⁷

¹⁴ <http://www.dailytelegraph.com.au/student-sex-slaves-recruited-overseas-to-work-in-a-sydney-brothel-a-jury-heard/story-e6freuy9-1226570011806>

¹⁵ <http://www.theage.com.au/victoria/police-raid-illegal-brothels-in-brunswick-and-coburg-two-women-arrested-20140606-39oej.html>

¹⁶ [http://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/545e0ced0ca425aeca257ef900185d16/\\$FILE/Final%20Report%20-%20Inquiry%20into%20the%20Regulation%20of%20Brothels.pdf](http://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/545e0ced0ca425aeca257ef900185d16/$FILE/Final%20Report%20-%20Inquiry%20into%20the%20Regulation%20of%20Brothels.pdf)

¹⁷ <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=20559&lang=en>



The 'Swedish Model' is a legislative response that culminated from decades of research, the legislation called the Kvinnofrid (Women's Peace/Security/Freedom) Law was enacted in 1999 to address women's inequality, all forms of violence against women and improve resources to women's services.

NorMAC supports the Swedish model which due to its increasing uptake in many jurisdictions has more recently been dubbed the 'Nordic Model' or 'Asymmetric Decriminalisation'. Increasing international evidence acknowledges this legislative response as the best human rights based approach to stop human trafficking for the purposes of sexual slavery.

The effect of this legislation is four-fold;

- Decriminalising prostituted persons through abolition of solicitation offences.
- Ensures protection and support to all victims of trafficking for the purposes of sexual exploitation.
- Creates access to exit pathways out of prostitution.
- Discourages men (the primary client base for people in prostitution) from purchasing sex thereby making the sex trade less viable for third party exploiters which includes traffickers, pimps, brothel owners/managers.

Legislative approaches based on Sweden's model have since been adopted in Norway (2009), Iceland (2009), Northern Ireland (2014), Canada (2014), France (2016) and the Republic of Ireland (2017). This approach is also under consideration in many other jurisdictions including Israel, Lithuania and Scotland.

The Swedish government report reviewing the effects of the legislation found that the law had acted as an effective barrier to trafficking for the purposes of sexual exploitation. The report also noted that prostitution in Sweden, unlike comparable countries, had not increased and street prostitution had halved in the decade since its introduction. Data shows the number of prostituted people in Sweden was roughly ten times lower per capita than in Denmark.¹⁸

Other countries that have adopted the Nordic Model have also noted its success. In 2014, Norway conducted an independent 5-year evaluation of their laws, the findings stated – *"The prostitution market in Norway is, like the rest of Europe, characterized by an increasing share of immigrants... Most of these immigrants are women with few other real options than to entry into prostitution. Human trafficking is a part of this rotating market. The entry into prostitution is based on economic motives... Norway has a number of good social policies and charities targeting trafficking victims and prostitute."* And *"The enforcement of the law, in combination with the laws against trafficking and pimping, makes Norway a less attractive country for prostitution based trafficking than what would have been the case if the law had not been adopted."* The results also showed a 20-25% reduction in prostitution, and street prostitution

¹⁸ <http://www.government.se/content/1/c6/14/92/31/96b1e019.pdf>



had nearly halved.¹⁹

- The implications for Australia's visa regime, and conformity with the *Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* regarding federal compensation for victims of modern slavery;

In the past week concerns have been raised that a secret government document has revealed that 457 'skilled worker' visas have been used to bring 'massage therapists' to Australia who were then used for prostitution. The document obtained by news.com.au is said to contain an independent review into the 457 program commissioned by the government in 2014. In a section marked 'Massage Therapist', the paper notes: "*This addresses concerns about potential use of this occupation in a prostitution setting. While lodged nomination numbers are very low, they are increasing and it is considered that the Australian community would be very concerned about such positions being filled with overseas workers.*" A source close to the review said the government knew there had been cases where this had happened. "*The government has been aware that 457 visas are being used to exploit people for prostitution for some time,*" the insider reported.²⁰

Given the very concerning nature of claims that 457 visas have been used to bring people into Australia for the purposes of sexual exploitation and sexual servitude. It is imperative that this report is made public and that any persons incriminated in the trafficking of person's for sexual exploitation are referred to the appropriate law enforcement agencies.

In the year 2000 the *Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*, made trafficking for prostitution, not simply for 'forced' prostitution, a primary form of sexual exploitation.

The explanatory note to the European Trafficking Directive states that;

*"Victims of trafficking in human beings should, in accordance with the basic principles of the legal systems of the relevant Member States, be protected from prosecution or punishment for criminal activities such as the use of false documents, or offences under legislation on prostitution or immigration, that they have been compelled to commit as a direct consequence of being subject to trafficking. The aim of such protection is to safeguard the human rights of victims, to avoid further victimisation and to encourage them to act as witnesses in criminal proceedings against the perpetrators. This safeguard should not exclude prosecution or punishment for offences that a person has voluntarily committed or participated in."*²¹

¹⁹ <http://www.eu-norway.org/Global/SiteFolders/webeu/Evaluation.pdf>

²⁰ <http://www.news.com.au/finance/economy/australian-economy/massage-therapists-used-as-prostitutes-in-457-visa-rort/news-story/46779feb1f1e0259843a49563e148a82>

²¹ http://ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/trafficking-in-human-beings_en



Other important documents recognising the connection between prostitution and trafficking include Article 6 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979) which demands that - *“Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”*²²

It is essential that we do not allow prostitution of women to be reframed as a form of empowerment for women. Coercion of women into the sex trade is also a form of forced sexual servitude and many studies internationally have highlighted that women in the sex trade, even those who have supposedly chosen to be in prostitution have experienced limited options and opportunities.

NorMAC is deeply concerned by the fact that recently a number of high profile human rights organization’s and their spokespersons have become apologists for the sex trade. An example was recent comments by Kenneth Roth, Executive Director of Human Rights Watch. On the social media platform twitter, Roth stated; *“All want to end poverty, but in the meantime why deny poor women the option of voluntary sex work?”*²³

NorMAC’s view is that a choice to enter prostitution based on poverty can not be described as an informed choice, or one motivated by 'agency' and constitutes an assault on the dignity of women. The ongoing targeting of women by the sex trade as a whole continues to prevent women from full, effective and equal participation at all levels of society including decision making processes in political, economic and public life.

Since 2015 victims of human trafficking have been able to stay on a temporary visa or a permanent witness protection visa, with an assistance notice from the Attorney-General's Department, rather than a criminal justice stay certificate. The Human Trafficking Visa Framework (HTVF) forms a part of the whole-of-government strategy to combat human trafficking and consists of 2 visa subclasses:

Bridging F visa- subclass 060 (Temporary): Unlawful non-citizens who have been assessed by the Australian Federal Police (or other law enforcement agency) as suspected victims of human trafficking may be eligible for this temporary visa designed exclusively for trafficked people.

Referred Stay visa - subclass 852 (Permanent): may be granted to eligible victims or witnesses of trafficking who have contributed to an investigation or prosecution of a human trafficking related offence, and as a result would be in danger if they returned to their home country.

These recently introduced visa categories have helped to alleviate some of the stigma that victims of human trafficking may have faced when seeking support or employment while in Australia but have been criticised by Anti-Slavery Australia Director Jennifer Burn, who stated;

²² <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>

²³ <https://twitter.com/kenroth/status/630677061858930688>



*“The system that we have in Australia really operates like a witness support system rather than a system that's based on the principles of human rights”.*²⁴

It is also NorMAC's concern that this current visa regime does not offer the protection that might be required for some victims of human trafficking. For some person's exploited by the sex trade, providing evidence to prosecute traffickers is dangerous and may risk the safety of their family.

In cases where coercion and the wellbeing of family and loved ones is threatened or placed at risk, it would be appropriate to introduce another visa category or alternatively extend one of the other visa categories to cover victims of Human Trafficking.

Such an option could include increasing eligibility of the Protection visa- subclass 866 to cover cases involving human trafficking. Another option could include an extension to the Woman at risk visa-subclass 204. Such an extension would involve a change in eligibility requirements but this could be limited only to victims of sexual slavery in Australia.

The fear of reprisals from traffickers is a real concern and well documented. In May 2013 the Australian Institute of Criminology published the paper *Barriers to trafficked persons' involvement in criminal justice proceedings: An Indonesian case study*.

The paper documented cases that identified where trafficked persons have suffered reprisals by their traffickers after they testified against them in legal proceedings. The paper stated that in deciding whether to participate in criminal justice proceedings, trafficked persons commonly focused on: the safety of both themselves and their family and fear associated with being in the physical presence of the perpetrator.²⁵

Maruska Batakovic is the national coordinator for the Red Cross Support for Trafficked People Program. Ms Batakovic raised concern that they can only support alleged people-trafficking victims if they agree to cooperate with the Australian Federal Police (AFP). Ms Batakovic said it was *“definitely the case in some occasions”* that women feared for their safety after they had cooperated with the police to access support. *“Once they leave the program then the parameters of the Support Program cease, but we would ensure that they have referrals and pathways to go to,”* she said.¹⁹

Australian Catholic Religious Against Trafficking in Humans (ACRATH) executive director Christine Carolan said victims had legitimate grounds to be fearful. *“The sisters that we work with in Thailand have told us that women who come from Thailand — that they know of — have real grounds for being fearful of cooperating with the Australian police because the traffickers in Thailand can be ruthless.... And they know where the young women, who've been*

²⁴ <http://www.abc.net.au/triplej/programs/hack/anti-slavery-workers-say-gov-failing-sex-trafficking-victim/7210778>

²⁵ <http://www.aic.gov.au/publications/current%20series/tandi/441-460/tandi451.html>



trafficked into Australia, where their families are.”²⁶

Another important point to consider is that trafficking victims may be able to provide very little in terms of actual evidence against their captors. Kathleen Maltzahn, founding director of Project Respect, said she had worked with women who had undoubtedly been trafficked but did not qualify as an ‘appropriate witness’ in the eyes of law. *“If the woman doesn't know the proper names of who trafficked her, if she doesn't know the address of the brothel, can't remember dates, if she's confused about what happened [and] when — partly because of trauma — that might mean that with the best will in the world she might not be a credible witness in court.. You can talk to women who don't even know what suburb they've been held in and, indeed, I've spoken to women who haven't always been sure what states they've been in. So they often can't be witnesses.”* she said.²⁷

- **Provisions in the United Kingdom’s legislation which have proven effective in addressing modern slavery, and whether similar or improved measures should be introduced in Australia;**

The United Kingdom’s Modern Slavery Act only received Royal Assent and became law on 26 March 2015. This was an important step taken by the UK government in consolidating laws regarding forced labour and trafficking. The legislation consolidated the previous statutes that were applicable to human trafficking and exploitation; the Sexual Offences Act 2003 (trafficking for sexual exploitation); the asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (trafficking for labour exploitation); and the Coroners and Justice Act 2009 (slavery and forced labour).

NorMAC's concern is that this law does not address the escalating tragedy of sexual servitude. A key amendment to the Modern Slavery Bill was put forward by Labour MP Fiona Mactaggart in November 2014 but was defeated. This amendment would have criminalised the purchase of sex, ultimately offering more protection for people in sexual servitude.²⁸

It appears there was a concerted campaign by politicians, including John McDonnell, who made claims that criminalising the purchase of sex would drive the sex trade underground.²⁹ Despite McDonnell’s position there is a mass of evidence showing that criminalising sex buyers is effective, as noted in our previous responses.

The Modern Slavery Act 2015 only covers England and Wales and does not extend to Scotland or Northern Ireland. In 2015 Northern Ireland’s Assembly passed the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act 2015. This legislation replicated offences covered in the Modern Slavery Act which includes human trafficking, slavery, servitude

²⁶ <http://www.abc.net.au/news/2015-08-26/sex-slavery-victims-lives-endangered-by-laws/6688224>

²⁷ <http://www.abc.net.au/news/2015-08-27/most-australias-alleged-sex-slavery-victims-left-in-limbo/6714974>

²⁸ <http://www.bbc.com/news/world-europe-29950986>

²⁹ <https://www.youtube.com/watch?v=O4to2bG7N5g>



and forced labour. Despite consistency with the UK legislation, there are some key differences in Northern Ireland's Human Trafficking and Exploitation Act.

The Human Trafficking & Exploitation Bill 2015 was passed unanimously in the Northern Ireland Assembly and is unique in the United Kingdom with clause 15 which criminalises those who pay for sexual services. [Part 2, Section 15].³⁰ The Bill also includes a clause against the offence of Forced Marriage [Part 2, Section 16].

The Northern Ireland legislation also includes a preparatory offence of intent to commit a human trafficking or slavery as well as including a sentencing framework which seeks to enhance public protection by setting out statutory aggravating factors.

Northern Ireland again goes further, stating that consideration should be given to the special needs and particular vulnerabilities of victims, and that support to victims must be offered from a person who is of the same gender.

Another shortfall which has been identified with the Modern Slavery Act 2015 is that the UK Government was reluctant to set out minimum support and assistance entitlements for adult victims. On the other hand Northern Ireland's legislation gives greater flexibility in the time frame in which they can support an individual, particularly for adult victims of slavery.³¹

- **Whether a Modern Slavery Act should be introduced in Australia; and**

We do not support the adoption of legislations based on the deficient and limited Modern Slavery Act 2015 in England and Wales. Although recognising the importance of the Modern Slavery Act we see this legislative approach as significantly weaker in a number of key areas than the respective Act in Northern Ireland. Northern Ireland's Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act 2015 includes all of the four key elements of the Trafficking Convention and Directive, and goes beyond the minimum international standards.

Tom Obokata, Brian Payne in their *publication Transnational Organised Crime: A Comparative Analysis*, have compared the two legislations, and report the following in regards to the improved protections and comprehensiveness of the Northern Irish Human Trafficking and Exploitation Act 2015 over the Modern Slavery Act 2015 of England and Wales;

“Although human trafficking is regarded as an indictable offence in Northern Ireland (it can be tried only before the Crown Court), it is a hybrid offence in England and Wales (triable by either the Magistrates' Court or the Crown Court)... In addition to these criminal justice aspects, discrepancies can be recognised with regard to the protection of victims of human trafficking. The Northern Irish legislation has included

³⁰ <http://www.bbc.com/news/uk-northern-ireland-30404275>

³¹ http://www.ecpat.org.uk/sites/default/files/atmg_class_acts_report_web_final.pdf



provisions on this, and this is significant as it enhances the accountability of the Northern Ireland government if it does not provide necessary protection. Section 18(4) now specifies a period of 45 days during which the so called Competent Authorities make a decision as to the status of the victims (known as ‘a reflection period’) and also make it clear that provision of assistance and support must not be conditional upon victims participating in criminal investigation or proceedings. In addition, those in a position to provide assistance must pay particular attention to the vulnerabilities of victims, such as their gender, age and physical/mental illness, including disabilities. Finally, the Act stipulates a non-exhaustive list of assistance measures which include, but are not limited to, safe accommodation, financial/material assistance, medical and psychological assistance and legal representation. In looking at these, it is evident that the Northern Irish legislation on human trafficking is far more advanced than the Modern Slavery Act 2015 in terms of victim protection and is more in line with the EU Trafficking Directive.”³²

Given the increased support provisions for victims of human trafficking and the comprehensiveness of the Northern Irish legislation, we would encourage the committee to seriously consider the adoption of legislation based on Northern Ireland's Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act 2015.

- **Any other related matters.**

NorMAC would like to raise concerns about campaigns in Australia by the sex trade lobby groups such as the Scarlet Alliance which have denied the reality of trafficking for the purposes of sexual servitude in Australia. In many cases these groups have attempted to re-frame women trafficked for the purposes of sexual exploitation as autonomous ‘migrant sex workers’ and have campaigned for measures such as the extension 457 visas as a way of reducing trafficking.

In March 2014 it was announced by federal Justice Minister, Michael Keenan that the Scarlet Alliance was one of four organisations to receive \$360,000 over a three year period for the purposes of detecting and preventing human trafficking and slavery.³³

Despite Scarlet Alliance receiving funding to prevent trafficking and also sitting on the National Roundtable on Human Trafficking and Slavery, The Scarlet Alliance’s current CEO Jules Kim has made questionable claims about human trafficking when interviewed in 2015. Ms Kim highlighted her denial of the reality of sexual exploitation in Australia when she stated; “*Despite*

³² https://books.google.com.au/books?id=_99RDQAAQBAJ&pg=PT81&lpg=PT81&dq=how+does+northern+ireland%27s+human+trafficking+legislation+differ+from+the+UK&source=bl&ots=qe_eeu0z-6&sig=jSmyFUOdoNDTndJxpcPxucMSVA&hl=en&sa=X&ved=0ahUKEwiQ-bro6MTTAhWFG5QKHagqAe8Q6AEIJTAA#v=onepage&q=Human%20Trafficking%20%26%20Exploitation%20&f=false

³³ <http://www.smh.com.au/federal-politics/political-news/antislavery-organisations-receive-144m-funding-boost-20140325-35eug.htm>



*the widely held myth of migrant sex workers being tricked into the sex industry in Australia, none of the prosecuted trafficking cases that included sex work have involved deception or trickery of the fact the person would be sex working in Australia. The people in those cases had all known they would be sex working in Australia with many of them having sex worked before in their home country.*³⁴

The assertion that “none of the prosecuted trafficking cases that included sex work have involved deception or trickery” is false. An example includes 2010 case Trevor McIvor and Kanakporn Tanuchit. Their five victims were Thai women who were exploited in a NSW brothel owned by Mr McIvor and co-managed by Ms Tanuchit. Mr McIvor and Ms Tanuchit were charged with five counts of possessing a slave and five counts of exercising over a slave powers attaching to the right of ownership. According to evidence provided, four of the five exploited women were advised that their work in Australia would involve providing sexual service. The fifth woman ‘Yoko’ was told that she would be working as a masseuse. (McInnes & Wilson, 2012, P. 113)

Another case from 2003 saw charges laid against Mr Daniel Sweeseang Kwok, Ms Jenny Lai Chin Ong, her son Mr Raymond Aik Tong Tan, and Mr Hoseah Paryud Saputra Yoe. It was alleged that the accused conspired between themselves and others to bring up to eight Southeast Asian women to Australia between November 1, 2001 and June 14, 2003 to work in brothels in conditions that amounted to servitude or slavery. Statements made in court proceedings later revealed that the women arrived in Australia on tourist visas, that their passports and documents were confiscated after arrival. The women were allegedly required to perform approximately 800 sexual acts, for no payment and pursuant to a ‘contract debt’, reportedly set at AU\$45,000 for each woman. The investigation came about when three Indonesian women escaped from an apartment in Auburn, Sydney, and reported to the New South Wales Police. The women told the police that they had been deceptively recruited to travel to Australia to work in the catering or public relations industry.³⁵

Despite the claims of Ms Kim and the Scarlet Alliance it appears that there is a twilight zone between the working environment which encompasses both ‘sex workers’ and ‘sexually exploited persons and sex slaves’. Neither group are totally isolated from each other and their buyers are often none the wiser about the real differences.³⁶

It should also be noted that Ms Kim and the Scarlet Alliance’s failure to acknowledge sexual servitude was referenced in page 56 of the NSW Select Committee on the Regulation of Brothels Report 1/56 – November 2015. The Report states – “*The characterisation of the case of sexual servitude that Ms Kim and Ms Fawkes of Scarlet Alliance were asked about involving Chee Mei Wong was clearly incorrect. They were challenged as to its accuracy and adhered to*

³⁴ <http://www.altmedia.net.au/110143/110143>

³⁵ https://www.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/aus/2005/r_v_kwok_2005.html?lng=en&tmpl=sherloc

³⁶ <http://tasmaniantimes.com/index.php/article/working-against-the-global-sex-industry#sthash.SyuaxjF2.dpuf>



the false contention that the workers involved were not tricked and knew that they would be involved in sex work when they came to Australia.”³⁷

We appreciate this opportunity to contribute to your inquiry and we are willing to participate in any further avenues of inquiry you pursue in our shared goal of best outcomes and protection for those persons currently exploited in the sex trade in addition to family members or others who may be valuable witnesses needing protection for the purposes of effective investigations into slavery by authorities in Australia.

Do not hesitate to contact us if you wish to discuss our concerns further.

Yours sincerely

Simone Watson,
Prostitution Survivor,
Director for NorMAC

Matthew Holloway -BSocSc Couns (Hons),
National Secretary for NorMAC

³⁷ <https://www.parliament.nsw.gov.au/committees/DBAssets/InquiryReport/ReportAcrobat/5198/Final%20Report%20-%20Inquiry%20into%20the%20Regulation%20of%20Brot.pdf>