



CATHOLIC WOMEN'S LEAGUE AUSTRALIA INC.

Member Organisation of the World Union of Catholic Women's Organisations (WUCWO)
NGO in consultative (Roster) status with the Economic and Social Council of the United Nations

Project Manager Sex Industry Review
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Submission from
CATHOLIC WOMEN'S LEAGUE AUSTRALIA INC. (CWLA Inc.)

Regarding
Regulation of the Sex Industry in Tasmania, Discussion Paper 2012.

Catholic Women's League Australia Inc. (CWLA) is the national peak body representing the League's seven member organisations located throughout Australia, and including Tasmania.

We are a Non-Government Organisation and have consultative (Roster) status with the Economic and Social Council of the United Nations. We are also a member organisation of the World Union of Catholic Women's Organisations which enables us to work with 5 million women in more than 60 countries to promote the presence, participation and co-responsibility of Catholic women in society and the Church.

Addressing social justice and ethical questions is one of our primary tasks. We seek to influence legislative and administrative bodies at all levels in order to preserve the dignity and rights of the human person, with particular focus on women and children. The subject matter of the current consultation is, therefore, of particular importance to our members and we are grateful for the opportunity to respond to the *Regulation of the Sex Industry in Tasmania, Discussion Paper 2012*.

I. Prostitution is inherently harmful.

Central to modern society's recognition of human dignity and human rights is the Kantian notion that a person should be treated as an 'end' and never merely as a 'means to an end.' Prostitution, however, treats women (and less frequently, men and children) physically, psychologically, and emotionally as a means to the sexual gratification of men. It treats women as 'objects' for sexual use rather than as 'persons' deserving of the opportunity to experience their identity, self-worth and agency through their sexuality. Because the vast majority of prostituted persons are women, prostitution also represents a serious obstacle to gender equality.

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This objectification and exploitation is an offence against the dignity (inherent value) of women, with serious negative secondary effects. The United Nations *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others* (1949) states:

...prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community...(Preamble).

Catholic social teaching expresses this in the following way: "Prostitution does injury to the dignity of the person who engages in it, reducing the person to an instrument of sexual pleasure." (*Catechism of the Catholic Church* n. 2355)

Prostitution is, therefore, *inherently* harmful and any attempt to re-frame prostitution as an ethically legitimate exchange of services and work is fundamentally misguided. The reality is that what is 'exchanged' - the use of a woman's body and sexuality – is too personal to ever be sold and bought. Prostitution is like no other form of work since it involves the use of a woman's body by the buyer for his sexual gratification. (Sullivan, 2005)

This 'market mentality' is also falsely premised on the free participation of women in prostitution. The reality could not be further from the truth. As one prominent international researcher in this area explains:

When prostituted women are asked, consistently around 90% say they want out of prostitution immediately, but the decision is out of their hands and in the hands of their pimps, their husbands, their landlords, their addictions, their children's bellies. A study of women in street prostitution in Toronto found that about 90% wanted to escape but could not and a 5-country study found that 92% of women, men and transgendered people in prostitution wanted immediate help to escape prostitution. If they are there because they cannot leave, then prostitution is not a freely made choice. (Farley, 2009)

Project Respect, a service conducting outreach and offering support to women in the sex industry across Victoria reports that of the 995 women they encountered in 2010/2011:

- 75% are single mothers
- 73% speak of either childhood or adulthood sexual abuse
- 60% are currently or previously in a violent relationship
- 47% financially support a partner
- 33% are homeless
- 35% either disclose excessive gambling or state that it was debt through gambling that forced them into the sex industry. (*Women Matter: Project Respect Annual Report, 2010/2011*)



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A large study published in 2003 surveying a population of 854 prostituted persons in nine countries across five continents, in virtually all forms of prostitution found that 59% of all respondents affirmed that they, as children, were “hit or beaten by caregiver until injured or bruised”. An additional 63% reported they were sexually abused as a child. In the same sample, 75% reported they had been homeless, either currently or in the past. 47% reported they entered under age 18. (Farley, 2003)

2. Legalisation compounds the inherently harmful effects of prostitution.

a. Legalisation creates a ‘culture of exploitation’

Legalised (decriminalised or licensed) prostitution normalises and perpetuates the culture of exploitation that is inherent in prostitution.

Once prostitution is legalised, men who previously would not have risked buying women for sex now see prostitution as acceptable. When legal barriers disappear, so do the social and ethical barriers to treating women as sexual merchandise. Legalisation of prostitution sends the message to new generations of men and boys that women are sexual commodities and that prostitution is harmless fun. (Farley, 2009)

Even when it is motivated by ‘harm minimisation’, the legalisation of prostitution is ultimately a concession to the ongoing exploitation of a group of women. Understood as a practice of sexual exploitation, prostitution cannot be made safe. Those in it cannot realistically be protected. (MacKinnon, 2011) The only approach which is truly worthy of women is a mindset of ‘harm elimination’.

While the welfare of prostituted women (men and children) should be the first priority, consideration must also be given to the effects of legalisation on the wider community. Do the majority of Tasmanians want a flourishing and *state sanctioned* sex industry? Do they want prostitution to become a source of state revenue or to be integrated into the state tourism industry? Do they want a ‘red light’ district, or neighbourhood brothels? Do they believe that prostitution is an appropriate state sanctioned employment option for women in poverty?

Following the legalisation of prostitution in Victoria, Sullivan and Jeffreys observed “an explosion of forms of sexual exploitation in the industry. Tabletop dancing, bondage and discipline centres, peep shows, phone sex and pornography -- all are developing profitably as part of a multi-million dollar industry of sexual exploitation.” (Sullivan and Jeffreys, 2001, p.3.)

Tasmania must avoid the creation of a ‘prostitution culture’ where it is acceptable for men to purchase women for sexual gratification. (Sullivan, 2005)

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b. Legalisation expands both the legal and illegal sex industry.

Experience in other jurisdictions demonstrates that legalisation of prostitution greatly expands the illegal, as well as legal sectors of the industry, effectively created a two tiered system.

Following legalisation of prostitution in Victoria, although the number of legal brothels doubled, the greatest expansion was in *illegal* prostitution. In 1 year (1999), there was a 300% growth of illegal brothels (Sullivan & Jeffreys). Illegal brothel prostitution burgeoned to meet buyers' demands for 'cheaper' or 'unrestricted' sexual services, including sex without condoms. (Sullivan, 2005) Additionally, many prostituted women are reluctant to work in legal operations to avoid disclosure.

Most women in prostitution do not want to think that this is all their lives are ever going to be. To become legal requires disclosure of a real name, registration, going to a hospital to get cleaned up, which in turn relies on and creates records. This in turn means deciding that prostitution will be part of your official life story. Most prostituted women, even if they have to do this now, have dreams. (MacKinnon, 2011)

Another factor encouraging the growth of the illegal sector is that once "the illegal market explodes, the governmental apparatus to address it erodes because the industry is decriminalized, no one sees any harm in it, and the illegal market intersects and overlaps the legal market." (MacKinnon, 2011)

The 2004 review of the Queensland Act found that only about 10 per cent of all prostitution services available in Queensland were operating within the legal brothel system.

c. Legalisation does not provide prostituted women with substantive benefits.

Putting aside the philosophical problems with harm minimisation, there are also practical reasons against the legalisation of prostitution. Sullivan explains that prostitution is inherently violent and incapable of being regulated.

Even given the supposedly optimum circumstances in which prostitution can take place—that is, in Victoria's legal brothels and escort agencies—women continue to be raped and traumatised. Attempts to treat prostitution businesses as similar to other mainstream workplaces actually obscure the intrinsic violence of prostitution. This violence is entrenched in everyday 'work' practices and the 'work' environment and results in ongoing physical and mental harm for women who must accept that in a legal system such violence has been normalised as just part of the job. (Sullivan, 2005. p.5)



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A study of the Netherlands, where prostitution is legal, found 60% of prostituted women suffered physical assaults; 70% experienced verbal threats of physical assault; and 40% experienced sexual violence. (Vanwesenbeeck, 1994, cited in Farley 2004, p. 1095)

A nine-country study found that 68% of the prostituted persons met criteria for posttraumatic stress disorder with symptoms in the same range as for battered women seeking shelter, survivors of rape, and refugees from state-organised torture. Such symptoms were found regardless of whether prostitution was legalised or criminalised, and regardless of whether it took place indoors, in brothels, on the streets, or in developing as opposed to fully industrialized countries. (Farley et al., 2003, 44–49, 56).

A 2008 New Zealand government committee inquiring into their prostitution laws found that violence against women in prostitution had continued after prostitution was decriminalised. The majority of prostituted persons as well as brothel operators felt that the Prostitution Reform Act of 2003 could do little about such violence (Prostitution Law Review Committee, 2008, 14, 57).

The German government has concluded that legalising the German sex industry has failed to deliver any of the promised tangible benefits to prostituted people:

The Prostitution Act has . . . up until now . . . not been able to make actual, measurable improvements to prostitutes' social protection. As regards improving [their] working conditions, hardly any measurable, positive impact has been observed in practice The Prostitution Act has not recognisably improved the prostitutes' means for leaving prostitution. There are as yet no viable indications that [it] has reduced crime [or] contributed . . . transparency in the world of prostitution . . . (Report by the German Federal Government on The Impact of the Act Regulating the Legal Situation of Prostitutes, 2007)

d. Legalisation promotes trafficking

MacKinnon notes that experience in the Netherlands, Germany, Victoria and elsewhere shows that when prostitution is legalised, trafficking goes through the roof. "As a business decision, it makes sense to traffic women and children where business is legal because once you get them there, the risks to sellers are minimal even if trafficking is formally a crime, and the profits to be made from operating in the open are astronomical." (MacKinnon, 2011, p. 304.)

Victoria is a well-documented instance where legalisation has been identified as a "pull factor" for traffickers. (Bindel, 2003) Brothels create a demand for constant new recruits and fuel the illegal trafficking industry. (Sullivan and Jeffreys, 2000.) Where prostitution is legal, sex industries are larger and create a demand for more women to sell sex, attracting traffickers and others who exploit women for financial gain. (Farley, 2009)

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3. The criminalisation of the purchase of sexual services and decriminalisation of prostituted persons provides the best outcome for prostituted persons.

The evidence is clear that legalisation and decriminalisation fail to protect women in prostitution and the wider community. Fortunately there is another positive legislative option, founded upon the recognition of prostitution as overwhelmingly unequal, exploitative, and harmful to prostituted persons. In Sweden, the criminalisation of the *purchase* of sexual services and decriminalisation of the prostituted person has significantly reduced the occurrence of prostitution in Sweden compared to neighbouring countries. (Waltman, 2011)

Regrettably, the efficacy of the Swedish legislative approach is poorly represented by the *Regulation of the Sex Industry in Tasmania, Discussion Paper 2012*. Therefore, the following points highlight the objective shortcomings of the Discussion Paper in this regard, as well as the major positive conclusions of the 2010 Swedish government report, *The Ban Against the Purchase of Sexual Services. An evaluation 1999-2008*.

- i. The Discussion Paper records the Swedish report as stating “The number of foreign women in street prostitution has increased in Sweden” but does not include the citation:

*The number of foreign women in street prostitution has increased in all the Nordic countries, including Sweden. However, by comparison it can be noted that **the dramatic increase in the number of foreign women in street prostitution reported from both Denmark and Norway has no parallel in Sweden.** (Report p.35)*

- ii. The discussion paper cites the report as stating “(M)ost young people who are exploited sexually in return for payment came into contact with the purchaser via the Internet... The ban on the purchase of sexual services has not had an effect on the exposure of young people on the internet.” It does not, however, mention the broader finding of the report regarding internet prostitution:

*In the last five years, Internet prostitution has increased in Sweden, Denmark and Norway. However, the scale of this form of prostitution is more extensive in our neighbouring countries, and **there is nothing to indicate that a greater increase in prostitution over the Internet has occurred in Sweden than in these comparable countries. This indicates that the ban has not led to street prostitution in Sweden shifting arenas to the Internet.** (Report p.35)*

- iii. Regarding the question of whether there has been an overall reduction in the number of sex workers in Sweden since the introduction of the Swedish laws, the *Discussion Paper*



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cites a Report published in 2007 by the National Board of Health and Welfare in Sweden:

It is also difficult to discern any clear trend of development: has the extent of prostitution increased or decreased? We cannot give any unambiguous answer to that question. At most, we can discern that street prostitution is slowly returning, after swiftly disappearing in the wake of the law against purchasing sexual services. But as said, that refers to street prostitution, which is the most obvious manifestation. With regard to increases and decreases in other areas of prostitution – the —hidden prostitution – we are even less able to make any statements.

However, the Discussion Paper overlooks the more recent conclusion of the 2010 Swedish Government report:

*The overall picture we have obtained is that, **while there has been an increase in prostitution in our neighbouring Nordic countries in the last decade, as far as we can see, prostitution has at least not increased in Sweden.** There may be several explanations for this but, given the major similarities in all other respects between the Nordic countries, it is reasonable to assume that prostitution would also have increased in Sweden if we had not had a ban on the purchase of sexual services. Criminalisation has therefore helped to combat prostitution. (Report p.36)*

- iv. The Discussion Paper includes a list of 'shortcomings with the law' identified by critics of the Swedish criminalisation approach. It is worth noting, however, that there are *only two* sources for this list – Ostergren's "Sex workers' Critique of Swedish Prostitution Policy 2004" and the Queensland Prostitution Licensing Authority – and no presentation of the relevant opposing view of the Swedish Government Report:

*When the ban on the purchase of sexual services was introduced, various misgivings were voiced. These included fears that criminalisation would risk driving prostitution underground, making it harder to reach out to the vulnerable people involved through social measures, and that the ban would bring an increased risk of physical abuse and generally worsen living conditions for prostitutes. **As far as we can judge from the written material and the contacts we have had with public officials and people involved in prostitution, these fears have not been realised.** (Report p.37-8)*

- v. The Discussion Paper omits significant findings of the Swedish Government report concerning human trafficking, public opinion and the numbers of men who purchase sexual services.
 - *Although it is hard to assess the exact scale of human trafficking for sexual purposes, in Sweden the establishment of this kind of crime is considered to be substantially smaller in scale than in*

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other comparable countries. According to the National Criminal Police, it is clear that **the ban on the purchase of sexual services acts as a barrier to human traffickers and procurers considering establishing themselves in Sweden.** (Report p.37)

- Judging by the results of four population-based opinion polls, there has been a change of attitude with regard to the purchase of sexual services that coincides with the criminalisation of the purchase of such services. The marked shift in attitude that has occurred here – without an equivalent shift in Norway and Denmark – must be interpreted as meaning that **the ban itself has had a significant normative effect which, given that support for criminalisation is greatest among young people, can be expected to last.** In all three surveys conducted since the ban was introduced, more than 70 per cent of those asked took a positive view of the ban. (Report p.37)
- According to surveys conducted in Sweden in the period following criminalisation, **the proportion of men reporting that they have, on some occasion, purchased sexual services has decreased,** and it would seem that fewer men purchase sexual services in Sweden than in the other Nordic countries. (Report p.38)

In conclusion, an accurate reading of the 2010 Swedish Government report demonstrates that their model is working to reduce the demand for sexual services and protect women from exploitation. For good reasons, this approach has now been adopted in Norway, Iceland and Korea, and is under serious consideration in France, Israel and parts of the United States of America.

4. Recommendations

Internationally, there is a growing consensus that prostitution is inherently harmful to prostituted persons and that decriminalisation or licensing further compounds this harm. The criminalisation of the purchase of sexual services and decriminalisation of prostituted persons provides the best outcome for prostituted persons.

Tasmania now has the opportunity to move beyond harm minimisation strategies which have been tried and found wanting.

CWLA Inc. recommends the following progressive measures to protect women (men and children) from the inherent harm of prostitution by *reducing demand* for sexual services.

- a. Tasmania's legislation in respect of sexual services provided for fee or reward to and by consenting adults should *criminalise the purchase* of sexual services (the 'Swedish criminalisation approach')



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- b. The government should introduce strategies to assist people in prostitution to leave the industry and find alternative means of support, through such measures as counseling, education and job training.
- c. Education and information should be provided to heighten people's awareness of the inherent harm of prostitution and help them rethink their attitudes to those exposed to prostitution and trafficking for sexual purposes.
- d. *At the very least*, the government should resist going down a path of decriminalisation or licensing, and maintain current legislation which:
 - provides that it is illegal for a person to employ or otherwise control or profit from the work of individual sex workers.
 - prohibits more than two sex workers to work together in a partnership arrangement.
 - makes it an offence to offer or procure sexual services in a public place – making street prostitution illegal for both worker and client.
 - establishes a range of offences relating to coercion of sex workers.

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