



20 September 2019

Dr Jennifer Buckley
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Dear Dr Buckley

Response to Economic Policy Scrutiny Committee’s review of *Sex Industry Bill 2019*

As below, I would like to submit comment to the Economic Policy Scrutiny Committee on the Northern Territory *Sex Industry Bill 2019*. I would be glad for any opportunity to speak with Committee members in person.

Best regards

Caroline Norma

1. **The *Sex Industry Bill* mostly protects the interests of sex industry entrepreneurs and their sex-buying customers in the Northern Territory.**
 - a. The Bill deregulates the commercial activities of sex industry entrepreneurs in the Northern Territory. It reduces their costs of doing business, and supports their pursuit of profit extracted from the prostitution of women. It imposes upon these entrepreneurs almost no regulatory requirements of business operation. The Bill lowers costs of business for sex industry entrepreneurs in the Northern Territory by requiring little government-imposed expenditure or efforts in relation to their commercial operations. The Bill imposes upon prostitution business owners very few active obligations—rather, these owners are simply required to desist from employing children, supplying drugs to women, etc. The Bill does not require them to enact any measures to enhance the safety of prostituted people (such as employing security guards), enforce condom usage among customers, or even display signs against sex trafficking. It imposes no restrictions on the size of prostitution businesses, their number of rooms, the numbers of women who may be available for prostitution onsite, or conditions in which business managers can dispatch women in outcall arrangements for prostitution. There are no restrictions on live sex shows staged within prostitution businesses, ‘gang bang’ advertised services, or restrictions on sex businesses applying for liquor licenses. There’s no restriction placed on visa-holders entering the Northern Territory’s sex industry, language proficiency, or the location of brothels near public facilities, or within residential apartments. There is no restriction on how many prostitution businesses one individual may own, or regulations relating to the intellectual capacity/mental wellbeing of people sold for prostitution in sex businesses. The Bill appears to plan for no checks by public servants in relation to risky aspects of sex industry venues, such as women living in brothels, external locks on brothel room doors, or arrangements for the security of women leaving sex businesses during the night-time.
 - b. The Bill supports sex-buying customers to bring civil claims against people prostituted in the Northern Territory sex industry. Namely, it allows customers to ‘recover damages for, a contract for sex work that is not performed’. In support of sex industry customers, the Bill newly deems that ‘[n]o contract for or to arrange sex work is illegal or void on public policy or similar grounds’, and ‘overriding the common law position that a contract for sex work is illegal or void on public policy or similar grounds, purely because the subject matter of the contract relates to sex work’. This strengthening of the position of sex-buying customers relative to prostituted women further subordinates vulnerable women to sex-buyers and pimps. They will be forced, at the threat of legal

action, to acquiesce to the demands of customers, which are often arranged directly with pimps, rather than the women themselves. Failure to fulfil sexual demands made by customers, which often include painful, humiliating and dangerous acts, risks exposing women to threats of court action. While such action is unlikely to ever reach Australia's courts, there are women for whom such threats will be persuasive and frightening. Women in the sex industry are almost always vulnerable, unsupported, impoverished and psychologically weakened, and threats of legal action, often supported by threats of violence, will mean they are forced to acquiesce to demands by customers that are harmful and sometimes life-threatening.

- c. The Bill protects criminal sex industry entrepreneurs from interference from police. It specifically excludes police involvement in sex industry oversight and investigation: 'a police officer, who may exercise powers and functions as an authorised officer under the Public Health and Environmental *Health Act* 2011, may not exercise those powers and functions in relation to sex work'. This is an extraordinary privilege of police non-interference afforded the Northern Territory's sex industry. It is a level of non-interference not awarded other industries in the Territory. It is a highly irresponsible gift from government, given rates of violence and organised crime in sex industries in all legal jurisdictions throughout the world. It entirely ignores everything that police forces globally known about the sex industry and its incorporation of organised crime. It is already recognised by police in NSW that deregulating the sex industry (decriminalising the legal status of sex industry participants) in the 1990s has been a policy failure. Bikie gang and other organised crime groups are now heavily involved in the NSW sex industry.¹ 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'.²
 - d. The Bill proposes to destroy records generated under the Northern Territory's 1992 legislation. While we might welcome the expunging of the criminal records of people prostituted in the sex industry, this destruction of records will erase the criminal histories of pimps and traffickers in the Northern Territory. This will make more difficult the task of excluding such criminals from the sex industry deregulated in the Northern Territory under the 2019 Bill.
2. **The Bill makes no special provision for Aboriginal women and girls, even though their disproportionate rates of prostitution in the Northern Territory are known, and they are recognised internationally as a population vulnerable to sexual exploitation.**³
 3. **The Bill misunderstands the commercial circumstances of the sex industry.**
 - a. In a number of places, the Bill (for example, in Part 2/7) insists upon the validity of 'contracts' concluded between sex-buying customers and the people they have bought for prostitution. However, the legislative drafters appear to have misunderstood the nature of the 'contracts' that usually exist within the sex industry that require legislative restriction. These contracts are almost always between sex industry entrepreneurs and people prostituted in the sex industry.⁴ A 2015 Australian Institute of Criminology report, for example, described these contracts in detail, and found them to be prevalent, particularly among foreign women in Australia's sex industry. The Bill introduces very little regulation of these contracts, which are notoriously exploitative, debt-bonding of women, and intimidating in terms of fees and penalties.
 - b. The legislative drafters have referred to 'specific performance' (perhaps meaning 'specified performance'?) in the Bill's explanatory notes when referring to contracts in the sex industry. The extent to which commercial contracts may govern the specified performance of tasks is not a matter for government but Australia's courts. The Bill oversteps the role of government in its dictating of contract law interpretation to Australia's courts. Also, 'specified performance' is usually a legal concept relevant only in the case of employer/employee relationships. Notably, Australia's sex industry denies any such employer/employee relationship when it comes to women prostituted in sex businesses. Instead, sex industry entrepreneurs insist these women are 'independent contractors'. The legislative drafters appear to be unaware of conditions in Australia's sex industry, and are particularly confused about the role that contracts play in this industry.

¹ <https://www.dailytelegraph.com.au/newslocal/the-hills/sex-industry-avoids-brothel-licences-and-police-unit-after-nsw-review-rejects-it-but-labor-mp-disagrees/news-story/c74a506e912234ecd537a9603b5fb550>

² <https://www.smh.com.au/national/nsw/licensing-law-to-tighten-screws-on-brothel-chiefs-20111010-1lhm7.html>

³ <https://www.abc.net.au/news/2009-11-30/aboriginal-itinerants-turning-to-prostitution/1162326>

⁴ <https://aic.gov.au/publications/rpp/rpp131/australian-sex-industry>

4. **The Bill's sponsors attempt to justify its provisions under banners of human rights and Article 6 of CEDAW.**
- a. The Bill misunderstands the fact that the CEDAW Committee, along with many international bodies globally, insists upon the obligation of member states to suppress domestic demand for the prostitution of women and children. In fact, the United States congress is currently considering an amendment to that country's Trafficking in Persons framework to audit countries on their efforts to suppress demand for prostitution. The Bill in its current form puts the Northern Territory government at odds with these international bodies, because it enacts measures *in support* of prostitution-buying customers of the sex industry, rather than measures to dissuade their activities.⁵
 - b. Decriminalising the activities of the sex industry constitutes state action towards expanding, not reducing, the exploitation of women in prostitution through giving the sex industry free reign to expand its business operations. At present, brothels are banned in the Territory; therefore, at the very least, the Bill allows their development, which would represent expansion in the size of the Territory's sex industry, and therefore a greater number of women at risk of exploitation.

⁵ <https://endsexualexploitation.org/articles/why-the-sex-trafficking-demand-reduction-act-matters-and-why-ncose-endorsed-it/>